EU Experimental Governance: Going Beyond Rodrik's Trilemma

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Abstract

This article investigates some possible models of integration with different outcomes for the European Union (EU). Many experts have tried to adjust Dani Rodrik's world economy trilemma to explore future EU integration options. However, his three governance models have limited explanatory power in illustrating the dilemmas of EU integration. Instead, an alternative model of experimental federalism offers bottom-up economic, social and democratic restructuring combined with top-down support for more balanced and inclusive development. Redirection is required in monetary and fiscal policies and in establishing strategic coordination between the governments and businesses. Economic and social reconstruction is necessary along with stronger democratic leadership at all levels of European polity and stronger involvement of the civil society as essential elements of comprehensive restructuring. The diversity within the EU member states also requires different development strategies to strengthen, rather than jeopardize, the idea of a single market, consistent with the proclaimed EU ideals.

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Introduction

An emerging consensus among experts appears to be that the current institutional setting for integration in the European Union (EU) does not fulfil many of the important goals stated in the third paragraph of Article 3 of the Treaty on European Union as amended by the Treaty of Lisbon. After years of financial, economic and social crisis, The goals of achieving full employment and social progress, combating social exclusion, promoting economic and achieving social and territorial cohesion and solidarity among member states are further away than they were at the time of the Lisbon treaty adoption in December 2007 (effective in December 2009).

The existing answers for how to overcome the existing impasse go in two fundamentally different directions. One school of European thought is advocating the development of European integration toward banking, fiscal and transfer Union. Another school of European thought is promoting comprehensive decentralization and the self reliance of member states. Therefore, the research question of this article is whether there is an alternative approach to these two mutually exclusive approaches.

The main argument of this article is that it is possible to envision an alternative model integration. This alternative presents an EU synthesis model of bottom-up economic, social and democratic restructuring and top-down democratic support called European experimental federalism. The main innovation of such a model is to allow and support the development of local and regional counter-models in place of a 'one-size-fits all' approach, which is currently suppressing initiatives and institutional creativity across the EU. This dynamic experimental federalism model views the bottom-up reconstruction vs. top-down technocratic approaches as complements. Another innovation of this model is that the goals of rescuing the euro and the entire European project are not compromised at the expense of democracy at the national or supranational level. The model also overcomes the North-South European divide in constructive terms.

The institutional setting based on the Lisbon treaty was not prepared to adequately cope with the magnitude of the financial shocks, followed by the sovereign debt crisis and historical high levels of unemployment in many parts of Europe. The inadequate and often counter-productive responses to the crisis were due to the ill-prepared European institutional setting, a lack of European leadership and mutual trust and the lost sense of European solidarity (on this last point, see Hall, 2013, p. 366). As a result, the EU as a whole, and especially the eurozone countries, are underperforming in terms of economic growth, job creation and long-term productive investments more than other regions around the world. In comparative terms, 'the eurozone is underperforming even when compared with the lost decade of Latin America' (Eichengreen et al., p. 18).

To make a debate on the future of European integration and of the eurozone even more complicated, the negative impact of the financial crisis has been felt especially strong in certain countries and regions across the EU, while other countries and regions (at least for the time being) weathered the crisis with relatively more modest social and economic shocks. While some of the countries are facing both the socio-economic hardships and are even on the verge of a major humanitarian crisis, some other countries and regions remain among the most cohesive and competitive regions in the world. On this basis, the most frequent (and not completely unreasonable) recommendation from the relatively well-off regions and countries throughout the crisis to the suffering countries and regions was that they should become more like them. The European institutions mainly adopted similar rhetoric and policy responses. If only these countries could live within their means, maintain financial discipline and avoid profligacy, they would be better prepared to cope with the crisis. They have only themselves to blame and therefore they should primarily help themselves. We are prepared to help them, but only on our terms.

More subtle discussions, such as the persistent structural imbalances within the eurozone, moral hazards that existed both in the peripheral countries and in the European financial sector, and social exclusions in peripheral countries and many core European regions, were almost completely omitted from the European deliberation. More subtle analyses would also reveal that a multitude of conditions in terms of socio-economics, education and research, development of infrastructure and the financial industry, and quality of public and private legal institutions would require many different approaches to facilitate comprehensive economic, social and financial restructuring across diverse EU member states and their regions.

At the conceptual level, the discussion on the future of European integration was not completed with the Lisbon treaty. Many of the issues, such as the division of competences and responsibilities between the Union and member states, how to organize an institutional framework for the European 'social-market' economy (as proclaimed in Article 3 of the EU treaty), and especially the issue how to approach the stagnating and backward regions across the enlarged Europe, were only provisionally resolved. In this sense, it is possible to accept the application of Rodrik's trilemma to unresolved European institutional dilemmas as succinctly presented by Crum (2012).

