Winter 2015

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Recommended Citation

Robbins, Peter (2015) "The Greek Debt Crisis: The Need for "Heroic" Economic Policy Reforms in the European Economic and Monetary Union," *Indiana Journal of Global Legal Studies*: Vol. 22 : Iss. 1 , Article 10.

Available at: <https://www.repository.law.indiana.edu/ijgls/vol22/iss1/10>

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The Greek Debt Crisis: The Need for “Heroic” Economic Policy Reforms in the European Economic and Monetary Union

PETER ROBBINS*

ABSTRACT

Greece is in the midst of a devastating economic and financial crisis that the European Union has been trying ardently to resolve since the default of Lehman Brothers in 2008. A significant number of other European Union (EU) Member States are also in crisis due to various state-level economic and monetary causes. Meanwhile, the European Union has consistently used the existing treaty articles and legislation within its competence to impose traditional and homogenized austerity measures on highly indebted Member States, most notably Greece. In sum, the European Union has zealously advocated for fiscal conservatism driven by the German “über-fear” of inflation, which the European Union firmly believes is not only an indicator of economic instability, but also an ineffective debt reduction policy. The discord sown by such a policy at the EU level is evident even without detailed economic analysis: inflation, wages, unemployment, debt, and other economic indicators are affected, and often controlled, by a wide variety of factors, both global and domestic. This Note will deal chiefly with the economic and monetary causes of the crisis in Greece, and it will briefly discuss the crisis in Spain. While an understanding that each crisis is different would induce a reasonable expectation that each of those countries—as well as any other Member State in need of assistance—

* Executive Notes Editor, *Indiana Journal of Global Legal Studies*, Volume 22; JD 2015, Indiana University Maurer School of Law; BA 2012, Wabash College. I would like to thank the International School of Indiana, particularly history teacher Donald Boehm, for instilling in me a profound interest in international relations and globalization. I would also like to thank John E. Schiller Chair in Legal Ethics Hannah Buxbaum of Indiana University, Roscoe C. O’Byrne Professor of Law Alfred C. Aman, Jr. of Indiana University, and Associate Professor of Economics Peter Mikek of Wabash College for their continued support during the drafting of this Note.

would have been prescribed a tailored solution to the extent that is practicable, this Note will explain that this has not been the case.

INTRODUCTION

European Union (EU)-imposed austerity measures always consist of the same basic principles: raising taxes, cutting government spending, and paying down sovereign debt. The theory, which is generally similar to the one promoted by U.S. President Herbert Hoover during his term immediately following the Stock Market Crash of 1929, is one of tightening the fiscal belt.¹ Of course, most agree that Hoover's policies exacerbated the Great Depression, including the 2008 winner of the Nobel Prize in Economics, Paul Krugman: "Most economists, to the extent that they think about the subject at all, regard the Great Depression of the 1930s as a gratuitous, unnecessary tragedy. If only Herbert Hoover hadn't tried to balance the budget in the face of an economic slump"²

This Note will investigate the ineffectiveness of the European Union's austerity measures as applied to Greece, propose an alternative solution, and suggest possible legal and political reforms by the European Union and its Member States to make the proposed solution viable and legal. Further, this Note will examine one particular austerity measure that has been applied to Greece, labor law reform, and discuss its compatibility with the proposed alternative solution. Each of these subsections informs an overarching discussion about the strengths and limitations of a global governance system like the European Economic and Monetary Union (EMU).

I. BACKGROUND: SETTING THE TABLE FOR CRISIS

At the heart of the EMU's economic problems are gaps in its structure and issues that were ignored or not fully considered when the EMU took effect in 1999. The principal requirement that Member States wanting to join the EMU had to meet was a budget deficit of 3 percent per year or less.³ Germany was profoundly influential in the process leading up to EMU. As such, the common view of how the

1. Brian Blackstone, *ECB Makes Case for Belt-Tightening*, WALL ST. J., Sept. 10, 2010, <http://online.wsj.com/articles/SB10001424052748704644404575481161959667700>.

2. PAUL KRUGMAN, *THE RETURN OF DEPRESSION ECONOMICS AND THE CRISIS OF 2008*, at 3 (2009).

3. Kathleen R. McNamara, *Globalization, Institutions, and Convergence: Fiscal Adjustment in Europe*, in *GOVERNANCE IN A GLOBAL ECONOMY: POLITICAL AUTHORITY IN TRANSITION* 332, 339 (Miles Kahler & David A. Lake eds., 2003).

