

## BOOK REVIEW:

**WOLF-GEORG RINGE AND PETER M HUBER (EDS)  
LEGAL CHALLENGES IN THE GLOBAL FINANCIAL CRISIS:  
BAIL-OUTS, THE EURO AND REGULATION**

(Oxford and Portland, Oregon: Hart Publishing 2014)  
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The global financial crisis that commenced in 2008 is definitely the most important economic and societal development of our times. Abundant literature regarding the global financial crisis as well as the several shapes and forms it has since evolved to has been published in an effort to understand what went wrong.<sup>1</sup> This is also the context into which '*Legal Challenges in the Global Financial Crisis*' fits.

This edited volume is, above all, a very welcome addition to the limited European legal literature on the global financial crisis.<sup>2</sup> Admittedly, European legal scholars (unlike their American counterparts) have been slower to react to the avalanche of legal change that resulted from the financial crisis – especially its acute European phase after 2010. This is largely understandable since the new legal architecture that emerged in the EU as a response to the European Sovereign Debt crisis was not part of a plan to complete the Economic and Monetary Union (EMU) but came as a collection of piecemeal legal arrangements attempting to respond to rapidly developing financial and political events.<sup>3</sup> Furthermore, this is the first comprehensive effort to approach the crisis from a cross-disciplinary legal perspective. The literature concerning the

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<sup>1</sup> For a general overview of the effects of the global crisis on issues of monetary and financial law see Mario Giovanoli and Diego Devos (eds), *International Monetary and Financial Law: the Global Crisis* (Oxford University Press 2010).

<sup>2</sup> See eg Wyn Grant and Graham K Wilson (eds), *The Consequences of the Global Financial Crisis: the Rhetoric of Reform and Regulation* (Oxford University Press 2014); Kaarlo Heikki Tuori, *The European Financial Crisis: Constitutional Aspects* (EUI Working Papers LAW No 2012/28 2012); Stefan Grundmann and Yesim M Atamer, 'Financial Services, Financial Crisis and General European Contract Law' (2012) 31 *Yearbook of European Law* 524.

<sup>3</sup> For an extremely detailed overview of the legal instruments that were created as a result of the European Financial Crisis as well as their impact on the legal structures of the Member States of the EU see the Country Reports from the European University Institute Department of Law, 'Constitutional Change through Euro Crisis Law'. <<http://eurocrisislaw.eui.eu>> accessed 12.12.2014.

financial crisis remains fragmented to different disciplines and, in the case of legal studies, to different specialisations within the discipline itself. Against this background, as the editors succinctly point out in the introduction, the different national legal background as well as the different law specialisations of practitioners and academics tend to limit if not obscure our understanding of the crisis. This work ostensibly aspires to remove the 'artificial limitations' (p 1) that each of these legal sub-disciplines place on our understanding of the financial crisis as 'an holistic affair' (p 1). In this context, the editors make a laudable attempt to bring together scholars and practitioners from different backgrounds, institutions and countries in order to provide a more coherent narrative of the law's response to the global financial crisis. In essence, however, they bring together lawyers from the UK and German legal traditions and focus on issues of constitutional law, financial markets regulation and European law.

The edited volume features six main contributions focusing on three different legal fields affected by the crisis: constitutional law, EU institutional and State aid law, and financial markets regulation. Further, a response essay from a discussant accompanies each of the six main contributions.

The first part of the book focuses on issues of EU and domestic constitutional law. In the second chapter, Peter Huber provides the reader with an extensive overview of the German Constitutional Court decisions relating to the Eurozone crisis and the bailout mechanisms that were set up as a response to it. He argues that these decisions, and the limitations they place upon further European integration, largely reflect a particularly German conceptualisation of democracy that, on the one hand, places politics beneath the law but, on the other, emphasises that 'the willingness to be subject to a majority vote involve[s] historical, cultural, economic and political preconditions that require a certain degree of social cohesion and matching interests' (p 26). This prompts Pavlos Eleftheriadis to argue that this particular conceptualisation of democracy by the German Constitutional Court corresponds to an idea of democracy as collective self-government, which would not be suitable to operate at the European level. Thus, he argues that an idea of democracy as a 'set of egalitarian institutions' with increased accountability would be more suitable to a European polity (chapter 3). In the fourth chapter, Gregor Kirchof engages in an historical overview of public debt in Germany and provides us the context of how the concept of 'debt brake', which later formed the basis of the European 'Fiscal Compact', came to be created in Germany. In the last chapter of this first part of the book, John McEldowney offers a British perspective to this particularly German concept, which comprises a 'less

rigid alternative that is capable of adapting to changing economic and fiscal conditions' (p 63). He appears sceptical and raises concerns about the appointment and competence of judges in relation to deciding upon economic and political issues.

