The European Central Bank and the European Macroeconomic Constitution

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Review essay on Klaus Tuori, *The European Central Bank and the European Macroeconomic Constitution. From Ensuring Stability to Fighting Crises, Cambridge Studies in European Law and Policy* (Cambridge University Press 2022).

Introduction

The central bank is typically the main monetary authority of a state. From the 1980s, central bank policymaking has predominantly operated within a specific framework: price stability as the primary target of its monetary policy; interest rates as the operational tools; and central bank independence as the institutional set-up.[1]

Tuori's 2022 book examines the evolving role of European Central Bank over the past two decades, from a central bank aiming at monetary stability to a central bank managing crises. It is part of a growing literature which examines the expanding role of central banks in an economy dominated by crises. It also considers how a legitimate regulatory framework for this independent technocratic institution can be ensured.

The book is divided into three parts. Part I of the book introduces the European Central Bank as the central bank of the European Monetary Union. With the establishment of the European Monetary Union, including the Euro and the European Central Bank, the EU went from having an overarching legal framework dominated by microeconomic principles – a constitution of sorts – to

[1] Although this framework is considered by many to be self-evident and indisputable, it is also the result of a long and conflictual historical process: B. Braun and L. Downey, 'Against Amnesia: Re-Imagining Central Banking' (*Council on Economic Policies*, 10 January 2020) https://www.cepweb.org/against-amnesia-re-imagining-central-banking/, visited 25 January 2024.

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a framework that integrated core macroeconomic elements. In tracing the foundations of this new European Macroeconomic Constitution, Tuori outlines a set of 10 constitutional principles: 1. an internal market; 2. price stability; 3. indivisible and exclusive monetary policy competence for the EU; 4. national responsibility for fiscal and other economic policies; 5. an open market economy and free competition; 6. central bank independence; 7. a narrow mandate for the central bank, excluding political value judgements; 8. a defined strategy for the European Central Bank; 9. no central bank financing of the public sector; and 10. safeguards against unsound national economic policies (p. 80–81). Part II of the book offers a detailed and systematic analysis of the many unconventional and contested decisions and measures implemented by the European Central Bank during the financial crisis starting in 2007, the subsequent sovereign debt crisis, the Covid-19 pandemic and the ongoing climate crisis. Tuori then considers whether these measures are in line with the principles which he has identified as constituting the European Macroeconomic Constitution. Part III takes a step back and draws conclusions from the two former Parts. Tuori argues that the European Central Bank has shifted from a central bank of stability to a central bank of crisis. He asks what has happened to the key constitutional principles of the European Macroeconomic Constitution, by looking at both the changes to the Bank's objectives and the institutional choices and safeguards implemented. In particular, Part III examines whether the preconditions for an independent expert-driven institution still exist.

The topic of the book raises traditional administrative and constitutional law questions related to the rule of law; the delegation of power; democratic accountability; *ultra vires* decisions and judicial review. However, the book is not limited to a traditional black-letter assessment. It also introduces, explains and assesses economic and institutional arguments and rationales related to central banks' decisions and crisis measures. At its best, Tuori's multidisciplinary approach provides lawyers with a deeper understanding of the economic and institutional objectives underlying and justifying the European Central Bank regulatory framework. This includes insights into the balancing of interests that went on when establishing the Bank as a technocratic institution independent from democratic organs in both member states and the EU. Tuori thereby advances the legal and regulatory debate on central banking. However, it is slightly difficult to determine who the intended audience is, because the level of complexity of the language, and of the economic and legal arguments developed, varies greatly. At times, the book provides pedagogical basic explanations, while at others the text takes for granted that the reader has prior knowledge of arguments and policy debates pertaining to the central bank discourse. While a multidisciplinary approach has the potential to lift the debate on the legality and legitimacy of the European Central Bank's expanded role, there is a risk that a multidisciplinary approach comes at the expense of the thoroughness of the legal analysis. In this regard, the book could have elaborated more on the case law and the legal debates concerning the extent to which the policies implemented by the Bank in the past 15 years were within its mandate.

This review starts by explaining the traditional institutional set-up of central banks since the 1980s and the expanding role of central banks over the past two decades. It thereafter starts to analyse the book by introducing its analytical approach – the European Macroeconomic Constitution. Subsequently, this review reflects upon the future relevance of the findings and analysis, and continues by discussing challenges related to the regulation of independent technocratic authorities more generally and associated judicial review. It concludes with some critical remarks on the book's multidisciplinary challenges.