European Union came up with the specific figure of 3 percent as the prerequisite target is that, rather than reflecting an economic necessity for monetary union, it was a political concession the other Member States offered to Germany to persuade it to join the EMU.⁴ In fact, Paul De Grauwe and Andrew Moravcsik have argued that Germany's motivation for the 3 percent deficit target was "to restrict the number and nature of participants in EMU so as to ensure [it] a dominant position and macroeconomic policies more closely in line with Bundesbank tradition."⁵ Germany was already operating within or near the 3 percent limit at that time, and its traditionally strong economy was thriving.⁶ If indebted countries had to raise taxes and cut spending in preparation for the EMU, Germany, already the largest economy in Europe, would be assured a great deal of influence. Indeed, as the Member States were preparing for the EMU, the idea that Germany would dominate economic policy standards was pervasive. In the words of Francesco Giavazzi and Alberto Giovannini: "Germany [was] the centre country and [ran] monetary policy for the whole system."⁷

After the signing of the Maastricht Treaty in 1992, several Member States were able to reduce their deficit ratios dramatically. Greece experienced one of the largest drops in deficit, as between 1992 and the time it was approved for the EMU in 2000, it had decreased its deficit by 10 percent.⁸ The shocking 10 percent figure can be attributed to intense short-term deficit reduction strategies by Greece in an effort to meet the 3 percent target (as well as to dishonest bookkeeping by Greece, which will be discussed later). The market's reaction to the prospect of countries joining the EMU was the lowering of interest rates, thus making short-term borrowing strategies possible.⁹ Normally, highly indebted countries are forced to sell long-term bonds because their debt causes the risk premiums on short-term interest rates to be

4. *Id.* at 340; see also Paul De Grauwe, *The Political Economy of Monetary Union in Europe*, 16 *WORLD ECON.* 653 (1993) (discussing Germany's influence on EMU goals); Paul De Grauwe, *Reforming the Transition to EMU*, 199 *PRINCETON U. ESSAYS INT'L FIN.* 16 (1996) (discussing Germany's influence on EMU goals). See generally ANDREW MORAVCSIK, *THE CHOICE FOR EUROPE: SOCIAL PURPOSE AND STATE POWER FROM MESSINA TO MAASTRICHT* (1998) (discussing formation of the EMU).

5. McNamara, *supra* note 3, at 340.

6. See *id.* at 345, fig.13.2 (showing the fiscal positions of countries in the European Union during the years 1992-1998).

7. KENNETH DYSON, *ELUSIVE UNION: THE PROCESS OF ECONOMIC AND MONETARY UNION IN EUROPE* 329 (1994) (quoting Francesco Giavazzi and Alberto Giovannini, *Models of the EMS: Is Europe a Greater Deutschmark Area?*, in *GLOBAL MACROECONOMICS: POLICY CONFLICT AND COOPERATION* 237 (Ralph C. Bryant and Richard Portes eds., 1987)).

8. See McNamara, *supra* note 3, at 343.

9. See *id.* at 346.

too high for them to afford. In short, Greece executed policies (supplemented by dishonest bookkeeping) to meet fiscal responsibility by 2000, but Greece did not have a sustainable fiscal responsibility plan after that point.

And while Greece had not adequately prepared for the years following the beginning of the EMU, the EMU itself did not have adequate means to enforce the deficit requirements it had imposed on all Member States. In 1999, the Stability and Growth Pact (SGP) came into effect.¹⁰ The SGP has two limbs: the multilateral surveillance procedure and the excessive deficit procedure.¹¹ These tiered levels of the SGP operate to notify a Member State that it has failed to meet the convergence criteria, with the most realistic discipline being publication of the violation to the rest of the European Union.¹² The theory was that the fear of public reprimand would persuade the national central banks and national governments to be fiscally responsible.¹³

This system proved unenforceable and failed to deter several Member States from being fiscally irresponsible. The ineffectiveness of the SGP was evident soon after its implementation, when both France and Germany violated its fiscal restrictions in 2003.¹⁴ As the two most politically and economically powerful countries in the EMU, France and Germany were able to convince the European Union not to impose the SGP-prescribed sanctions on them.¹⁵ So, only four years after the implementation of the SGP, the EMU's two most important economies had "flouted" the system, bringing the SGP into "disrepute."¹⁶

Around the time when the French and Germans dodged the SGP's sanctions, Italian economist Giampaolo Galli anticipated irresponsible actions to come out of countries like Greece, prompting economists Fabian Amtenbrink and Jakob De Haan to comment:

One may wonder then why Member States should feel obliged to pursue economic policies which they consider restrictive and potentially harmful for economic outlook and/or inconvenient in the light of the political cycle. Indeed, as Galli argues, there is a "strong temptation for governments to run high deficits since the costs, in

10. See Lauren Macias, *The Greek Debt Crisis: The Weaknesses of an Economic and Monetary Union*, 14 DUQ. BUS. L.J. 251, 260 (2012).