The subsequent financial, economic and social crisis showed that the Lisbon treaty institutional framework was not designed in such a way to provide an adequate, pan-European response to the crisis. Based on institutional fragility and lack of leadership, the EU 'failed to take measures that might have prevented the crisis from growing worse…' (Bermeo and Pontusson, 2012, 2). In this suboptimal European response to the crisis, different countries adopted different approaches in copying with their crisis. The countries with stronger macroeconomic positions implemented several economic and social measures to help their economy and society weather the storm. For example, Germany, implemented two stimulus packages in 2008 and 2009 (Schelkle, 2012, p. 137). Other countries, mainly the peripheral countries, were not in a position to adopt counter-cyclical policies and other active measures. So they were forced to adopt severe funding cuts in all possible areas at the expense of social, educational, health, infrastructure and other key segments of social and economic life. They were forced to adopt such measures under the pressure of international financial markets and the European institutions in the most visible and most painful form. Governments of the states most severely affected by the crisis co-ordinated their responses with a committee dubbed 'the Troika' formed by three international organisations: the European Commission, the European Central Bank and the International Monetary Fund. In such a way, the already wide gap of development between the North and South inevitably widened: '…the data suggest at least that leaving the response to the 2007 to 2009 contraction mostly to the member states accentuated regional divides between member states in northern and southern Europe' (Cameron, 2012, p. 122, references omitted). The member states and their regions were left mainly to their own increasingly constrained instruments, measures and resources. Inevitably, the actual developments in the European integration, and especially within the eurozone, were going in the opposite direction from the declared European goals and ideals of the Lisbon treaty.

Research question

In the context of the unresolved dilemmas at the conceptual, institutional and practical levels, several development and integration approaches are possible. One possible approach is to recognize that the dilemmas in Rodrik's trilemma (democracy, national sovereignty and global economic integration are mutually incompatible) are insoluble. According to this line of thinking, there are unavoidable conceptual and practical trade-offs. As suggested by Crum, from the perspective of rescuing the European project and the eurozone in particular, it would be possible or even desirable to emphasize the role of executive federalism and recognize the value of national self-government. Because this emphasis can threaten to come at a democratic price, Crum suggested adopting flanking measures to mitigate the effects of a democratic loss.

Such a pragmatic approach in preserving the eurozone and (inevitably a limited version) of national self-government at a democratic price appears to be a very plausible trajectory. Likely it would be complemented with some very limited attempts in establishing certain elements of transfer and fiscal union. According to this 'muddling through' approach, the future of the EU and the eurozone would most likely deepen the gap between advanced, highly developed and socially cohesive regions on one hand and the stagnating regions on the other. The price paid at the cost of democracy could prove to be too high sooner rather than later. This price would be in terms of unbalanced development and a growing gap between the privileged and masses of excluded population, and especially in terms of citizens' disenfranchisement. It would create the appearance that the technocrats 'know better' how to govern European societies. Clinging on one side of Rodrik's trilemma for too long while neglecting other important priorities may ultimately undermine the entire European project.

This article argues that the European project can both survive and develop further if the subtle balances between national self-determination and the supranational coordination for common advancement are maintained. For the purpose of strengthening the multilayered European polity and democracy, there is no intrinsic trade-off between the national self-determination and Europeanized (in Rodrik's terms, globalized) democracy. The processes of national development strategies are not inconsistent with the processes of democratization on the European level. They are mutually supportive. Analogous to the constitutional synthesis developed by John Erik Fossum and Agustín José Menéndez, where the 'already established constitutional states integrate through constitutional law, without losing their institutional structure and identity' (2010), the multitude of national social and economic institutions supporting the market economies do not lose their institutional structure and identity by establishing a European single market.

Institutional plurality of the European single market

Dani Rodrik has conducted a lot of his research focusing on the essential ingredients of securing long-term sustainable economic growth and social development. The scope of his research is not limited only to the developing countries, but also to the challenges of balanced and sustainable development of the advanced countries around the world. His valuable insight is also in another important book, titled *One Economics, Many Recipes,* published prior to *The Globalization Paradox*. His claim in that book, important for the purpose of this discussion, is that 'appropriate growth policies are always context specific. This is not because economics works differently in different settings, but because the *environments* in which households, firms, and investors operate differ in terms of the opportunities and constraints they present' (Rodrik, 2007, loc. 164-76). I believe that this insight also applies to the European single market and has important implications for the development of the European constitutional synthesis.