Central banks' expanding role in times of crisis

In his book, Tuori explains that the 10 principles of the European Macroeconomic Constitution stem from an ordoliberal worldview. The independence of central banks is here justified from a public policy standpoint.[2] Since the 1980s, there has been a consensus among orthodox economists and policymakers that central banks are best equipped to achieve price stability if they are granted independence from the executive branch. Such independence guarantees are often incorporated in the law. The traditional view is that price instability entails significant costs and no long-term welfare benefits.[3] The costs include distortions in economic activity, the cost of

[2]R.M. Lastra, *Legal Foundations of International Monetary Stability* (Oxford University Press 2006) p. 44. The literature uses empirical studies and creates a legal index (based on selected legal provisions and indicators) for the purpose of developing economic and statistical tests that show a negative correlation between central bank independence and inflation.

[3]The support for independent central banks is not unanimous. Policymakers and scholars have debated the need for better coordination with parliaments and governments in times of economic crisis. Questions surrounding the accountability and legitimacy of central banking tools have also spawned debates about central banks' independence. Lately, the distributional effects of both conventional and unconventional monetary policy tools have engendered new debates about the need for increased political awareness and involvement in monetary policy design. The effect of monetary policies on inequality has been analysed by many researchers. For example, the empirical effects of monetary policies on inequality were investigated by S.B Carpenter and W.M. Rodgers III, 'The Disparate Labor Market Impacts of Monetary Policy', 23 *Journal of Policy Analysis and Management* (2004) p. 813; O. Coibion et al., 'Innocent Bystanders? Monetary Policy and Inequality', 88 *Journal of Monetary Economics* (2017) p. 70; A.K. Bartscher et al., 'Monetary Policy and Racial Inequality' (FRB of New York Staff Report, January 2021), https://www.newyorkfed.org/research/staff_reports/sr959.html, visited 25 January 2024. *See* an overview over literature in A. Colciago et al., 'Central Bank Policies and Income and Wealth Inequality: A Survey', 33 *Journal of Economic Surveys* (2019) p. 1199.

repricing real assets in accordance with changing nominal price levels and the cost of efforts undertaken to avoid losses on financial claims. Central banks have different tools to help them achieve price stability. The main tool is adjustment of the policy interest rate.[4] Increasing the policy rate will increase the cost of borrowing, thus slowing down the economy by making credit and investment more expensive. Decreasing the policy rate will, on the other hand, stimulate the economy by encouraging credit and investment.

Independent central banks have been conceived as a means to achieve the goal of stable prices and avoid high levels of inflation or deflation. This institutional set-up has become widely recommended and accepted across jurisdictions since the 1980s. The idea is that if the central bank is independent from the executive branch and committed to the goal of maintaining price stability, it will not be subject to political pressure, which has shorter-term goals typically corresponding to election cycles. The challenge of non-independent central banks' price stability goal being sacrificed by politicians seeking to achieve other goals, is often referred to as the time inconsistency problem.[5]

Over the past two decades, central banks (including the European Central Bank) have played an expanding role, particularly in economic crisis management. When the real economy and financial markets are functioning normally, central banks typically remain in the background and are relatively invisible. When financial markets are experiencing a crisis and threaten to break down, central banks can step forward and implement measures to stabilise the economy. The expanded role started in response to the 2007 global financial crisis, continued with the sovereign debt crisis in several European states, and became even more obvious under the global Covid-19 pandemic. Increasingly, we also see that central banks are responding to the ongoing climate crisis.

The expanding role is seen, first, in the unprecedented increase in central bank purchases of financial assets in the market, in an attempt to stretch out a giant public safety net across the financial system. These measures have a more or less clear link to central banks' price stability mandate.[6] Second, central banks' activities have expanded into the areas of competence of other public institutions, such as elected

[4]ie the interest rate that commercial banks pay to have deposits at or borrow money from the central bank, which enables them to lend money to individuals and corporations. *See* Lastra, *supra* n. 2, p. 44-46.

[5]There are also arguments in favour of central banks, as financial supervisors, having at least operational independence, but this relies on a slightly different justification. *See*, for example, A. Khan, *Legal Protection: Liability and Immunity Arrangements of Central Banks and Financial Supervisors* (International Monetary Fund 2018) s III.

[6]A. Tooze, *Crashed: How a Decade of Financial Crises Changed the World* (Penguin 2018) ch. 18.

representatives[7] and financial supervisory authorities.[8] Many central banks have gained a new or increased responsibility for financial stability, a responsibility which otherwise has been under the domain of separate financial supervisory authorities, traditionally subject to greater democratic control by the Ministry of Finance.