11. See PAUL CRAIG & GRÁINNE DE BÚRCA, *EU LAW: TEXT, CASES, AND MATERIALS* 708–09 (5th ed. 2011).

12. See *id.* at 708.

13. See Macias, *supra* note 10, at 262.

14. See CRAIG & DE BÚRCA, *supra* note 11, at 709–10.

15. *Id.*

16. See *id.* at 710.

terms of higher interests or inflation, are spread over the whole Eurozone.”¹⁷

So, although the EMU was warned that Member States could erroneously view a common currency tied to a large group of other Member States as a shield from instability, thereby encouraging risky domestic economic policy, the EMU disregarded that possibility. “When one asked how Europe would handle situations in which some economies were doing well while others were slumping . . . the official answer, more or less, was that all the nations of the euro area would follow sound policies, so that there would be no such ‘asymmetric shocks[]’ . . .”¹⁸ A problem inherent in a global governance system like the EMU, where many governments with distinct economic policies share a common monetary policy, is that in times of economic instability there is little to no flexibility for a Member State to borrow from the Central Bank without such actions negatively affecting the other Member States in the monetary union.¹⁹ Because of this, the other countries will oppose such borrowing. Krugman discusses the limitations that a Member State like Spain would face when trying to regain competitiveness after wages have risen too high (inflation): “One way to get there is to persuade or push Spanish workers into accepting lower wages. That is in fact the only way to get there if Spain and Germany have the same currency, or if Spain’s currency is, as a matter of unalterable policy, fixed against Germany’s currency.”²⁰ The proposed alternative solution to the EMU’s economic crisis that will follow is, in part, an attempt to offer a more favorable option to a country in Spain’s position.

II. AUSTERITY: THE GLOBALIZED DEFAULT CURE FOR DEBT

A. *The European Union’s Strategy of Austerity Since 2008*

In his book published in the immediate wake of the global economic crisis of 2008, Krugman noted with relief that “most nations have at least avoided doing the Herbert Hoover thing of raising taxes and

17. See Fabian Amtenbrink & Jakob De Haan, *Economic Governance in the European Union: Fiscal Policy Discipline Versus Flexibility*, 40 COMMON MKT. L. REV. 1075, 1094 (2003); see also Briefing from Giampaolo Galli, Chief Economist, Confindustria and LUISS Univ., Rome, to the Comm. for Econ. & Monetary Affairs of the Eur. Parl. (2003).

18. PAUL KRUGMAN, *END THIS DEPRESSION NOW!* 173 (2012).

19. See *id.* at 179–180.

20. *Id.* at 169.

cutting spending as the economy slumps.”²¹ Unfortunately, in the years since Krugman wrote those words, the European Union has forced Greece, Spain, and other EMU countries to raise taxes and cut spending as the economy slumps—austerity measures that have been widely ineffective. Essentially, the Troika—meaning the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF)—has agreed to bail out Greece and a few other Member States in exchange for their agreement to the terms of a Memoranda of Understanding (MOU) requiring commitments to implement severe austerity measures.²²

The European Union’s response to the Greek crisis in the form of austerity measures has drawn the ire of more than a few notable economists, one of whom was 2001 winner of the Nobel Prize in Economics Joseph E. Stiglitz:

Government money spent on structural reform – helping move resources from old, less competitive sectors to new sectors – stimulates the economy, and the higher incomes give individuals and firms the resources to adapt to the changed economy. In many of the European countries facing austerity, there is simultaneously a demand for faster structural reforms. The structural reforms that they often focus upon do not entail government assistance in moving the economy into new sectors. Rather, what is referred to is a mixture of counterproductive measures (lowering minimum wages) and rent-reducing measures (like more effective enforcement of competition laws and reducing licensing restrictions), with measures of ambiguous effect – rushed privatizations that have, in many countries, actually increased rents and impaired efficiency. These reforms are topped off with aspirational messages – to be more competitive. Even were these reforms to occur at historically unprecedented paces, it would be years before the full benefits were realized. But these reforms at best (when they are well designed, and many are not) improve the supply side of the economy; . . . however, the weaknesses in the economy today stem from the demand side, and a cutback in workers’ income, either as a result of firing workers or lower wages, simply lowers total

21. KRUGMAN, *supra* note 2, at 195.

22. Joanna Pagonis, *The European Union’s Response to the Sovereign Debt Crisis: Its Effect on Labor Relations in Greece*, 36 FORDHAM INT’L L.J. 1517, 1521 (2013).

demand, lowering GDP and weakening the capacities of those who have to make the structural transformations to do so.²³

Considering Greece and Spain's current unemployment figures (26.4 percent and 23.67 percent, respectively, as of July 2014), Stiglitz's Keynesian argument about the importance of reform on the demand side is all the more compelling.²⁴ In the context of unemployment, the supply variable is workers and the demand variable is jobs. In both Spain and Greece, the supply variable is in a state of staggering surplus (as evidenced by their high unemployment). While the wage-lowering and rent-reducing measures currently in place might decrease inflation throughout those countries, when coupled with the other austerity measures like increased taxes and decreased government spending, there is nothing else available to solve the problem of unemployment. Moreover, unemployment is devastating, whether viewed from the Keynesian perspective of Stiglitz or from that of the Friedman-inspired "sound-money"²⁵ proponents of the Bundesbank and the ECB.