The most important idea of the European constitutional synthesis is to integrate the constitutional states without losing their institutional structure and identity. On the level of socio-economic integration, the similar process of integration could be envisaged to integrate the market economies into one single market without losing the institutional structure that underpins these markets. In this process, the European single market would not appear as a vehicle with the goal to 'simply bulldoze all internal borders' (Menéndez, 2009, p. 5), but as a framework allowing and supporting diverse institutional structures. This is because 'the market is not a source of its own legitimacy' (Menéndez, 2009, p. 25) and there is 'no single form of the market, which would have neutral and necessary content' (Unger, 1998, p. 23). These theoretical insights could have far-reaching impact on the nature and character of European social-economic and constitutional integration.

One practical consequence of rejecting the idea of neutrality and natural content of a European single market is to accept Rodrik's claim that 'every well-functioning market economy is a mix of state and market, laissez-faire and intervention' (Rodrik, 2007, loc. 2651-62). The conceptual overcoming of the traditional dichotomy of market versus state, as suggested by Rodrik, opens a space for a multitude of institutional links between public and private and between state and market. In the context of this analysis, accepting institutional diversity on how to organize modern market economies, representative democracy and the free civil society is more important than accepting constraints envisaged by Rodrik's trilemma. He claims that it is possible to envisage one economics with many recipes; in its qualified version it would be possible to bring this argument a step further. It would become possible to envisage a single market with many diverse institutions of market economy and representative democracy.

The reason for maintaining and stimulating institutional diversity is based on a claim that there is no single, universal and supposedly superior institutional framework for modern societies and economies. Moreover, to create and maintain space for creativity, initiatives and development strategies in all levels of European polity, institutional diversity should not be only tolerated but even encouraged from both bottom-up and top-down perspectives. Active, engaged, institutionally imaginative bottom-up and top-down approaches can be viewed as a model for experimental federalism. The dynamics of modern knowledge based societies and economies in the context of Europeanization and globalization requires constant institutional improvements and innovations to maintain balanced, sustainable and inclusive development.

The most comprehensive historical legal thinking emphasizing that a market economy is a social construct, not a product of a natural historical development, came in the form of American legal realism before and during the New Deal period (lasting roughly from 1933 to 1939). It was the period in which 'American society grew unequal and the spectacular increase in corporate concentration undermined the belief in the naturalness of a decentralized, competitive market economy' (Horwitz, 1992, p. 195). The legal realist understood that in many ways the Great Depression was a consequence of a belief in naturalness of the market (cf. Horwitz, 1992, p. 195).

The progressive legal thinking emerged as a critique of classical legal thinking and practice that culminated with the *Lochner* decision (1905) of the U. S. Supreme Court. In this case, the Supreme Court struck down the New York regulation with a maximum hours for bakers as unnecessary interference with freedom of contract. The *Lochner* era ended only after adoption of the National Labor Relations Act (Wagner Act) in 1935 that provided basic protection for the private sector workers. The New Deal legislation survived the challenges before the Supreme Court, which in a new social and economic context reversed its position stated in the *Lochner* decision.

Legal realists, among them most clearly an economist and lawyer Robert Hale, critically assessed the traditional orthodox legal and economic ideal of a self-executing market economy. Contrary to the dominant thinking of their time, Robert Hale claimed that 'all market transactions are affected by the prior distribution of property and entitlements' (Horwitz, 2012, p. 195). Contrary to the beliefs of classical legal and economic thinking and its subsequent hypothesis of market efficiency, Hale and other legal realists were convinced that prior distribution of property and entitlements determines the relations and outcomes in the market. Such a prior distribution of property and entitlements cannot be created in a neutral and objective manner. This led to the claims of markets as social constructs, determined by legal institutions such as property, corporations and others. The interplay between freedom and constraints on the markets requires constant creations and innovations in legal institutions. This is the best way to broaden access and opportunities in the markets.

American legal realism and the New Deal era came very close to the ideas of European social democracy. The legal thinking about broader social functions and the implications of private law were extensively elaborated by the Austrian legal scholar and subsequent president of the Republic of Austria, Karl Renner in his book *The Institutions of Private Law and Their Social Functions*, originally published in 1929.

In addition to the claim that markets are social constructs, determined by legal institutions and prior allocation of rights, there is another important legacy of American legal realism, as well as the legacy of European social democrats such as Karl Renner. Their analysis of the property right regime showed that the property right is not a unified, absolute and exclusive right, but it consists of 'bundles' of rights. Their insight about the possibility to fragment the traditional unified property right into different components can create a variety of rights holders in place of former exclusive property owners. Hence, 'property does not imply any absolute set rights' (Horwitz, 1992, p. 156). This insight could open a space for new and different kinds of rights holders to enter the market and entrepreneurial activities.