The policy responses of central banks have been described by many as unconventional, but also as necessary.[9] On the one hand, it might be argued that all the above-mentioned crises influenced price stability, the core concern of central banks. On the other hand, these policy responses can also be seen as a part of a more general tendency, a broadening of the central bank remit, beyond simply safeguarding price stability in a narrow sense. Regardless of which interpretation one prefers, the developments have made it increasingly clear that it is challenging to draw a clear line between financial and monetary policies, with the former falling within the competence of democratically elected politicians and the latter to independent central banks.

The expanding role of central banks in crisis-handling prompts the question of whether there is a need to rethink their independence from democratic politics. Does their expanding role fit within their current mandate? And are current controls on central banks sufficient to ensure that their decisions and policies remain within their mandate? These are all questions that Tuori's book examines. As will be clear from the following section, the book is not only concerned with the legality of the European Central Bank's crisis measures; it focuses more broadly on the legitimacy of the Bank's expanding role.

The analytical framework – the European macroeconomic constitution

Tuori describes the original legal framework of the EU ('the Original European Constitution') as a microeconomic one, based mainly on the four economic

[7]For example, the Bank took an important role in negotiating structural reforms of the Greek economy in the context of the Greek debt restructuring and crisis packages. See in general ch. 6 of the reviewed book (entitled 'The Prelude to the Sovereign Debt Crisis: Events, ECB Verbal Interventions and EU Rescue Programmes'). *See also* ibid., p. 290-295.

[8]See ch. 12.2 ('The Financial Stability Objective') of the reviewed book.

[9]'Unconventional monetary policy' is a common term used by central banks themselves, as well as researchers. For an overview of unconventional monetary policies across jurisdictions and their effects, *see* S.M. Potter and F. Smets, *Unconventional Monetary Policy Tools: A Cross-Country Analysis* (BIS 2019). *See also* V.V. Acharya et al., 'Whatever It Takes: The Real Effects of Unconventional Monetary Policy', 32 *The Review of Financial Studies* (2019) p. 3366. For an overview of the literature on the effects of and the lessons learned from the period before the Covid-19 pandemic, *see* D. Lombardi et al., 'A Survey of the International Evidence and Lessons Learned about Unconventional Monetary Policies: Is a "New Normal" in Our Future?', 32 *Journal of Economic Surveys* (2018) p. 1229.

freedoms and the rules on competition and state aid (p. 258). The establishment of the European Monetary Union, he argues, added macroeconomic elements to this legal framework, resulting in a new European Macroeconomic Constitution. The European Central Bank is the central bank under the European Macroeconomic Constitution. Tuori argues that this new constitution relies mainly on three foundations: (1) a *philosophical foundation* of economic constitutional thinking, with its roots in the German ordoliberal approach to both the economy and society at large; (2) an *economic foundation* which, given the evolution in central banking and economics, leans towards the inflation-targeting consensus of the late 1980s; and (3) an *institutional foundation* based on economic, political and legal developments in the EU that placed demands on macroeconomic integration in the form of a common currency.[10]

The three foundations both justify and inform the substance of the 10 macroeconomic constitutional principles. Tuori argues that these principles should be seen as a constitutional whole, and as a part of the larger European Economic Constitution that also includes microeconomic components. The principles express both the *objectives* of the European Macroeconomic Constitution and the *institutional choices and safeguards* that complete the overall European Monetary Union. Tuori regards the internal market objective as the main economic objective of the EU, as also underlined in the Maastricht Treaty.[11] The common currency was created to support the completion of the internal market. The independence of the European Central Bank and its objective of price stability; a narrow central bank mandate, which was meant to exclude political value judgements; and the principle of member state responsibility for fiscal and other economic policies, are among the other constitutional principles set out by Tuori.[12]

Together, the 10 constitutional principles function as a normative framework or yardstick for assessing the European Central Bank's expanding role and its contested crisis-related decisions and measures implemented over the past two decades. To be clear, the principles and the 'European Macroeconomic Constitution' are not purely black letter legal concepts. The book contains some discussions on the legality of the European Central Bank's expanded role, such as assessments of whether the Bank acted *ultra vires* in its handling of the various crises, and whether the new responsibilities transferred to the Bank – such as the increased responsibility for financial stability – were in fact in line with the Maastricht Treaty. However, the main focus is on broader legitimacy assessments

[10] *See* in general part I of the reviewed book for an introduction to the concept of the 'European Macroeconomic Constitution'.

