

NEW STATEHOOD (?) IN THE POST-PANDEMIC CONTEXT: A REFLECTION FROM THE COORDINATES OF THE GLOBAL MARKET FORM¹

La ¿nueva estatalidad? en el contexto pospandémico:
una reflexión desde las coordenadas de la
forma global de mercado

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Abstract

Globalisation, as a strategy of rupture of the material relationship between the Constitution and the Social State form, has generated an erosion of the legitimising assumptions of state sovereignty of social constitutionalism in terms of depoliticisation. However, the multiple crises experienced by the globalising strategy, with particular reference to health, seem to have consolidated a revisionist discourse based on the revaluation of state sovereignty. Precisely, the aim of this paper is to analyse whether the health pandemic has led to a new context that makes possible the return

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of the state as a response to the problems of legitimisation posed by the global market order. To this end, the analysis will focus on the measures adopted by the European Union and its member states during the pandemic and post-pandemic phases. The special focus on the European order is due to the fact that it has given a normative nature to the structural principles of global market constitutionalism, being its most complete legal formulation. In parallel, the bulk of the reflection will be accompanied by the methodological premise of the material constitution for its explanatory force of the reality of the state form in the constitutional paradigm of the global market, diluting the mirages of constitutional politics and post-positivist-formalism.

Keywords

Material constitution; formal constitution; State forms; constitutional paradigm; normativity; State sovereignty; deconstitutionalisation; globalisation; European Union.

Resumen

La globalización, como estrategia de ruptura de la relación material entre constitución y forma de Estado social, ha generado una erosión de los presupuestos de legitimación de la soberanía estatal del constitucionalismo social en clave de despolitización. No obstante, las múltiples crisis experimentadas por la estrategia globalizadora, con especial referencia a la sanitaria, parecen haber consolidado un discurso revisionista basado en la revalorización del soberanismo estatal. Precisamente, el objetivo de este trabajo es analizar si la pandemia sanitaria ha propiciado un nuevo contexto que posibilita el retorno del Estado como respuesta a los problemas de legitimación que plantea el orden global de mercado. Para ello, el análisis se centrará en el análisis de las medidas adoptadas por la Unión Europea y sus Estados miembros durante las fases pandémica y postpandémica. La especial atención al orden europeo obedece a que este ha conferido naturaleza normativa a los principios estructurales del constitucionalismo global de mercado, siendo su formulación jurídica más acabada. Paralelamente, el grueso de la reflexión se acompañará de la premisa metodológica de la constitución material por su fuerza explicativa de la realidad de la forma de Estado en el paradigma constitucional del mercado global, diluyendo los espejismos de la política constitucional y el postpositivismo formal.

Palabras clave

Constitución material; constitución formal; formas de Estado; paradigma constitucional; normatividad; soberanía estatal; desconstitucionalización; globalización; Unión Europea.

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I. INTRODUCTION

The term “new statehood” has gained particular emphasis in the two moments of crisis, financial and pandemic, that nation states have experienced in recent decades. Both contexts have been interpreted by some authors as exogenous or external links to national constitutional texts (Kjaer, 2019: 143-158; Somma, 2018: 85-109). These externalities mainly materialise in the denaturalisation of the moments of decision and control of the dynamics of policies and constitutional justice. On the one hand, because such links, by removing national spaces of financial and economic decision-making, impose limits that constrain the guarantees of democratic constitutionalism (Galli, 2019: 140). On the other hand, because they denaturalise the mechanisms of political and jurisdictional control over national executives which, inserted in the logics of supranational and global intergovernmentality, reproduce the systemic decision of the new constitutional paradigm of the global market order: weak national and supranational government and strong control through monetary orthodoxy and inverse redistribution (Maestro Buelga, 2021: 31). Hence the consideration of the two crisis contexts as potential turning points for regaining state sovereignty through the dissolution of the financial and economic links of the global and supranational spaces (Losurdo, 2022: 205-207; Cantaro, 2021: 80-84).

However, I believe that these readings sterilise the legal and political effects of the material bases of the new constitutional paradigm: the global

market order and its most complete legal formulation, the European legal order. Fundamentally, because they relegate the global market order to a mere *locus naturalis* whose effects can be circumvented through the simple removal of the limits of discipline and control of markets (Springer, 2015: 6). In this sense, the rescue of constitutionalism linked to the limits to power and the guarantee of rights is a voluntarist proposal that avoids two fundamental questions: firstly, the link between the constitutional function and the juridification of social reproduction, or, in other words, the connection between the Constitution and the form of State (García Herrera, 2015: 61).

The second of the issues neglected by the approaches that postulate a return to national constitutional sovereignties is the confrontation between the material bases that define social constitutionalism and the market order. In this respect, it is not a matter of merely purifying social constitutionalism conceptually and in terms of guarantees by means of a legal-descriptive analysis of the global and supranational elements that reveal the rupture of the paradigm of social constitutionalism, of its material constitution. On the contrary, the material constitution of the global market order highlights the contradictions of the new system and its prescriptive effects in the supranational and national spaces. This material constitution acts the reorganisation of the state-economy-power relationship, determining the strategy of the ideological project of global financial capitalism aimed at the rupture of social constitutionalism.

On the basis of these preliminary considerations, the purpose of this reflection is twofold: on the one hand, to assess the foundations of the approaches that grant the new statehood, which has theoretically generated the context of pandemic crisis, the role of defining a new order of relations between political power and economic power on a global, supranational and state scale (Somma, 2021: 229-238). These readings advocate the generation of a new social contract, the content of which would have been partially sketched out during the management of the pandemic crisis through the bulk of the measures adopted by states and the European order. Political, legislative and monetary measures which, according to these approaches, differ substantially from those adopted during the period of financial crisis management.

In particular, in terms of monetary policy, there would have been a shift from the objective of the primacy of monetary stability to an expansionary monetary policy which, recognising the greater financial fragility of the system, derived from the acceleration of the deregulation processes tested during the management of the financial crisis, would require the continued presence of the European Central Bank (ECB), which would thus end up becoming the lender of last resort. In this sense, the ECB would have assumed responsibility during the crisis for guaranteeing the economic system the

liquidity necessary for its stability, while at the same time avoiding contractions in the demand for consumer goods (Fabbrini, 2022: 187-198). States, for their part, would have actively intervened in the economic sphere through (substantial) aid to private capital, and, to a more relative magnitude in substance, to households and the working classes (Bergsen *et al.*, 2020).

With respect to this apparent supranational monetary activism that would have entailed a significant readjustment in European Economic Governance (EEG), bridging the asymmetry between the economic and monetary policy of the Union, and state economic policy that would ascribe to the narratives of the new statehood or the new order of state sovereignty, briefly note, as I will come back to it in the last chapter, that this type of monetary and legislative policies respond to guarantee the stability of the global market order in the face of its multiple crises, the so-called global market syndemic (Streeck, 2017: 97-120), and not to generate a new order that recovers the structures of public governance of the economy.

Basically, because these are measures that connect with the needs of global market power. The temporary suspension of the Maastricht criteria, the increase in public spending at the cost of increasing deficits and debt, is not due to macroeconomic and macro-financial policies of a redistributive nature, but to finance capital. The debt that has been accepted to be generated at supranational and state level is a debt designed to support capital and its needs in the contexts of pandemic and post-pandemic emergencies, a type of debt accepted by capital markets willing to finance it at lower interest rates. Hence I consider, as will be argued in more detail, that the state has not taken on any new function that would suggest a constitutional paradigm shift from the current constitutional market paradigm, but rather that the state continues to create the conditions for the perpetuation of the reproduction of the sense of legitimacy and social consensus towards the market order (Šumonja, 2021: 215-222).

On the other hand, the second aim of the reflection would be to assess the interpretation of integration through the health crisis and the measures derived from its management as endogenous or self-imposed links by states. In other words, the survival of the statehood of global market power. This is a thesis that confronts the majority readings that have interpreted the moments of crisis of globalisation as external links to national rights. Certainly, configuring globalisation as an external element causing the disappearance of the state and the consequent constitutional crisis simplifies the issue by underpinning the elements of crisis around globalisation and the erosion of sovereignty that it entails as external pressure on the constitution. However, I understand that this affectation must be interpreted as a heteronomous conditioning of globalisation on the social state and its constitution on the

basis of considering globalisation, as has been advanced, as a space of determination of the new constitutionalism of global market power. Fundamentally, because the states are the main driving agents of the globalising process, contributing to its extension and materialisation (Weiss, 1997:23-24), such as the European legal order, a union of states that concretises a specific form of affirmation of global market constitutionalism.