From a historical perspective of European integration, it would be possible to claim that the first period allowed more flexibility and institutional diversity among the member states than the subsequent creation of the narrow definition of a single market provided by the 1992 Maastricht treaty (formally, the Treaty on European Union or TEU). The subsequent regulatory and practical steps toward limiting the manoeuvre room for institutional innovations, improvements and changes took away the flexibility of the member states and their regions. Narrowed policy space and narrowed room for institutional change substantially limited the policy options. The responsibility of the member states to maintain economic and social security of their citizens remained in their hands. This constitutional asymmetry led to the 'joint decision trap', and overall scepticism to maintain the European social model (cf. Scharpf, 2010) This pessimistic assessment was proved to be correct especially during the eurozone financial crisis, but the structural imbalances and unresolved issues started to mount in the eurozone and in the EU even before the financial crisis.

The establishment of the European single market resembles the period of the *Lochner* era in theory and practice. There are, of course, important differences, but the belief that there exists a single, neutral, pre-political market economy and institutional framework is widely shared. Even the recent European jurisprudence in the cases of *Laval*, *Viking* and others resembles the line of thinking espoused in the *Lochner* case (Nicol, 2011). This differed in one recent European Court of Justice (ECJ) decision, *Commission v Germany* (C-95/12), dealing with the long-term dispute between the Commission and the Volkswagen law, which secured a privileged position of two public owners – the German Federal Republic and the Lower Saxony. The ECJ adopted a more pragmatic approach toward partial public ownership of this important German car manufacturer (cf. European Law Blog, 2013; on different economic doctrines and the ECJ activism Kaupa, 2013, pp. 56-75).

Expectations with the establishment of the European single market after 1992 were immense. They were best captured in the Cecchini report that calculated great benefits from its completion:

> …the completion of the Internal market will provide the economic context for the regeneration of European Industry in both goods and services; and that it will give a permanent boost to the prosperity of the people of Europe (Cecchini Report, 1988).

It is apparent that this optimistic forecast has not materialized more than two decades after adoption of the Maastricht treaty. It can be added, however, that the optimistic scenarios in general tend to overestimate benefits and underestimate costs. But this is only one of the problems with the establishment of the European single market and there are several others. Any legal framework for the market economy creates distributional effects. As a critical response to the estimates presented in the Cecchini report, Tsoukalis emphasized that a single market inevitably creates 'winners' as well as 'losers':

> Interestingly enough, the Cecchini report had virtually nothing concrete to say about the likely distribution of costs and benefits, apart from acknowledging the problem and expressing the hope that redistributive policies, supported by an active macroeconomic policy, would provide adequate compensation to losers or, even better, help weaker economies and regions to face the strong winds of completion unleashed by the elimination of barriers (Tsoukalis, 2006, loc. 652-57).

With a vision to complete a European single market by primarily 'bulldozing internal barriers' (Menéndez, 2009, p. 5) to make all participants better off, the issue of distributional effects and compensations should be examined along with the idea of a single market as a goal. A single market should not be viewed as a goal in itself; it should be viewed as a means to an end. The true goals of European integration are proclaimed in par. 3, Article 3 of the Lisbon treaty as previously noted.

To achieve the proclaimed goals, it is not enough to dismantle various barriers. It is necessary to equip local, regional, national and supranational authorities to deepen and broaden access to the markets. At this point, the comprehensive thinking of Dani Rodrik becomes relevant to the claim about plurality and the multi-dimensional nature of a single market. His claim about the complex interaction between the state and the market in every well-functioning modern market economy goes beyond the prevalent one-dimensional understanding of a single market. Modern economy presupposes a variety of institutions 'that maintain productive dynamism and generate resilience to external shock.' (Rodrik, 2007, loc 327-352). Local capabilities, local initiatives and context specific knowledge can be translated in a variety of institutional support for entrepreneurship and inclusive growth. The deliberate public activities can be combined with the market initiatives in different ways, depending on the local content.

Rodrik is therefore supportive of both the context specific growth policies and the institutional diversity to support high-quality growth. A wide variety of institutional possibilities that sustain modern, well-functioning market economies exists and develops to better employ the productive and creative capabilities of various local, regional and national communities. Many recipes, many institutional possibilities of different European localities and regions and many possible interactions between public and private sectors could enhance the possibilities of the excluded parts of populations and businesses in the markets.