[11] Treaty on European Union (Maastricht Treaty) [1992] OJ C 325/5, Art. G.

[12] The 10 principles are listed *supra* in the introduction.

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of whether the European Central Bank should have handled the crises as it did, and whether it was actually desirable – including socially and politically – to transfer new competences to the Bank through secondary legislation.

Through his analyses, Tuori argues that European Central Bank should stay loyal to and not stretch the 10 principles in its implementation of policies, as a wide interpretation of its powers and mandate can jeopardise the underlying consensus and the political project of the monetary union. According to him, alterations of the principles should be made only through formal changes of the legal framework. Tuori seems less interested in assessing whether the Bank's practice, and courts' assessments of the legality of this practice, may lead to an informal change in the constitutional principles themselves. As will be clear from the following section, Tuori's analyses are not only descriptive. He also takes a normative stance on the desirability of the substance of (some of) the principles. In particular, he communicates that central bank independence is desirable. He favours a strict division of labour between EU institutions with regard to price stability on the one hand, which is the proper remit of the central bank, while on the other hand financial stability and financial policies more broadly should mainly be left to politically elected organs (either at member state or at EU level).

The constitutional assessment of the European Central Bank's expanding role

According to the book's findings, the European Central Bank, as it was set up and functioned until 2007, was a central banking system with a narrow, price stability-oriented mandate, mainly operating in line with the principles of the European Macroeconomic Constitution (p. 117–126).

Tuori argues (and it is easy to agree) that the economic realities of the euro area – starting with the financial crisis in 2007, then the sovereign debt crisis, the Covid-19 economic downturn and the fight against climate change – have put the macroeconomic constitutional principles to the test. Neither the objectives of the European Macroeconomic Constitution, nor the institutional choices and safeguards that completed the overall European Monetary Union, were left untouched by the various crises. He documents the increasingly blurred division of labour between central banks and governments. It seems the policy assumptions informing the transferal of competence to an independent institution are no longer fulfilled (see more on this in the next section). Tuori's overall conclusion is that the economic and legal reality of the European Monetary Union is no longer in conformity with the principles of the European Macroeconomic Constitution as they were originally construed (p. 259).

Without reproducing the book's analyses, three examples of how the constitutional principles have been departed from are worth mentioning here. First, a narrow mandate, excluding political value judgements (such as those having distributional effects), was an essential part of the distinction between European Central Bank monetary policy and economic policies, which fell to the member states. Regardless, the Bank took on an important role in negotiating Greek economic structural reforms in the context of the Greek debt restructuring and crisis packages, both of which had clear political elements with distributive effect and engaged with questions normally left to democratically-elected organs. A connected point is that a narrow central banking model, protecting national economic policy competence, is a consequence of the principle of conferral and assumes that the Bank is subject to judicial review (p. 266). In reality, Tuori argues, the European Court of Justice proved unwilling to assess the limits of the European Central Bank's policy tools and the justifications for their implementation.[13] Second, the prohibition on central bank financing of the public sector and the prohibition of bailouts of Articles 123 and 125 of the Treaty on the Functioning of the European Union (TFEU) have, according to Tuori, been challenged in recent decades. Regardless of the justification given for purchasing government bonds, the fact that the European Central Bank holds more than four trillion euros of public sector securities, which is more than one third of the euro area GDP, can only be described as monetary financing of governments (p. 267). Third, while the formal independence of the central bank was not challenged, financial stability and public finance problems in the euro area reduced the European Central Bank's independence in practice (p. 266). In this regard, Tuori emphasises, first, the Bank's decision to give favourable treatment to government bonds in its operational framework to outright purchases of troubled government bonds, and second, the fact that the Bank was actively designing and monitoring rescue plans of member states, including structural reform programmes, as part of the Troika. He argues that the Bank's credibility and its financial position thereby became dependent on the financial position of individual member states and their banks.

Having arrived at the conclusion that the reality of the European Monetary Union is not in conformity with the principles of the European Macroeconomic Constitution as originally construed, Tuori ends his book by briefly considering the role the European Central Bank might take on in the future, and accompanying further shifts that we might see in the European

[13]The cases from ECJ are 27 November 2012, Case C-370/12, *Thomas Pringle* v *Government of Ireland and Others*, ECLI:EU:C:2012:756; 16 June 2015, Case C-62/14, *Peter Gauweiler and Others* v *Deutscher Bundestag*, ECLI:EU:C:2015:400; 1 December 2018, Case C-493/17, *Heinrich Weiss and Others* v *European Central Bank*, ECLI:EU:2018:1000.