The European supranational process interacts with the globalising process acting as an endogenous mechanism of the new market order that conditions the constitution of the social state form, denormativising it. Constitutional primacy declines in its constitution-legislation relationship, which is restructured around the pre-eminence of legislation as the form of action of the material constitution of the global market order. The regulation of the material bases of market constitutionalism in all spheres of national regulations alters the constitutional resistance to law, imposing itself on the fundamental norms that internalise the social state form (Luciani, 2008: 65-79).

In parallel, the methodology followed throughout these pages to corroborate the thesis of consolidation of the material constitutional reality of global market power during moments of pandemic systemic integration will be to approach financial and economic globalisation as a new constitutional paradigm and its juridification in the European supranational space from the perspective of the relations between state form and constitution, where the vector of the material constitution becomes the essential argumentative thread. Specifically, it is a question of analysing the consistency of the concept of statehood from the coordinates of the material constitution of the global market order. Fundamentally, because statehood plays an essential role in addressing the relations between global, supranational and state spaces from the perspective of a central concept for Constitutional Law: the State and its relations with the Law.

II. CONSTITUTION, CONSTITUTIONALISM AND FORMS OF STATE

In the approach to the object of Constitutional Law, the connection between the legal-constitutional categories and the forms of State to which they are linked is a constant. In this sense, in Constitutional Law the type of state around which the constitutional order is articulated becomes a central question. It is precisely this centrality of the state which prevents a normative reductionism which limits the state and its relationship with the Constitution to the bundle of legal norms which regulate it in form and content, that is, the exclusivity of the content referring to the constitutional norm. Thus, the

state-constitution connection materialises the constitutional function of juridifying the conditions of social reproduction (De Cabo, 1978: 5-6).

From this methodological perspective, which understands the Constitution as a necessary element of the new state functions in capitalist societies as it has its origin in a specific historical circumstance, it follows that the Constitution not only legally shapes the political order, but also guarantees it, in accordance with this causal relationship (De Cabo, 1993: 269-272).

It is a different matter that the transformations experienced since the 1980s by the form of state internalised by the fundamental texts of the Second World War, the Social State, which have generated its rupture, have been interpreted from an approach to the conceptual arsenal elaborated in democratic and social constitutionalism, moving from the formal guarantee of the normativising thesis to the material guarantee of the Constitution of the thesis of extra-constitutional reality or constitutional politics (Zagrebelsky, 2018). A methodological transition that has produced, in any case, the same result: the dissociation of the project of democratic and social constitutionalism from the form of the state.

In relation to democratic constitutionalism, analyses have focused on the tensions, especially during the Eurozone crisis period of 2010-2014, between financial globalisation and its institutionalised power structures –the Economic and Monetary Union (EMU)– and democracy. Globalisation would challenge the necessary balance between legitimacy and efficiency of national electoral representative democracy (Giannone, 2019: 12, 58). Issues such as the management of monetary sovereignty from the European space, that is, from the logic of the realities of capital market globalisation in order to avoid national social policies that undermine financial deregulation, imply a delegation that ends up going beyond the demarcation line of alienation by taking the final control of the Union's political agenda or action programme away from the citizenry. Hence the resource to the recovery of state sovereignty as a fundamental instrument of the demand for reconstitutionalisation (Crouch *et al.*, 2016: 500).

These approaches connect to questions of control and power-sharing. The crisis of legitimacy would manifest itself in abstention in electoral processes, the weaknesses of traditional party systems, and the volatility of the electorate increasingly inclined to direct their voting towards direct responsiveness to their demands. For its part, the crisis of efficiency would take the form of the constriction of national parliaments to legislative policy decisions without the possibility of producing agreement and consent through debate by the elected collective authority (Hanspeter, 2020: 251-252).

With regard to social constitutionalism, its weakness is attributed to the economic policies rehearsed during the EMU crisis and characterised by

conditional solidarity, the political-economic disconnect and the economic rationalism of moral hazard (Liebert, 2016: 308-309). To this end, the members of the EMU had to comply with the contents of the so-called memorandum of understanding that prescribed fiscal consolidation measures to reduce public debt and structural economic reforms to be implemented. Solidarity thus materialised in the form of short- and long-term conditionality to ensure compliance with the conditions of macroeconomic and macro-financial sustainability. But debt sustainability, under the coordinates of debt restructuring, led to pro-cyclical internal devaluation as the only possible and available option within adjustment programmes aimed at restoring stable prices and sound public finances (Montani, 2016: 109-138.).

Despite this accurate description of the effects: the reduction of the space for politics, excluding the economy from the social debate, and the flight of political decision-making that causes the democratic deficit given the absence of a European and global political space; the readings suffer from a sterile voluntarism insofar as they disconnect these effects from their links with the new constitutional paradigm of the global market order (Azzariti, 2015: 3). It is assumed that the paradigm of social constitutionalism would be subject to partial modifications due to the influence of the global power of the market, but without questioning its validity.

However, the approach to democratic and social constitutionalism from these readings trivialises the material foundations of the Constitution of the Social State form. The procedural conception of democracy and the renewal of the social to an axial category imply a material purification that leads to a prevalence of formal elements as the only key mechanisms to ensure its guarantee. The result is the disconnection of the unitary structure of the Constitution-State form, where these voluntarist readings attempt to recover a constitutional paradigm of a pseudo-social state.

Firstly, because the problem of democracy is not the transfer of sovereignty to the European supranational space, nor even the accentuation of the centrality of intergovernmental power in the Union (European Council and Council of the European Union) in the contexts of financial and pandemic crisis. On the contrary, the democratic distortions are only apparent, as they manifest a type of democracy that is confined to the constitutional paradigm of the global market order and not to the form of social state constitutionalised in the fundamental texts of the member states (Cantaro, 2022: 153-159).

It is therefore an approach in which the confrontation between constitutional systems is the determining factor in the different conceptual configuration of supranational democracy and its prescriptive and descriptive elements. A confrontation corrected through the subsumption of the global material constitution into supranational and national legal orders. Moreover, the link

between democracy and parliamentarianism is declining on a European scale from structural principles of the opposite sign to those of the constitutional structures of social constitutionalism. Multi-class legitimacy is replaced by economic legitimacy, and the strong government of the economy is displaced by the centrality of the intergovernmental bodies that materialise the moment of strong control of the EMU (Giannone, 2019: 36,148).

Secondly, because circumscribing the materialisation of the social in the form of the social state to the policies of benefits and material procurement implies deconstructing the material basis of the distributive conflict inherent not only to the emergence of social constitutionalism, but also to the very configuration of the Constitution as normative. In this sense, constitutional normativity is a requirement of the material bases of the Social State form, just as the rule of law was a requirement of the material bases of the liberal state form, and the unconditional centrality of the market is a requirement of the material bases of the constitutional market order.

The link between pluralism that transcends the political space to learn the socio-economic sphere through social conflict and the legal-political integration of labour subsumes the revaluation of the material bases of the social state form. Reducing the social state to a legal principle or social clause devoid of its transformative potential not only sterilises the moment of rupture with the liberal form of the state, but also allows a mix of dialectical principles to be mixed, avoiding the conflict between the constitution-form of the social state and new legal-institutional regulations of political-economic relations.

Hence the need for methodological recourse to the constitutional juridification of the material constitution with the forms of state. The reasons are twofold: on the one hand, because it allows us to confront the form of the social state with the moment of its rupture and replacement by the new constitutional order of the market. On the other hand, but in direct connection with what has just been pointed out, because the current constitutional moment raises the need for methodological orientations that help to understand the confrontation described.

1. THE MATERIAL CONTENT OF THE FORMS OF STATE AS METHODOLOGICAL PREMISE

To discuss about the rupture of the material constitution of the social state and its replacement by the new post-social material constitution requires a double order of observations. Firstly, it is necessary to examine the meaning of the term material constitution in order to determine its connection with the social state as an autonomous form of state with its own content. Secondly,

it is necessary to explain why this method is valid in order to approach the new constitutional reality of global market power.