The debate on the decentralized institutional diversity offered by Rodrik shows one possible way of moving beyond the trilemma. A single European market on its current trajectory may more likely than not lead to hierarchical market segmentation, concentration of economic, financial and political power and exclusion of large parts of populations and businesses. To redesign a European single market toward institutional diversity and innovations should not be viewed as an exercise that would put a European single market into question. On the contrary, it should be viewed as a deliberate effort to improve and broaden access to the single market and therefore as an effort to further strengthen rather than suppress the competitive nature of a single market.

The idea of a constitutional synthesis in the context of institutional plurality of the European single market should aim to protect the citizens, local and regional communities against the unfettered markets as well as to empower citizens, local and regional communities to enter and compete in these markets.

North versus South is not the only European divide

It was previously pointed out that the European suboptimal approach to the crisis increased the gap between the European North and South. The overly simplified narrative of the European crisis and its aftermath explains that in absence of any coordinated pan-European active response to crisis, most of the Nordic countries were capable of adopting different measures to help their economy and society, whereas the peripheral countries had to adopt severe cuts. This is obviously an over-simplified narrative that leaves out the role of structural imbalances in the European single market, the role of the oversized and often subservient European financial sector, and the weak response of the European institutions to these challenges.

To better understand European socio-economic realities, however, a recent report by the European Commission on *Employment and Social Development in Europe 2013* is very illuminating. The report emphasizes that ‘persistent economic and social disparities within the euro area threaten core objectives of the EU’ (p. 14). More specifically, ‘increasing hardship now sees nearly a quarter of the EU population at risk of poverty or exclusion... Growing social distress in employment and poverty are the result of the crisis and the lack of resilience of the labour market and social institutions' (p. 13). The report is also clear about any potential future economic growth: 'it is unlikely to be job-rich without sustained policy reforms and more effective public support and investment facilitating the labour reallocation process' (p. 13).

The report is particularly important because it presents a comprehensive overview of socio-economic realities with high unemployment, rising poverty and social exclusion. The report also reminds that 'declining household incomes in several member states reduce aggregate demand and erode confidence throughout the currency union and the EU as a whole' (p. 13). From these broader insights, it becomes clear that mutual co-dependency within the eurozone and the EU as a whole is stronger than the weak European response to the crisis has taken into account. Social and economic success in one European region or a member state is also a success in other European regions or member states; conversely, a failure in one European region or a member state is also a failure in others.

The divergences that have been growing, with the Southern EU member states being hit particularly hard, are not the only growing divergences in the EU. The report stresses that 'the negative impact on employment and growth took place in the vast majority of EU regions between 2008 and 2012, bringing to a halt the tendency toward declining regional disparities that had previously been observed' (p. 85). The growing divide between the vast majority of European regions experiencing stagnation and a small number of prosperous regions is another crucial, albeit largely neglected consequence of the period of crisis and its aftermath. The socio-economic divide is not only between European North and South and is much more extensive. Even core European countries, which on average cope with the crisis more successfully, face serious social and economic challenges.

One such example is Germany. There is no doubt that the German response to the crisis was in many aspects more successful than in other eurozone and EU member states. This does not mean, however, that the socio-economic developments in Germany are without any substantial concerns. On the contrary, as the report put forward, the core countries such as Germany also face substantial socio-economic and development challenges. While the report recognizes that Germany 'resisted the macro-economic shock much better than the rest of the euro area' (p. 25), it also pointed out that 'child poverty increased significantly, which may lead to a deterioration of human capital in the long run. In-work poverty has also increased, which may reflect rising inequalities on the labour market' (p. 31), and Germany 'is still characterised by labour market inequalities, with a higher than average gender pay gap' (p. 32).

This brief overview indicates that the socio-economic challenges are not something pertaining only to the peripheral countries of the EU. They also present a substantial challenge for many countries and regions in the core of Europe. The growing divide between North and South in terms of socio-economic development is only one of the more visible consequences of the crisis and its handling. Less visible consequences relate to the growing divides in many other regions and member states in the EU. Unravelling of the European social model is a phenomenon that does not take place only in the periphery of Europe, but in many core regions and member states. This overall socio-economic development partly explains the lack of European solidarity in the midst of a crisis.

Moreover, it shows the need to rethink the European single market framework. In its current form in place for two decades, it leads to economic and social dualism and to concentration of economic and financial power. In its current form, it works very well for the established industries and firms, whereas the entry costs for new emerging businesses, industries and regions are generally too high (on established industries and entry costs Gomory and Baumol, 2000, pp. 16-17).)

The phenomenon of economic and social dualism that exists in poor and rich countries (articulated by Unger, 1998, p. 65 and elsewhere) means that the established industries and businesses on the European single market, which are equipped with state of the art technologies, know-how, managerial skills, skilled and educated labour forces, have access to capital and all other necessary resources. Within this relatively privileged, but increasingly insulated advanced sector, the circulation of knowledge, information and skills is taking place. The arrangement is also advanced in organizational terms and in terms of constant innovations and an experiments- friendly environment.