But, as far as the European Union is concerned, the fact that Greece, Spain, and others must deal with these difficult economic conditions is part of the process. As Krugman writes, "[t]he problem of dealing with the crisis is often couched in moral terms: nations are in trouble because they have sinned, and they must redeem themselves through suffering."²⁶ For the purposes of this Note, assume the "sin" to which Krugman refers is an excess of debt in violation of the SGP. While the Greek crisis was caused in large part by the imprudent borrowing and spending of the government, Spain's debt-to-GDP ratio was actually in the process of falling before 2008.²⁷ Instead, Spain's crisis was caused by the burst of its housing bubble. In the words of the BBC:

After Spain joined the euro, the country experienced a long boom, underpinned by a housing bubble, financed by cheap loans to builders and homebuyers So,

23. JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY* 235 (2012).

24. *Greece Unemployment Rate*, TRADING ECONOMICS, <http://www.tradingeconomics.com/greece/unemployment-rate> (last visited Nov. 3, 2014); *Spain Unemployment Rate*, TRADING ECONOMICS, <http://www.tradingeconomics.com/spain/unemployment-rate> (last visited Nov. 3, 2014).

25. See DYSON, *supra* note 7, at 233.

26. KRUGMAN, *supra* note 17, at 179.

27. *Eurozone Crisis Explained*, BBC (Sept. 28, 2012, 12:44 PM), <http://www.bbc.co.uk/news/business-17549970> (exploring the causes of the Spanish fiscal crisis).

although the Spanish government had relatively low debts, it has had to borrow heavily to deal with the effects of the property collapse, the recession and the worst unemployment rate in the eurozone.²⁸

Regardless, both Spain and Greece are currently facing severe austerity measures demanded by the European Union. This is what Krugman refers to as “Europe’s Big Delusion: it’s the belief that Europe’s crisis was essentially caused by fiscal irresponsibility.”²⁹ Because austerity measures are justified by the moral fault reasoning above, Greece committed the debt “sins” while Spain did not, and the two countries are both subject to EU-imposed austerity measures; Krugman calls this a “Hellenization” of the problem.³⁰

Unfortunately, the European Union appears to have prioritized stopping the spread of the economic crisis over actually helping to fix the crisis in Greece and improve the conditions of the Greek people. As discussed above, when preparing for the start of the EMU in the 1990s, the European Union implemented a system with the goal of bringing all the future EMU states’ economic policies in harmony. At that time, the Member States seemed to embrace the idea that the strength of a monetary union depended on the collective efforts of all the countries involved. However, once the EMU came into effect, the principal economic regulatory mechanism, the SGP, failed to harmonize national economies the way the drafters of that legislation had hoped it would, as discussed below. As a result, economic harmonization failed in many respects while the ECB’s monetary union continued to operate.

In other words, in the first few years of the monetary union, the broader concept of economic cooperation was replaced with an emphasis on controlling inflation and deficit levels across the entire European Union. For the ECB, that meant keeping inflation low. In 1994, Dyson wrote:

The EMS and EMU policy process has been captured by a mainstream economics whose intellectual history involves a return to ‘sound money’ policy ideas; and, with the Treaty of European Union, the EC has in effect ‘constitutionalized’ a set of economic ideas that, preoccupied with price stability, risk neglecting sensible and effective demand management at the Community

28. *Id.*

29. KRUGMAN, *supra* note 18, at 177.

30. *See id.* at 177–78.

level. In this respect the treaty is more than a general procedural framework for achieving EMU; it is programmatic in an economic sense, imbalanced in the repertoire of policy instruments that it bestows on the EC and vulnerable to changing circumstances³¹

Regardless of the failures of economic coordination efforts in the early years of the EMU, the basic principle that the fiscal policies within a monetary union must cooperate remains true. That assertion is not the same as insisting that all the countries achieve the same deficit levels. The welfare of an economic union depends primarily on the idea that deficit levels of the countries involved must be compatible, but that does not always mean they must be the same.

B. The European Central Bank: Born out of Austerity

Unfortunately, the ECB was created in anticipation of a eurozone in which all the countries would have the same or substantially similar economic policies. However, as discussed above, the key to a functioning economic union is compatibility, but not necessarily homogeneity, among participants' fiscal policies. In the words of George Soros:

The ECB operates under asymmetric guidelines: It is constitutionally obligated to be concerned only with maintaining price stability, not full employment; Germany still lives with the memory of the Weimar Republic's runaway inflation, which served as a prelude to the Nazi regime. Both considerations militate against fiscal irresponsibility and unlimited money creation. This should favor the euro as a store of value, but the internal tensions within Europe work in the opposite direction.³²

Because the purpose of the bank was price stability, Germany wanted a strongly independent bank,³³ but if maintaining the euro's overall stability means making entire Member State populations suffer hardship, the European Union should be able to use the ECB's

31. DYSON, *supra* note 7, at 231–32.

32. GEORGE SOROS, *THE CRASH OF 2008 AND WHAT IT MEANS: THE NEW PARADIGM FOR FINANCIAL MARKETS* 196 (2009).

33. Laurence Gormley & Jakob de Haan, *The Democratic Deficit of the European Central Bank*, 21 *EUROPEAN LAW REVIEW* 95, 110 (1996).

resources to salvage devastated economies.³⁴ If that means an injection of cash from the ECB is called for, raising inflation and lowering the real debt level, so be it. Furthermore, allowing indebted countries to kick-start their economies is a step in the right direction toward price stability throughout an EMU in which the people of all the Member States could actually spend money.