Beginning with the first of these considerations, certainly, the rupture of the old material constitution makes it necessary to address, at least briefly, its essential elements as a starting point for confronting them with those recognised in the new material constitution. In this context, reference to Mortati's (1998: 129-132) construction of the material constitution is obligatory. The usefulness of his methodological proposal lies in the connection he establishes between formal constitution and material reality, unifying in the legal-constitutional sphere spaces that had remained separate.

His novel approach to constitutional law through its necessary link with the social demands in which it finds its *raison d'être* (material constitution), implied a treatment of constitutional law as a source of integration, legitimisation and guarantee as opposed to an interpretation of social constitutionalism as an expression of pluralist democracy that connects state sovereignty and sovereignty of the Constitution (*ibid.*: 124-132). The most outstanding aspect of his theorisation consists of articulating the unification of the legal system on the basis of a material foundation prior to the constitutional norm, which is identified with the distributive struggle of the order of social reproduction of post-industrial capital and which is configured as an organising element of the legal system by guaranteeing its validity and unity (Mortati, 1975: 39-47).

As has been pointed out in the second of the considerations, the identification of the material constitution of the social state is essential for its confrontation with that which emerged in the period of the rupture of this form of state. Fundamentally, because this means the alteration of the relationship between the autonomy of the formal constitution and the primacy of the material constitution. Therefore, in moments of rupture of the principles that configure the pre-existing material constitution, the normativity of the formal constitution regresses to the extent that it proves incapable of deploying its disciplining effects in the legal order as a consequence of the pre-eminence of the new material constitution.

From this perspective, it is possible to understand the transformations that began in the eighties and materialised in a symptomatology of conflict between the formally constitutionalised statements and the new constitutional reality, which, due to their stability over time, invite us to consider that we cannot speak of a crisis but of a rupture in the form of the social state. Hence, the progressive dismantling of the material bases that make up the social state exemplifies the confrontation between the constitution formally in force and the new constitutional material reality.

Although attempts have been made to overcome these contradictions by resorting to multilevel or composite constitutionalism as a methodological

orientation that invites us to consider the cohabitation between legal systems (Pernice, 2015: 541-562), that of social constitutionalism with that of market constitutionalism, this is only possible by situating the social state in an extra-constitutional reality, that is, by denying the contradiction Constitution of the Social State-reality of market constitutionalism with the consequent operation of either reformalisation or sterilisation of the material constitution of the social state.

Formally, as was the case in the liberal state, a sort of Constitution-reality, norm-power disintegration seems to be at work, which makes the formal validity of the fundamental texts possible. However, materially, a term that takes on a connotation of systemic deficiency of the positivised political order, the moment of rupture is evident. In particular, the market legal order and its material constitution have sterilised the legitimising element of the founding decision of the legal system of social constitutionalism, turning the social state form into a useful, but falsified, fiction. Basically, because it acts as a sterilised basic norm, insofar as it is detached and disconnected from its own object, the management of conflict (inequality of the order of social production of post-industrial capital) through its constitutionalisation.

For this reason, I consider that the approach bases on the connections between constitution-state forms from the methodology of the material constitution is decisive for the analysis of the different constitutional regimes and the structural principles that define them in opposition and contrast to the state forms that preceded them, up to the current constitutional paradigm of the market order.

2. THE LIBERAL STATE FORM: THE PURIFICATION BETWEEN LAW AND POLITICS IN THE LEGAL ANALYSIS OF THE STATE-LAW RELATIONSHIP

In liberal constitutionalism, the form of the state and its formal expression were ascribed to private autonomy, private property and contractual dogma. The internalisation of these postulates in the legal system took the form of a category of subjects of law synonymous with the contributions of contractual civilism and a centrality of the law as a mechanism for guaranteeing the liberal material bases: centrality of the private, defence of property and individual rights in accordance with a formalist conception of freedom and equality (De Cabo, 2001: 119-123).

The liberal constitutional regulation of the state implied the form (legal norm)-content (reality) split, which demanded the independent treatment of the norm as form because the content in law was not the factual but the form. However, this normativism had its roots in the political legal model of the liberal state (material constitution) to which the formalist method served as

an explanatory underpinning. The model had as its basic function the exclusion of intervention in the sphere of private initiative, a function that conditioned the explanatory methodological response to state form (Fioravanti, 1993: 161-1687). The subordination of the constitution to the law can only be explained by the very form of the liberal state and its concept of the constitution (Fioravanti, 1991: 45-46). The monolith structure of the liberal state of a monolithic, homogeneous nature did not need constitutional support (García Pelayo, 1980: 50-51).

Thus, the theoretical separation between the formal Constitution and the political Constitution characteristic of liberal constitutionalism was intended to neutralise the ideological transformation that acted under the aegis of the protection of freedom as a guarantee against absolute power, the material basis of the liberal order.

3. THE SOCIAL STATE FORM: THE CONSTITUTIONALISATION OF THE POST-INDUSTRIAL CONFLICT

The crisis of the liberal state is the starting point of the new material constitution and its connection with the new state form that is beginning to take shape, the social state. The state form operates as the determining element of the material constitution. In contrast to the liberal form of state, which denies conflict in its formalisation as an exclusionary state, this concept takes on a substantially different dimension in the social state. The rupture of the separation of the political and economic spheres introduces conflict into the social state both in the determination of its content and in its constitutional expression (Mortati, 1998: 129-132).

The integration of conflict is at the heart of the social state, which is opposed to the exclusionary liberal order. The centrality of the conflict on which the form of the social state is defined, the characteristics of which are shaped by the new interrelations between the socio-economic and political levels. Economic power, from being the active subject of the revolutionary constitutional transformation, becomes the object of the rules and limits of the government of the social state, which imposes the constitutional capture of the economic sphere.

The material constitution-state form connection is the element that delimited the government of the economy, manifested in its double dimension of conflict and guarantee. The former is inferred from the space of availability entrusted to conflict. The institutionalisation of conflict represents both the guarantee of the political subjectivisation of the working class and the redirection of its limits around the founding commitment of the social state (Mortati, 1972: 8). To this should be added the new position that the

social state attributes to the Constitution in the legal order. Constitutional supremacy derives from the centrality of the social state form in the construction of the order, which requires unification (unity) around the social conflict, the material constitution, of the state form internalised by the Constitution which acts as a guarantee.

4. THE CONTRADICTION BETWEEN MARKET CENTRALITY AND THE PUBLIFICATION OF SOCIAL CONFLICT: THE PROGRESSIVE DENORMATIVISATION OF SOCIAL CONSTITUTIONALISM

The destructuring of the field of the actors of the conflict constitutive of the material constitution of the social state form generates a new order, still incipient in the eighties, but whose features begin to take shape as the foundations of legitimisation of the legal, political and social reality of the market. The market is configured as the new social potential articulator of state-society relations with the capacity to organise the new regime and expand the imperative of accumulation for accumulation's sake. The new relationship is situated between competition, liberalisation and consumption, transforming the paradigm of the social and legal sciences through the elimination of the figure of subjectivity, the social classes (Losurdo, 2016: 10-12).

The rents of labour and capital are replaced by the *ethos* of economic agents: consumers and companies. The former provide labour and capital, the latter organise the production processes, albeit in a nuanced way, without participating in the distribution of income. There is no representation of interests according to social classes because these lack identity and, therefore, relevance. Income distribution becomes a market phenomenon that institutes the new system-environment (Somma, 2017: 161).

In this context, the state begins to assume new functions oriented towards the deregulation of economic and financial processes that will culminate in the unconditional hegemony of market self-government in the 1990s. The autonomy of the economy, monetarism as a system of economic-budgetary and financial self-linkage to political power, are the structural principles of the new order that begin to receive the backing of national legislators through a weak reading of the constitution of the social state (Guazzarotti, 2020: 18-19; Harvey, 2005: 64-86).