The gap between the relatively privileged sectors of established industries and businesses and the excluded businesses and industries is growing in the European single market. Start-up and comprehensive small and medium size business support is difficult to develop even in most of the core regions and countries in the EU, not only in its stagnating regions and countries.

A European single market works well for established industries that do not require systemic support and an innovative institutional framework conducive to new entrepreneurial initiatives. The primacy of the single market is relatively strong in incurring negative measures over the anti-competitive practices, but it has not developed positive measures for deepening and strengthening competition by the systemic support for the start-ups and for the development and advancement of small and medium size companies.

Without deliberate public support to provide broad access to technologies, know-how, long-term financing and other resources, the entry costs for the new companies and new entrepreneurs remain too high. In modern knowledge-based economies, it takes time to master technologies, production and its organization. As a consequence, without deliberate and systemic public support for deepening access to all of the necessary resources for start-ups and small and medium size enterprises, the established industries benefit from high entry costs. The single market, in absence of decentralized and coordinated positive means and institutional innovations, creates not only a strong distributional effect, but more importantly, amounts to the protection of established industries.

The divide between the relatively privileged economic and social sectors and the excluded parts of society, between the insiders and outsiders, is less visible but equally important to the most well-known divide between North and South, between the core and periphery. The existence and increase in economic and social dualism throughout the regions and member states of the EU create a different kind of challenge and require a different kind of overall response than the divide between North and South.

The effort to overcome economic and social dualism would require the establishment of various forms of strategic coordination between the public and private sectors Rodrik is supportive of the idea of institutional diversity and refers specifically to Unger's teaching about the 'full range of institutional possibilities' (Rodrik, 2007, loc 2653-75). Such coordination would take place in decentralized, participatory and experimental forms, which would be specific to the local contents. The experimental form of reconstructive efforts throughout the EU presents a distinction from the recommendations to establish a banking, transfer and political Union to overcome the crisis.

There are several problems with the financial transfers within the EU or eurozone. It is inconceivable that the financial transfers could become sufficiently large to effectively address the needs of the vast majority of European regions or the member states and their regions. The larger the financial transfers would hypothetically become, the bigger source of conflicts among member states and taxpayers would inevitably become. The financial transfers could also easily overlook the needs of excluded populations and businesses in the relatively wealthier European regions.

Any hypothetical transfer union could also lead to the path of dependency in place of economic and social restructuring of the European regions and member states. They should be primarily given an opportunity and support to develop their own long-term development strategies, suitable to their own needs, potentials and aspirations. Therefore, many legal and practical restrictions that unnecessarily narrow the manoeuvring room for institutional innovations and local initiatives and creativity should be removed or kept to the minimum.

Diversity of institutional models presupposes a diversity of financial institutions. Not all of the financial institutions are equally capable of engaging and providing support for long-term development of local producers and improvements for the local consumers. A variety of financial institutions, such as decentralized public-private venture capital funds, can be foreseen in the context of experimental federalism. This does not mean that it would encourage European regions and member states 'beyond their means', but rather to encourage them to look for their own ideas, initiatives and creativity in a search for how to better exploit and further advance the existing productive and development potential.

Rethinking the existing framework of the European single market and searching for institutional plurality is not the same as fragmentation of the single market. By equipping local communities, regions and member states, especially the vast majority of the stagnating regions but also the advanced regions, the goal is to strengthen the single market by broadening the entrepreneurial and educational opportunities. Markets are indeed not a source of their own legitimation as argued by Menéndez. By broadening access and reducing the entry costs, the markets can become social constructs much closer to the proclaimed goals of the Lisbon treaty.

If the balance between the freedoms in the single market changes in some imaginative post-Lochner period, if the redistributive effect of the single market is taken into account and if co-existence of institutional variety is recognized, the constitutional synthesis becomes an outcome of more pluralistic, inclusive and balanced European markets and societies. In this case, Rodrik's claim about many recipes for one economy (and for one single market) becomes at the forefront of the economic and social reconstruction of Europe. It is a claim that goes beyond his trilemma and could fit the proclaimed European ideals much better. Constitutional synthesis should embrace institutional plurality of the European markets, co-existence of different development models within the same European framework and support of bottom-up initiatives as well as top-down democratic complements to these initiatives.

European institutional experiments

Creation of a European single market was based on the premise that it would work most efficiently without any barriers, distortions and with very limited room for public regulatory interventions at the supranational level. It was also based on the premise that there is a single, natural and neutral version of the market economy, to which everything else must be adjusted.