Macroeconomic Constitution (p. 296–301). In particular, the book raises the question of whether it is possible, or desirable, to *reconstruct* a new European Macroeconomic Constitution with financial stability as its main objective. Tuori outlines three possible future paths. First, the Bank could continue on its current path as the euro area 'fire brigade', with a focus on financial stability and handling crises. In this case, member state discretion with regard to financial stability will decline, and the political institutions of the EU (the Council and the Commission) are likely to continue their work towards a more sustainable economic policy model for the EU, which would include a broader competence over the public finances of member states. The risk here is (regardless of a potential change of the TFEU) that the European Central Bank may over-extend its role and capabilities. In line with the arguments of the book, Tuori argues that an increased emphasis on the financial stability mandate and crisis resolution tasks may easily challenge the Bank's independence. Moreover, the division of labour between the European Central Bank, the politically elected EU institutions, and the member states, would continue to be contested and could become a major challenge to the existence of the European Monetary Union itself, as was also the case during the financial crisis and the subsequent sovereign debt crisis. A second path is that of an actual collapse of the European Monetary Union. The third path, which seems to be the one preferred by Tuori, is that the Bank returns to a focus on price stability as a means of ensuring economic stability. If price stability is considered the main contribution of a central bank, the Bank could, according to Tuori, re-emerge as the independent expert it was designed to be. Structural adjustments and environmental sustainability would then be addressed by member states and the EU.

Relevance when transitioning from a low to high interest rate environment

Tuori's book was written during, and is mainly concerned with, the extremely low-interest-rate period that has dominated Europe for the past two decades. As mentioned above, the main tool of central banks to ensure price stability is to influence the money supply by adjusting the interest rate. In response to the global financial crisis and the deep recession it caused in the euro area, but also during the subsequent sovereign debt crisis, the European Central Bank lowered its policy interest rates to near-zero levels. Regardless, economic growth remained weak. When the interest rate is close to or at zero per cent, the traditional tool used by central banks to ensure price stability and a low, stable and predictable inflation rate (2 per cent over the medium term) is ineffective (the zero-lower bound).[14] This is one of the core reasons why we have seen a great surge in central banks implementing unconventional monetary policies in an attempt to strengthen the economy.

The book was published in 2022 and does not take into account the recent surge in inflation in Europe, which began in mid-2021 and increased after the Russian invasion of Ukraine in 2022. The main question faced by central banks has once again become how to lower inflation. As a result, they have gradually returned to the conventional tool of raising interest rates to reduce economic activity.[15] One may legitimately ask whether this development renders Tuori's book less relevant today. Will it become a work of historical interest, with little to say on questions related to the future legal framework governing central banks? The answer is clearly no.

While the main part of Tuori's book examines the European Central Bank's expanding role in a low-interest-rate environment, many of the questions raised in the book will remain relevant in both normal- and high-interest-rate environments. For one, both financial instability[16] and the climate crisis will continue to influence the economy, regardless of the level of the interest rate.[17] And questions about the legality and legitimacy of the Bank's role in dealing with the respective crises will remain relevant. Moreover, and despite the changing economic

[14]The zero lower bound is the macroeconomic problem that occurs when the short-term nominal interest rate is at or near zero, causing a liquidity trap and limiting the central bank's capacity to stimulate economic growth with the traditional tool of lowering interest rates.

[15]Central banks have started to reduce their holding of government bonds, which has its own negative consequences. The Bundesbank announced in March 2023 that it had suffered a 1 billion euro hit from its bond holdings, as it grappled with the impact of higher interest rates. *See* G. Chazan and M. Arnold, 'Bundesbank May Need Recapitalisation to Cover Bond-Buying Losses' (*Financial Times*, 26 June 2023).

[16]As an example, in September 2022, the Bank of England stepped into Britain's bond market to stem a market rout. It pledged to buy around GBP 65 billion of long-dated gilts after the government's tax cut plans triggered the biggest sell-off in decades. The Bank of England had already planned to cut GBP 80 billion over the next 12 months in its holdings of bonds bought after the global financial crisis of 2007–2008 and during the COVID-19 pandemic. However, due to potential risk to the stability of the financial system, the Bank of England also delayed the start of a programme to sell down its GBP 838 billion of government bond holdings. *See* D. Milliken, 'Bank of England to Buy 65 Billion Pounds of UK Bonds to Stem Rout' (*Reuters*, 28 September 2022) https://www.reuters.com/markets/europe/bank-england-buy-long-dated-bonds-suspends-gilt-sales-2022-09-28/, visited 26 July 2023.