5. THE NEW STATEHOOD IN THE CONTEXT OF GLOBAL MARKET POWER

Although the social state form has been denaturalised by the constant neo-capitalist doctrinal assessments, globalisation, as has been advanced, is basically characterised by its confrontation with the material constitution of

the social state form (García Herrera, 2015: 55). So, we could define globalisation as a project that unfolds its process of materialisation through neoliberal ideology as a vector of a type of social reproduction of a systemic nature, insofar as it encompasses the structure of accumulation, international exchanges, the state, ideology and the reproduction of working classes (Saad-Filho, 2011: 254).

Moreover, it is a political decision adopted by the majority of nation states that began to take shape in the 1950s and 1960s with the gradual withdrawal of limits on financial capital, and was definitively consolidated in the 1990s with the liberalisation of financial markets (Kapstein, 1994: 32). The deregulation of legal limits to capital acts in the global space, concretising the globalising strategy as an unconstitutional space, free of constraints on private financial and economic agents. However, this space needs the supranational and national spheres to consolidate the strategy of market centrality through the juridification of its coordinates of expulsion of social conditioning factors to the market.

In this way, the state has played and continues to play a central role in the global space not only as the architect of the legal-political project of globalisation, but also as the guarantor of the material constitutions that have succeeded each other in the various forms of state (Arrighi, 2014: 35-40). In any case, the new statehood of the market is contrasted with the statehood of social constitutionalism through its new material constitutional principles. The two axes around which the role of the state is now defined are: the unconditional centrality of the market, which implies, on the one hand, the subordination of politics to the demands of accumulation and, on the other hand, the affirmation of rules refractory to the conditioning intervention of the market; and financial globalisation as the liberalisation of the material bases of the social state (Pureza and Mortágua, 2016: 363-381).

This approach implies interpreting the law of the global market order as a new type of Law that is articulated with an autonomous character and based on its own material constitution that relates to national constitutional orders in a relationship of conflict and expulsion of the elements that prevent its consolidation as an autonomous order. From this point of view, the global market order as a political and legal “creature” of the states generates its own configuration of the elements of power and law.

Specifically, in relation to power, it is depoliticised, in the sense of abandoning its prototypical functions of the social state, the government of the market, to take on others: the management of economic processes through the indirect regulation of control and the reforms of the labour markets, which have the EU as their paradigm of legal concretisation. In terms of Law, constitutional denormativisation is taking place in the loss of the original

meaning of the constitutions of the social state as constitutions of conflict. In particular, the constitutional internalisation of the legal subjectivisation of the protagonist subjects of the social pact of the social state form, capital-labour, is replaced by the guarantee of the economic bond (market), giving the constitution an ahistorical function that dilutes its transformative potential (García Herrera, 2016: 189-199).

III. AN APPROACH TO THE CONSTITUTIONAL PARADIGM OF THE MARKET STATE FROM THE PERSPECTIVE OF THE MATERIAL CONSTITUTION OF FINANCIAL AND ECONOMIC GLOBALISATION

The conceptual framework that serves as a legitimising foundation for the new form of market state is the link between globalising strategy and constitutional order. The interaction between strategy and constitutional innovation changes the constitutional order of the state, so that Law and strategy affect each other. According to this premise, we can identify the strategy of the market state around financial and economic globalisation as the legitimising foundation of the new form of state, by incorporating its principles into the new constitutional design (Knight, 2001: 27-50).

The market state is confronted with the forms of intervention that materialised in Europe during the golden decades of the social state. The pursuit of community welfare is replaced by individual progress only possible through the liberalisation of markets. This means, in turn, that the state assumes a new role that affects the constitutional basis of the social state form leading to its rupture. In the reordering of socio-economic relations, the new market-based state re-appropriates the accumulation function by undoing the conflict implicit in the integrative conception of the social state. This implies that the Constitution loses its capacity to direct social regulation (Maestro Buelga, 2016: 72-78).

In this political and legal process, the main protagonist is the state. Thus, the market state is presented as the decision taken by the political body, as it would be illusory without its institutional design and the maintenance of the conditions for its development. This institutionalised capitalism implies that the market is a political institution and, as such, establishes relations of dependence with respect to the state. In this sense, the intimate connection, already noted, of financial globalisation with the liberalising political conditions created by states exemplifies the linkage.

The use of deflationary and economic cooling therapies, to the detriment of traditional forms of state intervention in the economic and state spheres, together with the coordination of monetary policy, are necessary conditions

imposed by financial globalisation in order to be able to compete in the context of globalisation itself. The uniqueness of this process is that the limits imposed by the centrality of the market as a globalising paradigm not only determine the dismantling of the political links of the social state constitution, but also determine the new organisational principles of the system.

We have already alluded to how the elements incorporated by the globalising strategy establish a clear confrontation with the very contents of the social state, more specifically, a rupture of the mechanisms of political integration of the conflict. In contrast to the guarantee of the forces that protect collective freedoms and the rights of participation in the redistribution processes, the social and institutional circumstances that played an important role in determining the distribution of income, the monetarisation of labour relations is instituted in order for the market to reach equilibrium, that is, for market forces to assume only the private value of the labour “factor” and not its social value as a subject. Moreover, market dynamics itself initiates a strategic process of fragmentation and remercantilisation/individualisation of rights that requires the abandonment of socio-economic subjectivisation (Wills, 2017: 49-93).

The strategy of financial globalisation described above has unfolded its effects in supranational integration processes and national spaces. This is materialised in the interrelationship between these spaces in such a way that each of them acts in the new context determining the contents of the new statehood of global market power. Hence, the recomposition of the economic and political space is defined on the scale of global financial capital, and the state is thus reinserted in a new context. If the global space determines the rupture of the social state, this is the space from which both the new form in which power is organised and the resulting relations with society are defined, generating the global form of the market (Maestro Buelga, 2022: 188-189).

This approach questions the theses that confront the globalising strategy alleging the loss of state sovereignty that this strategy produces when it is interpreted as an external link to the state, as an autonomous project, and not as a political and social construction of the states themselves. According to these theses, the recovery of political and economic democracy would be the only option for breaking with the disciplinary mechanisms of global capitalism (external link) that condition state policy (Fazzi and Mitchell, 2018). Their approach to the relations between globalisation, state and law places the crisis of these bases as the basis for recovering state space in terms of the financing of sovereign debt, but ignores the complexities raised by the transformation of the state resulting from the rupture of the social state form. In the new statehood imposed by the global market form, there is no such external link to state action, but rather a self-limitation, in terms of refusal, of

the state to social intervention from the political governance of financial and economic processes.

The global space subordinates the state space to the globalising project, giving a form that imposes the centrality of the market on the public political space. This global space is, in turn, shaped as a space outside the control and regulation of power, given that its function is to subordinate, conditioning, the state and European spaces, which are the ones that must incorporate the mechanisms of discipline of the global market form into Union law and internal rights. Hence the close link between the globalising and European processes (Ryner, 2019: 89-98).

IV. THE RUPTURE (?) OF THE MARKET ORDER AND THE NEW (?) CONSTITUTIONAL PARADIGM: SPECIAL REFERENCE TO THE MOMENTS OF PANDEMIC CRISIS AND POST-CRISIS

As advanced in the introduction, the pandemic crisis exemplifies the last of the evolutionary stages of the consolidation of market hegemony (García Herrera, 2022: 257), despite the elements of the crisis of global market power and the rhetoric of the return of state sovereignty during the management of the pandemic (Crabtree *et al.*, 2020; Gerstle, 2022).

The main argument of these theses for a new statehood focuses primarily on the changing roles of states during the global financial crisis and the global pandemic crisis. In contrast to the economic policies of the post-Washington Consensus², which favoured the self-regulation of financial markets that was tried without nuance during the financial crisis, the return of “Big Government” and industrial policy would have been the flagship of the economic policies adopted during the health crisis (Van Apeldoorn and De Graaff, 2022: 307, 313-317).

² The hegemonic position of the neoliberal paradigm began to come under serious criticism in the early 1990s based on the accumulation of empirical evidence that undermined the fundamental claim of the Washington Consensus that large-scale liberalisation, at all costs, was associated with superior economic performance. This questioning was confirmed by the very research conducted by the major Bretton Woods institutions, the World Bank and, to a lesser extent, the International Monetary Fund. The result was a reorientation of the globalising constitutional paradigm from a hard neoliberalism to a revamped one, the so-called post-Washington Consensus, which emphasised enhanced state performance as a necessary ingredient of market-oriented reforms. That is, from autonomy to market centrality (Önis and Senses, 2005: 265-266, 273-274).