Proponents of the existing version of a single market also claim that to overcome the current protracted economic, financial and social crisis, it is necessary to implement more of a single market (Pelkmans, 2011). A single market, as a core European activity and a driving force of integration, should therefore be viewed as a guarantor of overall prosperity. If there is a crisis, the answer is a wider and broader single market through further liberalization and removal of remaining obstacles.

A European single market is neither an automatic guarantor of overall welfare nor an obstacle to future prosperity. Because it creates strong distributional effects, it requires institutional mechanisms to adequately offset these effects. More of a single market is needed, but a different kind that would become more open, inclusive and balanced. There are many possible outcomes of a single market depending on the overall framework and the balance among the provided freedoms. A single market is a social, legal and political construct that determines the outcome, which is something that escaped proponents of a single market and a large part of ECJ jurisprudence. A single market is not a one-dimensional construct.

Another important dimension of a single market, not sufficiently taken into account, is the emergence of new types of production, new types of competition (cooperative competition) and a knowledge-based economy and society. These changes have an impact on the nature and organization of production. If the traditional style of production in the past decades was mass production to pursue economies of scale, this is not always the most efficient way of production. It is efficient in the circumstances of stable demand. However when the demand is not stable, a better type of production called flexible specialization. This insight, put forward by Piore and Sabel, is that flexible specialization as 'a strategy of permanent innovation, accommodation to ceaseless change, rather than an effort to control it' (Piore and Sabel, 1984, p. 17), can be more efficient than mass production of standardized goods.

Introduction of flexible specialization creates an opportunity for comprehensive reorganization of production, the nature of modern enterprises and the relations between employers and employees, enterprises and public institutions. Local networks of small and medium size enterprises, which are competing and cooperating at the same time, are capable of offsetting the deficiencies in large scale production of standardized goods. Instead, small scale production of high value-added products with skilled workers, tailored-made for the customers, can, in certain circumstances with institutional support, present an example of innovative organization of production, firms and public–private relations in some of the advanced and cohesive EU regions.

Innovations and improvements in production, cooperation and competition, in education and research, in finance providing long-term support for start-ups and small and medium size companies, also require innovations in economic, legal and political institutions. For example, to sustain a strategy of permanent innovation with a system of cooperative competition of small and medium size enterprises to achieve economies of scale; a system of long-term financial support; and a system of education, research and training, new economic, legal and political institutions are needed. Without such institutional innovations, the efforts for economic, social and political reconstruction at the local, regional and national levels are doomed to failure (cf. Cui, 1997, p. xi). The essence of experimental federalism is therefore to stimulate the creation of new economic, legal, social and political institutions in different regions across the EU to realize their true developmental potential.

The current direction of the EU integration imposes regulatory, fiscal and monetary requirements in addition to the prohibition of any traditional coordination between the public and private sector to the extent that an increasing number of European regions and member states cannot cope with. Even the advanced European regions are facing the gap between the relatively privileged economic and social sectors and the excluded parts of economy and society, as observed by the European Commission in *Employment and Social Development in Europe 2013*. The development of the European integration toward the common fiscal, banking and political union, founded on the neutrality of the European single market, may reinforce the described European divergent trends. A hope that these divergent trends can be ameliorated by some distant and vague transfer Union is an act of economic and social fatalism of the stagnant European regions and member states.

The experimental federalism as a model implies a plurality of economic recipes for inclusive economic growth, a diversity of institutions at various levels of European polity, and a variety of content specific policies. Experimental federalism is hospitable to experiments and initiatives from different social groups organized bottom-up. The most important part in the context of this discussion is that experimental federalism transcends the trilemma as posed by Rodrik. It also transcends the rigidities of the fiscal, banking and transfer Union as foreseen. By empowering local communities, regions and member states, it can also help overcome the existing dividing lines between North and South for the mutual benefit and interest.

The examples of successful experiments at the local and regional levels in the EU include the successful Irish local public–private partnerships as vehicles of inclusive rural development, the successful and coherent Finnish policies that created a truly knowledge-based society, and the cooperative competition arrangement in Emilia Romagna. They are also examples of institutional innovations at the local and regional levels and successful transparent partnerships between the public and private sectors, as well as examples of decentralized, participatory, democratic, and pluralistic models of development. They represent successes where competitiveness of the regions is combined with high levels of social cohesiveness. They show that even in the era of globalization and Europeanization, it is possible to maintain high-quality enterprises with high wages and high levels of value added, while maintaining and strengthening the social cohesion in these regions.