[17]Financial stability and climate risk are seen as interconnected. On the role of the European Central Bank concerning climate change and legal limits, *see* M. Ioannidis and C. Zilioli, 'Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies', 59 *CML Rev.* (2022) p. 363. For a critical view on the limited effect of central bank policies on climate change, *see* J. Cullen, 'Central Banks and Climate Change: Mission Impossible?', 9 *Journal of Financial Regulation* (2023) p. 174.

environment, Tuori's case study of the European Macroeconomic Constitution in the last two decades has the potential to contribute to the broader debate on the delegation of power to independent expert institutions.

Delegation of power to experts – technocracy and the rule of law

A key premise for reconciling the delegation of powers to independent authorities with concerns over their lack of democratic legitimacy is the feasibility of restricting the delegated powers to the technical implementation of policy decided on by elected officials. In addition, it must be possible to ensure meaningful judicial review of the decision-making of such authorities. These premises may not always hold. As indicated in the previous section, Tuori convincingly argues that both of these premises have been seriously tested, to the point that it is no longer clear whether they still hold for the European Central Bank.

The previous section listed three examples of how the Bank's expanded role has departed from the principles of the European Macroeconomic Constitution. As with many central banks, the European Central Bank has also expanded its role with regard to responsibility for financial stability since the 2007 financial crisis. This is a responsibility which traditionally fell within the remit of separate financial supervisory authorities, who are normally subject to greater democratic control by the Ministry of Finance. Further, ensuring financial stability does not necessarily have a clear link to the central bank's price stability mandate (p. 281–289). The original justification for granting the European Central Bank independence was, as mentioned above, the risk that governments might misuse their powers to interfere with the central bank's goal of ensuring price stability. When the Bank takes on tasks not strictly linked to the price stability mandate (such as responsibility for financial stability), the original justification for independence no longer holds. Moreover, the new mandate requires an explicit basis in law in order to be legitimate.[18]

There are, of course, other justifications for transferring powers to independent authorities. While central banks are the traditional example of administrative powers being delegated to an authority independent of government, a perceived need for institutions to be both impartial and able to exercise technical expertise

[18]There may be good reasons to provide independence to authorities other than central banks, but the justification for the independence should be specific to the institution and its role. The delegation of powers to independent central banks more broadly rests on the premise that monetary policy is based on rules rather than discretion, that the implementation is technical rather than political and value-based, and encompasses a minimum of distributive effects. Value-based and political issues typically come under the remit of elected representatives under democratic control.

without political interference has led to an increase in the number and scope of independent administrative authorities. This is particularly the case with regard to authorities providing highly technical economic expertise.[19] Today, competition authorities, financial supervisory and regulatory authorities, and energy regulators have – or might soon be granted – a certain level of independence.[20] In some cases, the delegation of tasks to independent authorities is an EU requirement. While the justification for the transfer of powers may be different, independent institutions across various sectors are faced with the same inherent challenge of balancing independence and accountability: independent administrative authorities may be at odds with the traditional notion of separation of powers which is at the heart of constitutional thinking.

Tuori analyses the ways in which an independent expert organ takes on (or is given) an increasingly broad set of tasks and responsibilities, potentially departing from what was originally intended. The book therefore has lessons to offer for fields beyond central banking, with regard to the negative effects of such developments on the legitimacy of expert bodies and on the rule of law itself. However, only to a limited extent does Tuori's analyses engage with these wider implications. For example, the book would have benefited from greater engagement with the existing literature on regulatory theory and constitutional discourses. Beyond the field of central banking, there are many overlapping questions that might have been touched on: When is it legitimate to delegate power to independent expert authorities? What are the limits of delegated powers? What is the appropriate way to regulate delegation (regulatory theory)?

The question of expert knowledge is also a core challenge when it comes to the accountability of independent authorities. In cases of judicial review, courts often show restraint in reviewing the decisions of expert bodies. The book does refer to the current standard for judicial review under EU law, but does so only in passing. With his knowledge of the field of central banking, Tuori could have made a constructive contribution to the broader debate on the appropriate discretion of courts and judicial review of independent authorities.[21]

It would also have been interesting if Tuori had discussed how we might best regulate the delegation of power to independent expert authorities when there is scholarly debate over the *effects* of a chosen policy, and sometimes even over the

[19]eg *Peter Gauweiler and Others v Deutscher Bundestag*, *supra* n. 13, at [75].