To refute these claims and to substantiate the persistence of global market power, the actions taken by the EU and its Member States during and after the management of the pandemic crisis will be taken as a reference. The reason, as has been reiterated from the outset, is because the EU emerges as the most complete legal-constitutional paradigm of global market power. Moving from theorisation to praxis, the apparent paradigm shift in the economic, monetary and financial policies implemented is also located in the supranational and national space. Specifically, it is pointed out that the measures adopted to contain the disruptive effects of the health pandemic on the EU economies have generated a macro and microeconomic scenario that is different from that of the 2008 global financial crisis. Furthermore, it is noted that the economic proposals have differed from the conditional solidarity, via financial rescue programmes tested between 2010 and 2012, to a redistributive solidarity of risks based on a transfer union (Buti, 2020).

It should be recalled that, according to the dominant thesis, the deficient design of EMU was accentuated by the asymmetric shocks caused mainly by the countries of the southern European periphery during the 2000s, highlighting the triple crisis of intergovernmental tension in relation to the demands of monetary orthodoxy: fiscal crisis, crisis of rationality and crisis of legitimisation. In order to recompose it, one of the variables in the conflict between risk sharing and risk reduction should be chosen. While risk sharing or risk distribution advocates an economic policy of financial transfers or shared responsibility for public debt; risk reduction is ascribed to the neoliberal logic of economic policy centred on the individual responsibility of debtor countries to overcome their economic problems through reforms of their political economies (supply-side policies and structural reforms) and the establishment of stricter common rules from the European space limiting the macroeconomic use of fiscal policy to deficit and public debt reduction (Talani, 2016: 18-19).

As is already known, the set of rules adopted during the period of euro crisis management was in line with ordoliberal ideas that denied the long-term macroeconomic effectiveness of fiscal policy. Thus, actions focused on ensuring, through reinforcement, corrective rather than stabilising measures. For its legal foundation, the advocates of the model resorted to the thesis of the historicist and evolutionist conception, which they confronted with the explanation of the diachronic dialectic and the singular synchronic transversality of the relations between politics and the economy. From this perspective, the real economy would condition the forms of society and, in particular, the fundamental political structures and their corresponding legal systems, with the consequence that, when they evolve, they mutate, break down and transform in order to become coherent with the new economic-material conditions of existence in society (Di Plinio, 2019: 105-106).

On the contrary, it is emphasised that the political and legislative actions promoted during the pandemic have involved a centripetal accommodation of national deficit spending measures through recourse to borrowing (loan package), the temporary monetary easing agreed by the ECB and the financing of the Recovery Plan for Europe (Next Generation EU) through debt issuance backed by the Union's budget (Tesche, 2021: 480-496). Actions that have served as a basis for interpreting the moment as the possible beginning of the end of financial and economic globalisation.

However, if we analyse these measures from their link to the statehood of the constitutional market paradigm, it can be observed that the measures taken at the European level, such as recovery bonds guaranteed by the EU budget, only have the advantage of better financing conditions in the primary markets than those obtained by a country issuing debt individually, but the substance of the spiral of over-indebtedness present in the EMU crisis remains. In fact, the intentional ambiguity of "repayment conditions linked to the recovery of economies" actually represents the continuity of the policy that emphasises the absolute efficiency of the internal market and the attachment of price stability and financial stability to its policies (Celi *et al.*, 2020: 419-420).

With regard to the flexibility in the framework of EU budgetary rules adopted by the Council on 23 March 2020, as with the temporary framework for state aid measures to support companies in financial difficulties adopted on 19 March 2020, this is a flexibility provided for by the European primary and secondary legislation. Moreover, the safeguard clause cannot compromise budgetary sustainability and aid must be compatible with the sustainability of the internal market. And in relation to the appropriate further relaxation through quantitative flexibility, the objective has not been definancing, i.e. limiting the extractive view of financial yield to avoid speculation. Stabilisation of the value and interest rate of bonds is not achieved through quantitative easing programmes, but through the injection of unlimited resources linked to the real economy.

At the same time, if we assess the management of the pandemic by the member states, despite the fact that the set of measures adopted unilaterally by the states includes a series of interventions that inject resources into the real economy (aid to people who have lost their jobs during the pandemic or aid to companies so that they do not lay off workers), these have been actions resulting from the pandemic contingency in an attempt to re-establish the conditions of social reproduction prior to the crisis. In such a way that domestic legal solutions under the pressure of the emergency have become a structural element of the conjunctural phase of integration through the economic emergency. Moreover, we could interpret these as micro-social measures aimed at containing a potential re-politicisation of the mechanisms

of capital self-reproduction. In other words, to avoid the eventual subordination of the economic interest to the public interest coordinated by a return to the material constitution of the social state.

Perhaps this statement is most illustrative if we contextualise it within the function of the state in the form of global market power as an organisation for the subordination of the entire economy to the interests of capital, especially in situations of systemic gravity such as the present one. Specifically, the participation of the state in saving the system through indirect interventions in the production process (subsidies, guarantees, investments) and so that it can contribute, during and after the acute phase of the crisis, through direct intervention (nationalisations), to the reorganisation of the bases of global finance capital (Moro, 2020).

Regarding external interventions, the objective is clear: to reduce the private debt of companies through public debt. Relative to direct interventions through capital bailouts in sectors in crisis which, with public acquisition, allow them to increase their profit rates while conserving private capital, they have been interpreted as the result of the pandemic accentuation of a commercial and defensive protectionist tendency contrary to the liberalising currents that have characterised the phase of financial capitalism. However, the exceptions to state aid to companies announced by the European Commission, the remarks warning of attempts by foreign private capital to capture strategic companies in the fight against the pandemic would be manifestations of a protectionism aimed at reinforcing the conditions for the survival of global market power (Pochet, 2022: 126-129).

Just as the EU economies were beginning to revive in the post-pandemic phase, the war in Ukraine and the blockades in China due to the resurgence of the coronavirus have provoked a sharp rise in the price of the main basic resources (energy, agriculture and metals) that is leading to an inflationary spiral. In any case, as Konicz (2022) warns, the growing inflationary dynamic is not only due to war and dysfunctions in global supply chains, but also to the expansionary monetary policy of the world's banks, which reveals the existence of a close link between inflation and financial growth. This interpretation of rising inflation as an endogenous variable of the market paradigm allows us to assess the threat of erosion of the Union's economies not as a subsequent economic shock, pandemic-war-inflation, but as a phase of the same systemic crisis process (Zolea, 2022). Otherwise, the economic and monetary responses of the Union's institutions would not continue to follow the path of stability conditional on the reduction of public spending and price stability based on the dynamics of demand.

Starting with post-pandemic economic policy, the Eurogroup Statement on the fiscal guidance for 2023 states: "We support the Commission's view

that [...] transitioning from an aggregate supportive fiscal stance in the euro area to a broadly neutral aggregate fiscal stance [...]”. The move from a supportive fiscal stance to a neutral fiscal stance seems to mean the end of expansionary fiscal policies and a return to the neutrality (?) of restrictive fiscal policies. This interpretation is confirmed when the Eurogroup distinguishes between the euro countries that will be subject to this broadly neutral aggregate fiscal stance, stating that, “with a view to preserving debt sustainability, in member states with high public debt, we concur that starting a gradual fiscal adjustment to reduce their public debt is appropriate, if conditions allow” (Eurogroup, 2022).

Although the final precision, “if conditions allow”, could be seen as a safeguard in times of inflation, allowing the most indebted states a laxity in complying with debt reduction, it is striking that if the Eurogroup itself recognises that inflation is a consequence external to the economies of the Union, it promotes guidelines that lack economic logic in view of the causes that have led to the shocks in the euro area. As we learned from the economic policies applied to the Southern euro countries during the Eurosystem crisis, considerations about the sustainability of a country’s public debt are not made on the absolute value of the debt, but on the ratio of public debt to the economic value of the country’s total output (GDP). Reducing public debt means that the state has to spend less than it collects in taxes. But this, in turn, means that the state has to take resources out of the economy by reducing public spending on investment and consumption or by raising taxes. A decision that reduces demand from companies (which will produce and invest less) and impoverishes the working classes (who will consume less and have to spend more). A vicious circle that ends up reducing GDP, causing the burden of public debt to increase rather than decrease (Roberts, 2021). Moreover, the adoption of economic policies that reduce demand generates a consequent reduction in public revenue, which also worsens the prospects for debt sustainability (Corniare Rivolta, 2022).