These regions have successfully escaped from the traditional Fordist-type of mass production that requires low-skilled, low-paid workers producing large quantities of standardized products. In its place, the post-Fordist type of production gradually emerged. Its characteristic is flexible specialization with high value added, with highly skilled teams of workers and experts producing in much more innovative ways than in traditional production schemes. Small and medium-sized enterprises can cooperate and compete at the same time, thereby successfully overcoming the difficulties of the traditional economies of scale. Public supportive institutions (educational, financial, and others) develop and progress together with the private sector.

This escaped the attention of many experts of European integration, because they do not fit easily to the existing conceptual and practical framework of the European single market. They can be viewed as an exception to the general pattern of European integration. To advance the European constitutional synthesis, however, more and not less of such exemptions are needed (cf. Culpepper, 2001). These examples show that it is possible to develop models and counter-models across the EU capable of inclusive and cohesive development.

Legal, economic and social institutional innovations deviate from the standard model of economy and society as envisaged by the policy-makers in charge of handling the protracted crisis and stagnation. For example, take the model of cooperative competition that deviates from the standard model of competition and competition laws, articulated by the European competitive laws. Cooperative completion, developed in certain European regions, successfully combines the traditional artisanal craft production with the skills, technology and innovation of post-Fordist production. An essential characteristic of this model is the production of small quantities of highly specialized goods with high value added that are tailored for customers. The production requires constant improvements and innovations, which requires highly skillful workers, experts and managers who tend to work in small groups that promote a high level of collaboration among them. A competition among groups of workers occurs inside the firms as well as among the firms, promoting different methods to achieve the best possible results. The experimentalist production, based on constant innovations, cooperation and competition, is possible because of the strong institutional support from financial and technological spheres (Unger 1998, p. 197–9). It is not clear how long such exemptions from the standardized model of competition can persevere in the context of European acquis.

Local governments, local financial institutions, professional and commercial associations, trade unions, universities and research centers and social networks all participate and have a stake in permanent improvements of their regions. They are an example of dynamic, competitive, innovative and cohesive regions. They also show that it is not possible to overcome the gap between the advanced and backward parts of the economy and society without the deliberate actions of public institutions (Unger 1998, p. 198). The crucial issue for the European policy-makers is whether to encourage or suppress such exemptions to the general, ‘one size fits all’ European economic and social model.

Conclusion – toward European experimental federalism

The golden period of the European integration was in the first two decades since its inception. There were many reasons behind this: the period of post-war reconstruction, the role of the Marshall plan and the role of Keynesian policy and others. It was also important that the diverse institutional models co-existed. They allowed different regions and member states to pursue different trajectories of development, suitable to their own potentials, capabilities and aspirations. Of course, the relative homogeneity of the initial group of member states also played a role, but based on the arguments in this article, this was not the most crucial part of the successful period of European integration.

Gradually, the path toward ever increasing constraints imposed on governments, their regions and localities led to its unsustainability. O’Rourke has summarized this process in the following way:

> Europe is now defined by the constraints it imposes on governments, not by the possibilities it affords them to improve the lives of their people. This is politically unsustainable. There are two solutions: jump forward to a federal political Europe, on whose stage left and right can compete on equal terms, or return to a European Union without a single currency and let individual countries decide for themselves. The latter option will require capital controls, default in several countries, measures to deal with the ensuing financial crisis, and agreement about how to deal with legacy debt and legacy contracts. (O'Rourke, 2014).

This analysis is accurate and consistent with the findings presented in this article. His proposal on how to move beyond the current unsustainable path of development is more questionable. It is within the context of Rodrik's trilemma. The focus is therefore on strengthening the Union via establishment of a banking Union, transfer Union, and political Union.

As discussed in this article, the steps toward real banking, transfer and political Union (in terms of central economic government) are neither feasible nor desirable. The best way to tackle the current European path of unsustainability, whose practical failure is reflected in the economic and social dualism across the EU, is to equip local, regional and national governments to help overcome the economic and social dualism. At the same time, the Union should develop and strengthen its key policy, which should be to provide comprehensive European support for life-learning education, training and re-skilling of workers. Too much money, time and effort were dedicated for rescuing the large European financial institutions. The effort should be redirected to the support for local producers, local banks and entrepreneurs. Institutional diversity with a variety of socio-economic models across the EU should be supported, not suppressed, by the EU. Many recipes for the Union could preserve 'legitimate diversity' (cf. Scharpf, 2002) and be a deliberate step of the EU, its member states and regions beyond Rodrik's trilemma.

A top-down approach by the EU as an effort in empowering, equipping and re-skilling European citizens, complemented by the bottom-up approach of local, regional and national governments in broadening access to the markets in a variety of experimental, participatory and inclusive ways, can be a major step toward genuine European constitutional synthesis.

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