[20]In the EU, independent authorities are called 'EU agencies'. They are independent bodies set up by the EU to carry out technical, scientific or administrative tasks in order to assist the EU and its member states in their work. An overview of the EU agencies can be found at https://euagencies.eu/, visited 25 January 2024.

[21]*See* for example one contribution on this topic, M. Goldmann, 'Adjudicating Economics? Central Bank Independence and the Appropriate Standard of Judicial Review', 15 *German Law Journal* (2014) p. 265.

causes of the underlying problem that the policies are designed to remedy. In an introductory sense, the book does show that the debate on monetary policy is ongoing in economic theory,[22] both with respect to the *causes* of inflation[23] and the *effects* of the corresponding central bank policies aimed at meeting the inflation target.[24] However, only to a small extent does Tuori follow up on such discussions in his analysis throughout the book. As mentioned above, Tuori draws up three possible future paths for the European Central Bank, and his preferred solution seems to be a return to a narrow interpretation of its price stability mandate, as an increased financial stability focus risks overstretching its capabilities and destabilising the European Monetary Union. A possible path that Tuori does not mention, or a debate he does not engage in, is the possibility and desirability of a closer coordination of monetary and financial policies, and closer cooperation between the Bank and democratically elected organs. This is a debate that has revived over the past years, and that is relevant both under a low- and a high-interest-rate environment.[25] It comes in different forms, but a common denominator is the view that monetary policy, both unconventional and conventional, is not neutral – as an ordoliberal view is likely to suggest – but has distributive effects in society,[26] and that the delimitation between monetary and financial policies is not absolute. Moreover, because inflation can be fought

[22]Tuori shows how the development of economic theory on inflation has shaped the central banks over time. While he introduces the reader to the opposing views of monetarist and Keynesian economics, he also explains how an emerging consensus brought the two opposing camps closer together (neoclassical economists and new Keynesians) and thereby enabled a new (and for a time a relatively stable) fundament for central bank policies. This new foundation embraced independence and inflation targeting as a means to achieve price stability. Touri is careful to note that economic theory will continue to develop, and new consensuses may therefore emerge.

[23]In the last few years, economists, like Isabella Weber, have reminded policymakers and central bankers that the current understanding of inflation is too narrow. She has argued (and increasingly her argument is being heard by more mainstream orthodox economists) that inflation today, like in the interwar period, seems not to be driven by increases in wages (demand side of the economy), but rather by a rise in the prices fixed by providers of goods (supply side of the economy). *See* overview of the debate in Z. Carter, 'What If We're Thinking About Inflation All Wrong?' (*The New Yorker*, 6 June 2023) https://www.newyorker.com/news/persons-of-interest/what-if-were-thinking-about-inflation-all-wrong, visited 25 January 2024.

[24]It is regrettable that Tuori does not refer to more recent economic literature, in particular empirical literature, concerning these debates. While some of the secondary literature is fairly recent, the great majority is from 2016 or earlier. In general, it could have been useful to have had an explicit acknowledgement of the cut-off date for the study of the relevant literature and data used.

[25]*See* for example the debate on a European Credit Council: E. Monnet, 'The Power of Coordination and Deliberation', *Accounting, Economics, and Law: A Convivium* (2023); J. van't Klooster, 'The Case for a European Credit Council: Historical and Constitutional Fine-Tuning', *Accounting, Economics, and Law: A Convivium* (2023).

[26]See an overview over literature in Colciago et al., *supra* n. 3.

through various means, not only through monetary policy but also through fiscal policy, and because the choice of tools has distributional consequences, some academics and policy makers argue that central banks and the executive branch need to find better ways to coordinate monetary and fiscal policies. One implication of closer coordination can be that central bank independence from the executive branch is softened, but it is not necessarily the consequence.[27] Such cooperation could potentially also alleviate legitimacy concerns rightly raised by Tuori related to the expansion of central banks into tasks such as ensuring financial stability and dealing with climate-related risks.

On multidisciplinary challenges

The book explicitly describes its aims as multidisciplinary. A not so small number of lawyers express a lack of curiosity and resistance (not to say fear) when confronted with economic arguments. Legal analyses are at their best when they engage with and understand the underlying field. Multidisciplinary approaches which set the law in its broader context are therefore an indispensable contribution. At its best, the book communicates both economic and legal arguments in a pedagogical and nuanced manner. Writing as a lawyer, both the introduction (part I) and a great part of the analysis of the European Central Bank's contested crisis policies (part II) will deepen lawyers' understanding of the economic and institutional objectives underlying and justifying the regulatory framework of the Bank.