Turning now to an analysis of the post-pandemic monetary governance framework, we return here to the thesis that the expansionary monetary policy of the health pandemic has contributed to inflation. Since the 1980s, with the major financial crises of the 21st century acting as triggers for each phase of low or zero interest rates, the ECB has historically tended to lower and lower its key interest rates. Benchmark interest rates in the euro area were above 3% at the time of the introduction of the euro. After the bursting of the dotcom bubble (2000), the housing bubble (2007) and the euro crisis, they have been increasingly lower. Since 2014, a *de facto* zero interest rate policy accompanied by increasingly massive money printing has prevailed in the Eurozone (Konicz, 2022). This ample liquidity has induced financial operators to intensify, in the

absence of good and safe productive investment opportunities, their speculative activity on existing resource stocks, such as primary ones, which has accentuated the current imbalance.

However, in the choice of how to redistribute the cost of inflation internally, the ECB (2021) makes an external reading of the factors causing inflation –rapid economic recovery after the pandemic crisis, Russia’s invasion of Ukraine, production problems in non-member third countries– as a determinant of the monetary policies to be followed. In particular, by interpreting the factors as the result of multiple crises and not as a systemic crisis it seems to favour an approach similar to that adopted during the inflation of the 1980s, where restrictive economic and monetary policies on aggregate demand, mainly interest rate hikes and wage cuts, were the keynote. This is the only way to explain why the ECB (2021) warns: “We are also keeping a close eye on wages, because prices and wages influence each other. Employees and unions are currently asking for pay rises to compensate for higher living costs. This is normal. But if wages continue to increase, businesses may recoup their higher costs by bumping up prices, which pushes up prices even more”.

An approach that clashes with the very causes that the ECB describes as the cause of inflation, since unlike in the 1980s, the current inflation is supply-driven (scarcity of primary resources) and not demand-driven. In any case, it seems that this biased narrative of the origin of the current inflation, as it is detached from the contradictions inherent to the global market paradigm, is the dominant one. All the more so if we take into account that, in order to contain inflation, in addition to monitoring a hypothetical wage increase, the ECB announced two monetary policy measures on 9 June 2022: an increase in interest rates and the end of direct purchases of government bonds by central banks; which were completed with the approval of the Transmission Protection Instrument (TPI) by the ECB Governing Council on 21 July 2022.

Considering the first of these decisions, the increase in interest rates has taken the form of an unprecedented rise in the euro area for 11 years (50 basis points) (ECB, 2022a). Central banks often explain that inflation is caused by excess demand that overheats the economy and thus creates inflationary waves. However, the overheating does not come from the real economy’s demand for productive capacities (firms and households), but from the demands of financial markets that have used the expansionary monetary policies of negative interest rates to generate new speculative bubbles³. That is, the very low rates

³ According to Stiglitz (1990: 13), a bubble can be defined as follows: “if the reason that the price is high today is only because investors believe that the selling price will be high tomorrow —when “fundamental” factors do not seem to justify such a

that accompanied the exceptional emergency monetary policy of the euro crisis and the pandemic have been responsible for inflating the multiple bubbles of financialisation of capital (Di Comidad, 2022).

Even so, the answer seems to be the path of deflation or monetary policy of austerity that has begun to take its first steps. The reason is that this rise in interest rates generated by the financial markets directly affects the real economy and, above all, wages, operating a reverse redistribution, that is, a redistribution of income from wages to profits. Firms, seeing their production costs rise (firms indebted to the banking sector will have to pay a higher interest rate and bear a higher cost of debt), pass these higher costs on to prices, increasing them, and to wages, reducing them.

In this way, financial rents and the maintenance of corporate profits are protected, weakening the capacity of labour as a potential subject of conflict and reducing it to an asset of production. A monetary policy that guarantees the disconnection of financial markets from the real economy instead of putting an end to the multiple crises in financial markets that are the main causes of price and public finance instability (Gnesutta, 2022). A scenario that heralds a progressive weakening of the already weakened bargaining conditions for the improvement of wages, worsening working and living conditions without, for the time being, any measures to ensure that the rents of capital participate equitably in internal redistribution. A continuum of marginalisation of conflict in tune with the logic of neoliberal material inequality.

The second of the monetary policy measures, the end of government bond purchase programmes in the markets (ECB, 2022a), also recaptures the dogma of conditional sustainability of the euro crisis. It is important to bear in mind that bond purchases are not only the main instrument for containing the cost of public debt borne by governments, but also the main mechanism for governing spreads, i.e. the differences between interest rates on government bonds in different European countries. And herein lies the importance of the announced measure. With the end of the purchases announced by the ECB, this amount of accumulated public debt will be maintained, but the composition of the public debt securities that make up this amount may vary at the ECB's discretion.

So the ECB will be able to buy new government bonds from one country with the proceeds from the maturity of another country's government bonds as long as it holds the amount. For the time being, reinvestment is

price— then a bubble exists". Market fundamental of an asset is its true or real market value taking into account all the tangible or intangible elements affecting the asset.

materialising from North to South to avoid a widening of spreads that could lead to a debt crisis similar to the one experienced between 2010 and 2012. But it is also important to bear in mind that, if every time the ECB buys a country's public debt securities it pushes down the interest rate on these securities because it feeds the demand for them; conversely, the possible sale of public securities held by the ECB from more over-indebted countries would push up the interest rate on these securities because it increases their supply and, thus, the cost of public debt (Cesaratto, 2021: 4, 10-13, 20-29). This would therefore be an apparently monetary measure, but with a clear political connotation that could destabilise the governments of those euro countries less inclined to adopt economic cooling policies, as happened during the Greek crisis.

The third measure, the TIP, aims to ensure the homogeneity of the ECB's monetary policy in all Eurozone countries in order to bring price increases back to around 2% per annum (ECB, 2022b). For the first time, the ECB will be able to implement an "anti-spread" monetary policy whereby interest rates in all Eurozone countries will have to converge. The aim is to avoid speculation on the public debt of euro countries that could endanger EMU itself. If the financial markets want to attack a country and widen spreads, then the ECB will be able to intervene to save the state that is the target of the speculation. However, it is important to remember that the speculative attack on the debts of certain Eurosystem countries, with Greece as a benchmark, was led in 2010 by a politically sponsored and normatively backed bank concentration, in which Deutsche Bank and UBS, among other European banks, played a leading role (Pulliam *et al.*, 2010).

Moreover, this guarantee comes with two conditions: the first is that the ECB will intervene if and when the financial market imposes debt costs that are not justified by the so-called "fundamentals", i.e. the actual state of public finances of the country affected by the speculation. The second condition is that states must meet the following criteria: "(1) compliance with the EU fiscal framework: not being subject to an excessive deficit procedure (EDP), or not being assessed as having failed to take effective action in response to an EU Council recommendation under Article 126.7 of the Treaty on the Functioning of the European Union (TFEU); (2) absence of severe macroeconomic imbalances: not being subject to an excessive imbalance procedure (EIP) or not being assessed as having failed to take the recommended corrective action related to an EU Council recommendation under Article 121.4 TFEU; (3) fiscal sustainability: in ascertaining that the trajectory of public debt is sustainable, the Governing Council will take into account, where available, the debt sustainability analyses by the European Commission, the European Stability Mechanism, the International Monetary Fund and other

institutions, together with the ECB's internal analysis; (4) sound and sustainable macroeconomic policies: complying with the commitments submitted in the recovery and resilience plans for the Recovery and Resilience Facility and with the European Commission's country-specific recommendations in the fiscal sphere under the European Semester" (ECB, 2022b).