III. AN ALTERNATIVE TO AUSTERITY

A. *Mechanics of the Proposed Alternative Solution*

Were Greece to receive such loans, the European Union would be able to take advantage of a key element of its infrastructure: the Customs Union.³⁵ Following Stiglitz's analysis above, this Note proposes that the European Union and the ECB spend money on structural changes in Greece, thus helping to move its economy into new sectors. It seems to make most sense to try and revitalize the Greek industrial and manufacturing sector, as it is a sector of the economy in which southern Europe has traditionally had trouble being competitive. But, injecting money into Greek manufacturing and industry will not do much good if no one is going to buy the products.

Indeed, after the start of the EMU, the GIPSI countries (Greece, Italy, Portugal, Spain, Ireland) began borrowing large sums and applying them to manufacturing, thereby driving wages up and causing unit labor costs to increase. As a result, "[m]anufacturing in Europe's south became uncompetitive, which in turn meant that the countries that were attracting huge money inflows began running correspondingly huge trade deficits."³⁶ Since Greek consumers (and indeed those of several Member States) now have very little money to spend, the resulting products in the proposed alternative solution would have to be sold and bought by people in other countries, especially Germany. Krugman argues that one way for Germany and Spain, for example, to create complementary economic policies would be for the ECB to offer easy money loans to Spain, while strong economies like Germany simultaneously engaged in fiscal stimulus.³⁷

A simplified version of such a plan could involve Germany lowering taxes and spending more government money on social programs, thereby putting more money into the hands of the German population. This would cause German employment to remain constant, at least for a

34. See CRAIG & DE BÚRCA, *supra* note 11, at 706.

35. See *id.* at 611.

36. KRUGMAN, *supra* note 18, at 175.

37. See *id.* at 180.

while, while German wages and costs would rise.³⁸ Then, the GIPSI countries would engage in very tightly controlled government spending on industry and manufacturing thanks to more affordable loans from the ECB; for example, keeping inflation in those countries significantly lower than what it would be in Germany (but still much higher than the current deflation in those countries). In turn, exports from the GIPSI countries would have more demand in countries like Germany that have more spending power. The result would be higher inflation in the whole of the European Union, which, over time, would chip away at the national debts of struggling countries relative to GDP.

In order for such a plan to be sustainable the GIPSI countries would have to be able to attract investments from sources other than the Troika.³⁹ Because the GIPSI countries do not presently have their own currency or a central bank from which to borrow in that currency, part of the current crisis was a self-fulfilling panic by investors.⁴⁰ Investors caught wind of the rising debt in Greece, for instance, and in an effort to avoid losses caused by potential default, they pulled out their investments, causing default on a much larger scale.⁴¹ Rightfully so, investors are now wary of such a catastrophe repeating itself since the chances of default are high. Not only would the ECB have to loan money for spending to the GIPSI countries, but it would also have to guarantee to buy government bonds of Euro nations if investors began to pull out their investments on a large scale.

As a step in the right direction, the European Union created an institution that could guarantee adequate liquidity and avoid the self-fulfilled panic discussed above: the European Stability Mechanism (ESM), which took effect in 2012.⁴² The ESM is a bailout mechanism to which Member States in need can apply for aid subject to the review of the Troika.⁴³ In addition, the ECB has guaranteed to buy bonds from countries that have received approval for loans from the ESM. The current effectiveness of this guarantee is discussed below.

38. *See id.*

39. *See* Macias, *supra* note 10, at 267 (noting that despite the Troika's bailout measures in 2010, Greece's recession continued to worsen).

40. *See* KRUGMAN, *supra* note 18, at 182.

41. *See id.* at 183.

42. *About the ESM*, EUROPEAN STABILITY MECHANISM, <http://www.esm.europa.eu> (last visited Dec. 22, 2013) (describing the relationship between the ESM and the member states).