Part II shifts the focus to issues of 'pure' EU Law. Paul Yowell in chapter 5 draws attention to the role of the ECB and its mandate under EU law. He produces a very thorough and insightful analysis of the law governing its operation and makes a convincing argument that the ECB's legal mandate 'precludes it from acting as a lender of last resort to governments' (p 82). In addition to that, he decidedly claims that EU law is not to be cast aside even in response to extreme exigencies according to what economists 'dictate' as that would replace 'the rule of law with the rule of experts' (p 119). This point is further elucidated by Christopher Ohler who points out that the EU system of governance is not flexible enough to address the problems brought about by the crisis. Particularly insightful contributions to the collection are the ones, which immediately follow, and in which the authors focus on issues of State aid. Conor Quigley assesses the operation of the EU State aid rules with respect to recapitalising European banks. Interestingly, he observes, the Commission adopted a very flexible approach to the rules that resulted in a piece-meal and rather nation-centric plan of action. He admits, however, that there was no other suitable legal framework the Commission could utilise at the time in order to 'prevent national action from resulting in protectionist subsidies' (p 148) and, as a consequence, it is still early to assess its success. In chapter 9, Thomas Ackermann, further commenting on State aid rules, notes that the aforementioned 'bending' of these rules is only of a temporary character but it has achieved the inter-institutional strengthening of the Commission's position.

Part III of the book highlights issues arising out of the legal developments in the field of financial markets regulation. In chapter 10, Alexander Hellgardt offers a very insightful comparative account of public, private, criminal and tax law as instruments of financial regulation and explains which instrument would be most optimal in achieving different regulatory purposes. John Vella subsequently sets apart the use of corrective taxation and further elaborates on its role as an instrument of financial regulation, a development that only came about as a result of the recent crisis (chapter 11). Finally, Gustav Sjöberg, presents a detailed analysis of 'banking resolution' mechanisms as well as the different needs and objectives they ought to serve (chapter 12). Indeed, he attempts to conceptualise the resolution of banks as a 'governance tool' (p 187) that seeks to minimise moral hazard (by imposing losses on shareholders and creditors) and strengthen legal certainty. He, nevertheless, recognises that this approach

would only be effective in containing non-systemic bank crises and that authorities need to enjoy a significant degree of flexibility when dealing with systemic events. This prompts Christos Hadjiemmanuil to reply and voice his scepticism about the use of resolution mechanisms as governance tools (chapter 13). He criticises banking resolution mechanisms, like the ones described by Sjöberg, as either not prescribing ‘the eventual outcomes in a relative determinate way’ or as not being ‘credible’ (p 231).

The final two chapters of the edited volume (chapters 15 and 16) aspire, perhaps counter-intuitively, to demonstrate that legal instruments themselves are very often of limited help or even significance when dealing with important or sensitive political issues. Rudolf Streinz expresses his disbelief that the ‘Fiscal Treaty’<sup>4</sup> will be effective in enforcing more stringent rules about highly political fiscal issues where the Maastricht Treaty failed; Franz-Christoph Zeitler complements that view by suggesting the introduction of a ‘state restructuring law’ (p 248) for insolvent states in order to incentivise fiscal self-responsibility and make the whole legal framework credible.

Ultimately, *Legal Challenges in the Global Financial Crisis* is a commendable attempt to bring together legal scholars of multiple sub-disciplines and present a detailed account of the most avant-garde issues that sprung from the recent financial crisis. Further, as the editors themselves claim, it is also an attempt to assess whether legal rules could actually serve as useful instruments in resolving the related economic and sovereign problems. Arguably, the former objective is fully accomplished but, regrettably, not the same can be undoubtedly said for the latter. The ‘golden thread’ running through all the essays is often obscured by the very specialist nature of the debates whilst a final concluding chapter bringing together some of the main themes and fleshing out any conclusions that can be drawn from the collection would be particularly welcome in that context. Despite this, it constitutes an important contribution in the field and it is certainly to be applauded for paving the way for further cross-disciplinary discussion amongst lawyers.

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<sup>4</sup> Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, 02.03.2012, < [http://european-council.europa.eu/media/639235/stootscg26\\_en12.pdf](http://european-council.europa.eu/media/639235/stootscg26_en12.pdf)> accessed 12.12.2014.