The similarities of the TIP's criteria with those of the Securities Markets Programme, the programme to buy government bonds from southern euro countries launched by the ECB in 2010 (Cesaratto, 2022), and with those imposed by the International Monetary Fund on countries in the global South to restructure their debts, are irremediably reminiscent of the restrictive fiscal policies and monetary orthodoxy developed during the 2010-2014 period. Loans that result in the conditionality by the markets of the economic policies of the euro countries. From this perspective, we can point out how behind the fetishism of price stability and financial stability a political decision is attached to the constitutional paradigm of the market that maintains the logic of reverse redistribution and the conditionality of national political stability to the decision/discipline of the markets. Hence, this phase of supranational and state public intervention cannot be interpreted in terms of the emergence of a new statehood that challenges global market power through new material bases that introduce elements of control of global power by repoliticising it, but rather as the continuity of a mercantilised statehood insofar as it is inserted into the logic of market centrality and support for its conditions of accumulation.

Bibliography

- Arrighi, G. (2014). *Il lungo XX secolo. Denaro, potere e le origini del nostro tempo*. Milano: Il Saggiatore.
- Azzariti, G. (2015). Vento di cambiamento verso dove? *Costituzionalismo.it. Le trasformazioni della Forma di Stato. Rappresentanza, Governabilità, Partecipazione*, 3, 1-12.
- Bergsen, P., Billon-Galland, A., Kundnani, H., Ntousas, V. and Raines, T. (2020). *Europe after coronavirus: the EU and a new political economy*. London: The Royal Institute of International Affairs.
- Buti, M. (2020). A tale of two crises: Lessons from the financial crisis to prevent the Great Fragmentation. *VoxEU*, 13-06-2020. Available at: <https://bit.ly/401qvam>.
- Cantaro, A. (2021). *Postpandemia, pensieri (meta) giuridici*. Torino: Giappichelli.
- Cantaro, A. (2022). La ragione totalitaria. Neoliberalismo e legittimazione dell'Unione. En A. Lasa López, M. A. García Herrera and G. Maestro Buelga (coords.). *La refundación de la Unión Europea y la nueva centralidad estatal* (pp. 153-172). Valencia: Tirant lo Blanch.
- Celi, G., Guarascio, D. and Simonazzi, A. (2020). A fragile and divided European Union meets Covid-19: further disintegration or "Hamiltonian moment"? *Journal of Industrial and Business Economics*, 47 (4), 411-424. Available at: <https://doi.org/10.1007/s40812-020-00165-8>.

- Cesaratto, S. (2021). An ECB's Staff Narrative of Two Decades of European Central Banking: a critical review. *Quaderni Del Dipartimento di Economia Politica e Statistica*, 866, 2-34.
- Cesaratto, S. (2022). CRISI UE/ L'inflazione si batte con la fine della guerra, non con la recessione. *ilsussidiario.net*, 03-08-2022. Available at: <https://bit.ly/3MCIqkB>.
- Corniare Rivolta (2022). Bellicismo e austerità li pagano sempre i lavoratori. *Corniare Rivolta* [blog], 21-03-2022. Available at: <https://bit.ly/3MB7RTC>.
- Crabtree, J. *et al.* (2020). The future of the state. Ten leading global thinkers on government after the pandemic. *Foreign Policy Magazine*. Available at: <https://bit.ly/41eGOSo>.
- Crouch, C., Della Porta, D. and Streeck, W. (2016). Democracy in neoliberalism? *Anthropological Theory*, 16 (4), 497-512. Available at: <https://doi.org/10.1177/1463499616677904>.
- De Cabo, C. (1978). *Sobre la función histórica del constitucionalismo y sus posibles transformaciones*. Salamanca: Universidad de Salamanca.
- De Cabo, C. (1993). *Teoría histórica del Estado y del Derecho Constitucional* (vol. 2). *Estado y derecho en la transición al capitalismo y en su evolución: el desarrollo constitucional*. Barcelona: Promociones y Publicaciones Universitarias.
- De Cabo, C. 2001). El sujeto y sus derechos. *Teoría y Realidad Constitucional*, 7, 117-136. Available at: <https://doi.org/10.5944/trc.7.2001.6531>.
- Di Comidad. (2022). È la lobby della deflazione a gestire il quantitative easing. *Sinistrainrete*. Available at: <https://bit.ly/3UwCb3z>.
- Di Plinio, G. (2019). Costituzione economica e vincoli quantitativi. Per un costituzionalismo non keynesiano. *Federalismi.it, Rivista di Diritto Pubblico Italiano, Comparato, Europeo*, 5, 103-133.
- Eurogroup. (2022). *Eurogroup statement on the fiscal guidance for 2023*. 14-3-2022. Available at: <https://bit.ly/3zTmrOO>.
- European Central Bank. (2021). *Why is inflation currently so high?* 16-11-2021. Available at: <https://bit.ly/3GALKJ2>.
- European Central Bank. (2022a). *Monetary Policy Decisions*. 9-6-2022. Available at: <https://bit.ly/3KUHVg2>.
- European Central Bank. (2022b). *The Transmission Protection Instrument*. 21-6-2022. Available at: <https://bit.ly/3MCuqHG>.
- Fabbrini, F. (2022). The Legal Architecture of the Economic Responses to COVID-19: EMU beyond the Pandemic. *Journal of Common Market Studies*, 60 (1), 186-203. Available at: <https://doi.org/10.1111/jcms.13271>.
- Fazzi, Th. and Mitchell, W. (2018). *Sovranità o barbarie. Il ritorno della questione nazionale*. Milano: Meltemi.
- Fioravanti, M. (1991). *Appunti di storia delle costituzioni moderne. Le libertà: presupposti culturali e modelli storici* (vol. 1). Torino: Giappichelli.
- Fioravanti, M. (1993). *Stato e Costituzione. Materiali per una storia delle dottrine costituzionali*. Torino: Giappichelli.
- Galli, C. (2019). *Sovranità*. Bologna: Il Mulino.
- García Herrera, M. A. (2015). Estado social y Estado económico. *Jueces para la Democracia*, 84, 51-66.

- García Herrera, M. A. (2016). Estado económico y capitalismo financiarizado: propuestas para un constitucionalismo crítico. In M. A. García Herrera, J. Asensi Sabater and F. Balaguer Callejón (eds.). *Constitucionalismo crítico: liber amicorum Carlos de Cabo Martín* (vol. 1) (pp. 145-250). Valencia: Tirant lo Blanch.
- García Herrera, M. A. (2022). Estado y soberanía en la nueva fase de acumulación: entre crisis de la integración europea y la reconstrucción del espacio global. In A. Lasa López, M. A. García Herrera and G. Maestro Buelga (eds.). *La refundación de la Unión Europea y la nueva centralidad estatal* (pp. 225-276). Valencia: Tirant lo Blanch.
- García Pelayo, M. (1980). *Las transformaciones del Estado contemporáneo*. Madrid: Alianza.
- Gerstle, G. (2022). *The rise and fall of the neoliberal order*. United Kingdom: Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780197519646.001.0001>.
- Giannone, D. (2019). *In perfetto Stato. Indicatori globali e politiche di valutazione dello Stato neoliberale*. Milano: Mimesis.
- Gnesutta, C. (2022). Che cosa preannuncia la ripresa dell'inflazione? *Sbilanciamoci.info*, 2-8-2022. Available at: <https://bit.ly/3UCAXnB>.
- Guazzarotti, A. (2020). Integrazione europea e riduzionismo politico. *Costituzionalismo.it*, 3, 1-45.
- Hanspeter, K. (2020). Is There a Crisis of Democracy in Europe? *Polit Vierteljahresschr*, 61, 237-260. Available at: <https://doi.org/10.1007/s11615-020-00231-9>.
- Harvey, D. (2005). *A brief history of neoliberalism*. New York: Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780199283262.001.0001>.
- Kapstein, E. B. (1994). *Governing the global economy: international finance and the state*. Massachusetts: Harvard University Press.
- Kjaer, P. (2019). The transnational constitution of Europe's social market economies: a question of constitutional imbalances? *Journal of Common Market Studies*, 57 (1), 143-158. Available at: <https://doi.org/10.1111/jcms.12811>.
- Knight, J. (2001). Explaining the rise of neoliberalism: the mechanism of institutional change. In J. L. Campbell and O. V. Pedersen (eds.). *The rise of neoliberalism and institutional analysis* (pp. 27-50). New Jersey: Princeton University Press. Available at: <https://doi.org/10.1515/9780691188225-006>.
- Konicz, T. (2022). Fed e BCE nel vicolo cieco della politica monetaria. Breve storia delle aporie della politica di crisi borghese nella transizione dell'economia mondiale dalla crisi pandemica alla crisi bellica. *Blackblog Francosenia* [blog], 27-7-2022. Available at: <https://bit.ly/3UCB9Dl>.
- Liebert, U. (2016). 'TINA' revisited: why alternative narratives of the Eurozone crisis matter. In P. Iglesias Rogriguez, A. Triandafyllidou and R. Gropas (eds.). *After the financial crisis. Shifting legal, economic and political paradigms* (pp. 303-334). London: Palgrave Macmillan. Available at: https://doi.org/10.1057/978-1-137-50956-7_10.
- Losurdo, F. (2016). *Lo Stato sociale condizionato. Stabilità e crescita nell'ordinamento costituzionale*. Torino: Giappichelli.
- Losurdo, F. (2022). Italexit. Trasformazione del vincolo europeo e sovranità condizionata. In A. Lasa López, M. A. García Herrera and G. Maestro Buelga (coords.). *La refundación de la Unión Europea y la nueva centralidad estatal* (pp. 205-224). Valencia: Tirant Lo Blanch.