43. *Id.*

B. Legal Reforms Required for the Viability of the Proposed Alternative Solution

In practice, there are several legal, political, and structural impediments to the solution proposed above. The ECB has always had a substantial amount of independence from the rest of the EU law-making structure, as provided by Articles 130 and 282(3) of the Treaty on the Functioning of the European Union (TFEU).⁴⁴ The ECB is independent from the control of both the EU governmental structure and the Member State governments. Furthermore, the ECB has its own law-making powers that are independent from the ordinary legislative procedure of the European Union. In the years following the Lisbon Treaty, some secondary Community legislation has been determined by the European Court of Justice (ECJ) to have the ability to modify some of the statutory provisions governing the ECB, generally on the basis of 352 TFEU. The Court noted “the general competence for the Community legislature to legislate in fields where it does not have in another provision of the EC Treaty a more specific competence to ensure that the objectives of the Community are met.”⁴⁵

Nevertheless, the ECB remains free from the political decisions of the Community. The ECB was founded mostly according to “German desires to have an ECB which mirrored closely the powers and status of the Bundesbank.”⁴⁶ Like the Bundesbank, the ECB does not have to coordinate its price stability or inflation targets with the Member States, and so by design, “the short-term interests of certain Member States, or even the EU institutions, [cannot] sway the ECB.”⁴⁷

Obviously, this fundamental characteristic of the ECB would appear to stand in the way of any embodiment of the solution proposed above, such as for Germany to coordinate a domestic fiscal stimulus package with an influx of cash from the ECB to GIPSI countries designed to raise inflation levels throughout the EMU. If Germany were to propose such cooperation (which, based on Germany’s history with inflation, is perhaps unrealistic), the ECB would be under no obligation to comply. In addition, if the ECB were to propose it, the German government would be able to refuse to engage in fiscal stimulus.

If no EU body or Member State could order such a fiscal and monetary program, a program would instead have to be born out of a sophisticated agreement negotiated outside of the formalized

44. See CRAIG & DE BÚRCA, *supra* note 11, at 706.

45. Chiara Zilioli & Martin Selmayr, *The Constitutional Status of the European Central Bank*, 44 COMMON MKT. L. REV. 355, 379 (2007).

46. CRAIG & DE BÚRCA, *supra* note 11, at 706.

47. *Id.*

governmental powers of the European Union. Then, buttressed by existing or newly reformed economic coordination laws, it would regulate the inflation of the countries that receive loans from the ECB. In other words, many governmental bodies would have to come together to formalize a treaty. This would not be a treaty in the sense of Maastricht or Lisbon (though, as will follow, the TFEU and TEU (Treaty on European Union) may have to be amended to allow it), but “treaty” in the more general sense of the word: a formally concluded and ratified agreement between countries.⁴⁸ The bodies involved would primarily be the German government and the ECB, but the participation—preceding and subsequent to the negotiations about new economic coordination laws—of the EU legislative bodies and the governments of Member States receiving loans would be critical. In addition, the governments of the other Member States would have to ratify any treaty amendments that would be necessary.

Once again, Germany’s hatred of inflation would be an extraordinarily difficult obstacle to overcome, so its commitment to engage in fiscal stimulus would have to be in exchange for significant concessions on the part of the debtor countries, and perhaps the European Union in general. Since the whole point of such an arrangement would be to reduce the debt of struggling Member States, such concessions could not be monetary in nature, as discussed below.

In order for the EU legislative bodies and Germany to be able to influence the specific loans the ECB would provide to Greece, the ECB would have to decline to enforce its right of independence from the other EU bodies, as “there is [no] . . . formal provision allowing the other EU institutions to override the choices made by the ECB.”⁴⁹ However, the ECB is not prohibited from accepting the advice of the EU governmental bodies or Member States. Ideally, the ECB would come to the conclusion that since its own structure was modeled after the German Bundesbank, a commitment from Germany to engage in such an uncharacteristic fiscal stimulus program would be a persuasive indication that the ECB’s German-inspired independence from political influence was no longer prudent in the current crisis.

If, however, the ECB refused to cooperate and insisted on completely controlling the loans, as is its prerogative granted by the TFEU, the articles of the TFEU governing the ECB would have to be amended. The Treaty of Lisbon’s Ordinary Revision Procedure, found in Article 48 of the TEU, provides the procedure for such an amendment.

48. See *Treaty Definition*, NEW OXFORD AMERICAN DICTIONARY, http://www.oxfordreference.com/view/10.1093/acref/9780195392883.001.0001/m_en_us1300120?rkey=WVv0Qm&result=83769 (last visited Nov. 17, 2014).

49. CRAIG & DE BÚRCA, *supra* note 11, at 706.

The procedure would first involve the president of the European Council calling a European Convention: a gathering of national governments, national parliamentarians, members of the European Parliament, and representatives from the European Commission.⁵⁰ At the European Convention, these legislators of the European Union would draft changes to the ECB's Treaty Articles.⁵¹ Ideally, the European Convention would not have to make any changes to the ECB's structure that would be too dramatic, but instead would do the bare minimum to allow the EU legislative and executive bodies to supervise the loans made to the GIPSI countries. Perhaps this could take the form of adding a fiscal emergency procedure, calling for the ECB's independence to be suspended if all the EU countries agree that the fiscal emergency procedure should be set in motion. To preserve the credibility of the ECB's core characteristic of independence, such a fiscal emergency procedure could stipulate that to suspend the ECB's independence, the bodies of the European Union would have to meet the same unanimity as it takes to amend a treaty article. This would dispel the fear that in times of stability or when it is otherwise unnecessary, the ECB's independence would not be overrun for capricious political reasons. Following draft revisions at the European Convention, the proposed revisions would go to an Intergovernmental Conference, where all the heads of state of the Member States would have to sign in order for the revisions to be ratified.⁵²

When it comes to preventing self-fulfilling panic on the part of investors, the ECB has stated that it only guarantees to buy bonds if the Member State in question is still complying with the terms of its MOU for receiving loans.⁵³ As discussed above, an MOU issued to indebted Member States up to this point have been in the form of austerity measures, so in order for the ECB's guaranteed bond-buying to neutralize the problem of self-fulfilling panic in the context of the proposed alternative solution, the current MOU must be adapted to allow for some deficit spending.