The multidisciplinary approach also comes with its own challenges. As mentioned, at times it is unclear who the intended audience might be. While parts of the book provide a pedagogical introduction to developments in central banks' institutional and economic thinking, which is useful for those new to the field of central banking, other parts seem to take for granted extensive knowledge of monetary policy. It therefore remains somewhat unclear whether the book is aimed at lawyers who wish to learn more about the economic and institutional side of central banking; or non-lawyers hoping to familiarise themselves with legal analysis in the field of central banking; or central bankers with a law and economics background already familiar with the field.

Further, at times, the multidisciplinary approach comes at the expense of traditional legal analysis based on a systematic and textual study of primary or secondary law. This may be a calculated trade-off. However, it can also make it challenging for the non-lawyer to understand the legal framework governing the European Central Bank, and so distinguish between a violation of binding legal

[27]E. Monnet, 'The Democratic Challenge of Central Bank Credit Policies', *Accounting, Economics, and Law: A Convivium* (2023).

norms and a violation of – or rather a deviation from – the broader principles set out by Tuori. As a lawyer, I also missed more thorough engagement with the legal reasoning of the German Bundesverfassungsgericht and the European Court of Justice in the relevant case law, in particular concerning the question of whether the European Central Bank acted *ultra vires* when implementing its policies and decisions in the last two decades. There is also little engagement with the legal literature discussing this *ultra vires* case law.

Last, some editorial weaknesses influence the readability of the book. Several chapters suffer from a lack of references. In several places, statistics and economic data documenting the severity of various crises, as well as numbers referring to the implementation of the European Central Bank's crisis policies, are left unreferenced.[28] Similarly, case law is repeatedly referred to by its popular name, without a full case reference and specified paragraphs being provided, including first-time references to the case. Some acronyms are used (to refer, for example, to European Central Bank policies and crises programmes) without the full name being given on first mention. This makes the reader experience a little off-putting for those not already familiar with the Bank's discourse.[29] It must be said that, in the main chapters of the book (from Chapter 6 onwards), the quality of the references improves significantly. Nevertheless, the referencing – or lack thereof – affects the overall efficacy of the multidisciplinary approach, as it does not guide or invite the reader to pursue further information or engage with ongoing debates, whether economic or legal. In this regard, it would also have been desirable to provide an overview of legal sources (such as treaties, directives and decisions taken by the European Central Bank) in the bibliography.

Concluding remarks

The aim of *The European Central Bank and the European Macroeconomic Constitution* is to assess whether the expanding role of the European Central Bank in the past 15 years or so has been in conformity with the principles of the European Macroeconomic Constitution as it was originally construed. The book clearly fulfils this aim by providing a systematic overview of the Bank's contested

[28] *See*, for example, p. 130, fn. 5; p. 131, fn. 10; p. 138, fn. 43. It might be that some of the numbers are taken from the ECB Statistical Data Warehouse, which is referred to in Figure 5.1 and 5.2, but this is somewhat unclear.

[29] At p. 141, 145 and 147 respectively, the terms 'FCC' (the German Federal Constitutional Court), 'PSPP' (Public Sector Purchase Programme, the Bank's quantitative easing programme); and 'QE' (quantitative easing) are not explained. To the best of my knowledge, this is the first time each of these acronyms appear in the book. The acronyms are, however, explained in the list of acronyms. At p. 114, however, the acronym RTGS is unexplained and does not appear in the acronym list.

crisis measures over the past two decades, and discussing the objectives and effects of said measures based on economic, institutional and legal analyses. The book also sheds light on the legal and democratic challenges of the delegation of power to independent expert authorities on a more general basis. With the EU increasingly seeking to establish independent expert authorities, the book will hopefully encourage future multidisciplinary discussions also on these essential issues.

Tuori's conclusion, that the economic and legal reality of the European Monetary Union is no longer in conformity with the principles of the European Macroeconomic Constitution as it was originally construed, should not be an end point, but will hopefully inspire more multidisciplinary research on central banks, their desired roles and how to ensure their legitimacy. The growing focus on distributional effects of central bank policies in relation to setting interest rates, more unconventional monetary policies, their financial stability mandate, as well as their work on the climate crisis, increases the pressure for reforming the way in which central banks operate and implement their policies. The outcome of potential reform processes is very much unclear. Legal scholars should in all circumstances continue to engage with these ongoing debates, and discuss how to ensure legitimate legal frameworks and meaningful judicial review with institutions implementing both monetary and financial policies.

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