- Luciani, M. (2008). Costituzione, integrazione europea, globalizzazione. *Questione Giustizia*, 6, 65-79.
- Maestro Buelga, G. (2016). Del Estado social a la forma global de mercado. In M. A. García Herrera, J. Asensi Sabater and F. Balaguer Callejón (eds.). *Constitucionalismo crítico: liber amicorum Carlos de Cabo Martín* (vol. 1) (pp. 59-100). Valencia: Tirant lo Blanch.
- Maestro Buelga, G. (2021). El constitucionalismo de la forma global de Mercado. In M. Della Morte and C. De Fiore (eds.). *Europa e Costituzione. Oltre la globalizzazione neoliberale* (pp. 189-219). Napoli: Editoriale Scientifica.
- Maestro Buelga, G. (2022). Las precondiciones para la recuperación del espacio constitucional estatal. In A. Lasa López, M. A. García Herrera and G. Maestro Buelga (coords.). *La refundación de la Unión Europea y la nueva centralidad estatal* (pp. 173-203). Valencia: Tirant Lo Blanch.
- Montani, G. (2016). From national to supranational: a paradigm shift in political economy. In P. Iglesias Rogriguez, A. Triandafyllidou and R. Gropas (eds.). *After the financial crisis. Shifting legal, economic and political paradigms* (pp. 109-138). London: Palgrave Macmillan. Available at: https://doi.org/10.1057/978-1-137-50956-7_4.
- Moro, D. (2020). Nazionalizzazioni, Golden power e aiuti di stato: la partecipazione dello Stato allá competizione intercapitalistica. *L'ordine Nuovo*, 27-04-2020. Available at: <https://bit.ly/4010PKP>.
- Mortati, C. (1972). Il lavoro nella Costituzione. Problemi di diritto pubblico nell'attuale esperienza costituzionale repubblicana. In C. Mortati. *Raccolta di Scritti* (vol. 3). Milano: Giuffré.
- Mortati, C. (1975). *Le forme di governo*. Padova: Cedam.
- Mortati, C. (1998). *La costituzione in senso materiale*. Milano: Giuffré.
- Öniş, Z. and Senses, F. (2005). Rethinking the emerging post-Washington Consensus. *Development and Change*, 36 (2), 263-290. Available at: <https://doi.org/10.1111/j.0012-155X.2005.00411.x>.
- Pernice, I. (2015). Multilevel Constitutionalism and the Crisis of Democracy in Europe. *European Constitutional Law Review*, 11 (3), 541-562. Available at: <https://doi.org/10.1017/S1574019615000279>.
- Pochet, Ph. (2022). From one crisis to another: changes in the governance of the Economic and Monetary Union (EMU). *Transfer: European Review of Labour and Research*, 28 (1), 119-133. Available at: <https://doi.org/10.1177/10242589221084582>.
- Pulliam, S., Kelly, K. and Mollenkamp, C. (2010). Hedge funds try 'career trade' against euro. *Walt Street Journal*, 26-02-2010. Available at: <https://bit.ly/41d7x1w>.
- Pureza, J. M. and Mortágua, M. (2016). The European neoliberal order and the eurocrisis. Blame it all on Germany? *World Review of Political Economy*, 7 (3), 363-381. Available at: <https://doi.org/10.13169/worlrevipoliecon.7.3.0363>.
- Ryner, M. (2019). The authoritarian neoliberalism of the EU: legal form and international politico-economic sources. In E. Nanopoulos and F. Vergis (eds.). *The crisis behind the Eurocrisis: the Eurocrisis as a multidimensional systemic crisis of the EU* (pp. 89-98). Cambridge: Cambridge University Press. Available at: <https://doi.org/10.1017/9781108598859.005>.
- Roberts, M. (2021). Il dilemma dei banchieri centrali. *Sinistrainrete*. 24-12-2022. Available at: <https://bit.ly/3o8obRF>.

- Saad-Filho, A. (2011). Crisis in Neoliberalism or Crisis of Neoliberalism? *Socialist Register. The Crisis this Time*, 47, 242-259.
- Somma, A. (2017). *Europa a due velocità. Postpolitica dell'Unione europea*. Reggio Emilia: Imprimatur.
- Somma, A. (2018). *Sovranismi. Stato, popolo e conflitto sociale*. Roma: DeriveApprodi.
- Somma, A. (2021). Il mercato delle riforme. Come l'Europa è divenuta un dispositivo neoliberale irrimediabile. In E. Mostacci and A. Somma (eds.). *Dopo le crisi. Dialoghi sull futuro dell'Europa* (pp. 229-240). Roma: Rogas.
- Springer, S. (2015). Postneoliberalism? *Review of Radical Political Economics*, 47 (1), 5-17. Available at: <https://doi.org/10.1177/0486613413518724>.
- Stiglitz, J. E. (1990). Symposium on Bubbles. *Journal of Economic Perspectives*, 4 (2), 13-18. Available at: <https://doi.org/10.1257/jep.4.2.13>.
- Streeck, W. (2017). ¿Cómo terminará el capitalismo? Ensayos sobre un sistema en decadencia. Madrid: Traficantes de Sueños.
- Šumonja, S. (2021). Neoliberalism is not dead. On political implications of Covid-19. *Capital and Class*, 45 (2), 215-227. Available at: <https://doi.org/10.1177/0309816820982381>.
- Talani, L. S. (2016). The European crisis: between the global financial crisis and the structural imbalances of the EMU. In L. S. Talani (eds.). *European in crisis. A structural analysis* (pp. 11-35). London: Palgrave Macmillan. Available at: <https://doi.org/10.1057/978-1-137-57707-8>.
- Tesche, T. (2021). Pandemic politics: the European Union in times of the coronavirus emergency. *Journal of Common Market Studies*, 60 (2), 480-496. Available at: <https://doi.org/10.1111/jcms.13303>.
- Van Apeldoorn, B. and De Graaff, N. (2022). The state in global capitalism before and after the Covid-19 crisis. *Contemporary Politics*, 28 (3), 306-327. Available at: <https://doi.org/10.1080/13569775.2021.2022337>.
- Weiss, L. (1997). Globalisation and the myth of the powerless state. *New Left Review*, 225, 1-26. Available at: <https://doi.org/10.7591/9781501711732>.
- Wills, J. (2017). *Contesting World Order? Socioeconomic Rights and Global Justice Movements*. United Kingdom: Cambridge University Press. Available at: <https://doi.org/10.1017/9781316809921>.
- Zagrebel'sky, G. (2018). *El Derecho dúctil. Ley, derechos, justicia*. Madrid: Trotta.
- Zolea, R. (2022). La BCE sta neutralizzando i tassi negativi? *Economiaepolitica. Rivista Online di Critica della Politica Economica*, 16-3-2022. Available at: <https://bit.ly/43u4bJi>.