50. Consolidated Version of the Treaty on European Union art. 48, Oct. 26, 2012, 2012 O.J. (C 326) 41–43.

51. *Id.*

52. *Id.*

53. Press Release, European Central Bank, Technical Features of Outright Monetary Transactions (Sept. 6, 2012), http://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html.

C. Selling the Proposed Solution

1. Germany

At this point it is important to consider two of Germany's potential basic goals under such a proposed alternative solution, one of which is forward-looking, and the other backward-looking. First, Germany would want to put procedures in place to ensure that in the future, Member States that have proven to be irresponsible cannot repeat their transgressions. Second, Germany would want Greece to atone for the damage they have caused the monetary union. Greece could make an excellent case for a concession that would meet both of Germany's goals, which is to turn over competence of some, if not all of their economic policies to the European Union. As applied to the first goal, such a change would alleviate German concerns that Greece would not hold up its end of the bargain, and if Germany were to bend over backwards and engage in stimulus and raise inflation, a failure by Greece satisfy its obligations would be utterly unacceptable to Germany. Furthermore, Greece would have very little bargaining power at the negotiation table, and Germany's representatives in the EU legislative and executive bodies would be able to weigh in on precisely which industries would receive loans from the ECB. Collectively, the European Union would mandate exactly how the Greek stimulus would unfold and the statistical requirements Greece must satisfy by certain deadlines. Because of Greece's history of reporting false fiscal statistics to the European Union, the European Union would directly monitor Greece's finances.⁵⁴

As applied to the second goal, a Greek surrender of control of its own economic policies in the form of EU legislation would be a significant price to pay. It would be a very public admission of guilt and responsibility that would be ratified into law, evoking the peer pressure sanctions in the SGP of which the European Union seems to be so fond. Furthermore, since the European Union is a transnational union of independent nations that has always treasured its autonomy, such a surrender of control would have been unthinkable only a decade earlier. In sum, a commitment from Greece to surrender future control of its economic policies to the European Union would be a persuasive bargaining chip that could convince Germany to agree to an alternative solution like the one proposed.

However, another huge obstacle in the way of Germany agreeing to participate in such a strategy is the Greek people's economic and fiscal

54. Macias, *supra* note 10, at 266–67.

culture, an obstacle that is not easily subjected to political control and fiscal strategy. As Michael Lewis's firsthand account of his time in Greece describes, Greece has a very large black market, high corruption scores, and pervasive habits of tax fraud and evasion.⁵⁵ These socio-economic features are not present to the same degree in any other eurozone Member State, further illuminating the naiveté of including Greece in the eurozone at all. However, if the Greek government and people were able to show Germany, the IMF, and the ECB that they could improve the enforcement of tax collection, for example, it would make a solution as proposed above more plausible.

When Germany and France persuaded the European Union not to enforce sanctions against them after they violated the deficit provisions of the SGP, they referred to the "growth" aspect of the SGP. The Pact has an unmistakable commitment to facilitating employability: in 1997, the European Council declared that priorities of convergence must be "improving competitiveness, labour-, product- and services-market efficiency, education and training, and to making taxation and social protection systems more employment-friendly."⁵⁶ Accordingly, German Chancellor Gerhard Schroder declared in 2003 that there are "phases in the economy when one has to stress growth more than budget consolidation."⁵⁷

For Greece, Spain, and other EMU Member States, the current crisis calls for growth and facilitation of employability. While this Note's proposed alternative solution admittedly calls for drastic and uncharacteristic economic adjustments on the part of Germany, the idea of Germany standing in the way of Greece and Spain's growth is hypocritical, as is their continued insistence on severe austerity measures.

George Soros argues that if the European Union does not obtain the kind of political control over economic policy described above, a possible solution to Europe's identity crisis is for Germany to withdraw from the EMU.⁵⁸ His argument is that "if Germany were to exit and leave the common currency in the hands of the debtor countries, the euro would fall and the accumulated debt would *depreciate* in line with the

55. Michael Lewis, *Beware of Greeks Bearing Bonds*, VANITY FAIR (Oct. 1, 2010), <http://www.vanityfair.com/business/features/2010/10/greeks-bearing-bonds-201010>.

56. Roger J. Goebel, *Economic Governance in the European Union: Should Fiscal Stability Outweigh Economic Growth in the Stability and Growth Pact?*, 31 FORDHAM INT'L L.J. 1266, 1298 (2008).

57. *Id.* at 1328.

58. George Soros, *The Tragedy of the European Union and How to Resolve It*, THE N.Y. REVIEW OF BOOKS (Sept. 27, 2012), available at <http://www.nybooks.com/articles/archives/2012/sep/27/tragedy-european-union-and-how-resolve-it/>.

currency.”⁵⁹ Soros’s theory does appear to make sense in economic terms, and it would mitigate some of the limits of the European Union’s current global governance structure. However, Germany is the EMU’s largest economy and one of the least volatile in the world. A German exit from the monetary union might reduce the debt of the GIPSI countries in the short term, but the overall value of the euro in the long-term would suffer.

2. *The European Union*

In 2010, the EU Commission asked Italian economist and soon-to-be Prime Minister Mario Monti to submit a report on the state of the single market in the European Union. Monti identified three main challenges facing the single market: erosion of the political and social support for the single market, uneven policy attention given to developing a single market (particularly, unfinished business in expansion to new sectors), and a sense of complacency that the single market has already been achieved.⁶⁰

The solution that this Note proposes would positively address the second and third of Monti’s challenges, as it would be both a deliberate change in policy that would use the EU single market to expand the Greek economy into new sectors, and it would be anything but a display of complacency that the single market has already been achieved. As for the first challenge, the dilemma there is very real, as there is much apprehension throughout Europe concerning the practicality of the single market, and the European Union has yet to take substantial steps to achieve a single market. The execution of this Note’s strategy would face significant unpopularity, which would perhaps be the most significant threat to its plausibility.

IV. EU-IMPOSED LABOR LAW REFORM OF GREECE IS COMPATIBLE WITH THE PROPOSED SOLUTION

In her critique of the European Union’s austerity measures against Greece, Joanna Pagones argues that the conditions the European Union imposed that modified the Greek labor system were both harmful to Greek laborers and beyond the scope of the European Union’s competence.⁶¹ She argues these labor-focused austerity measures are

59. *Id.*

60. MARIO MONTI, A NEW STRATEGY FOR THE SINGLE MARKET 6, 9 (2010), *available at* http://ec.europa.eu/internal_market/strategy/docs/monti_report_final_10_05_2010_en.pdf.

61. *See generally* Pagones, *supra* note 22.

harmful to Greek laborers because they compelled the traditionally-centralized labor unions in Greece to decentralize, meaning unions would be firm-based, and since the Greek workforce is not experienced in negotiating at the firm level (or, in essence, without the clout of a very powerful union behind them), the workers' bargaining power would be very low.⁶²

If the European Union was to modify the functioning of the ECB by allowing moderate and controlled inflation in the GIPSI countries, while Germany simultaneously engaged in fiscal stimulus, certain EU austerity measures (including labor law reforms) would theoretically be very beneficial. As of July 2014, Greece's unemployment is at 26.4 percent, but as of July 2014, its inflation rate is less than 0 percent (-0.8 percent, to be exact).⁶³ If inflation rose too quickly in Greece and the high unemployment figure remained substantially the same, the result would be stagflation. Decreased bargaining power on the part of Greek workers would theoretically keep wages low, helping achieve the above-stated goal of checking the inflation levels. Unemployment would go down; naturally, this would mean more people would be making at least some money, as opposed to the present situation: being unemployed. This would raise inflation above 0 percent and simultaneously further the ECB's desire to keep inflation moderate as opposed to high.

Pagones also argues that the labor-focused austerity measures the European Union imposed on Greece were in violation of the EU Treaty.⁶⁴ She cites Article 156 of the TFEU, which states that when it comes to labor laws, the European Union "only has the authority to encourage cooperation between Member States by making studies, delivering opinions, and arranging consultations to improve working conditions."⁶⁵ Furthermore, she cites Article 126 of the TFEU that "where an excessive deficit exists, the European Union shall adopt recommendations addressed to the Member State."⁶⁶ Finally, she cites the SGP, which "allows Member States to take the corrective budgetary action *they deem necessary* to meet the objectives of their stability or convergence."⁶⁷

Pagones's conclusion, that the labor law reforms in Greece as imposed today are in violation of the European Union's treaty and legislation, is probably accurate.⁶⁸ But as discussed above, the

62. *Id.* at 1554.

63. *Greece Unemployment Rate*, *supra* note 24.

64. Pagones, *supra* note 22, at 1547.

65. *Id.* at 1549.

66. *Id.*

67. *Id.* at 1550.

68. *Id.*

provisions in EU law that grant the Member States autonomy in regulating their own economic policies have greatly contributed to the current crisis in the EMU. For one thing, they grew out of negotiations that occurred before the EMU took effect. Member States that wanted to join the EMU agreed to coordinate their economic policies among each other as a condition of entry into the EMU.⁶⁹ In addition, the economic conditions of the Member States were much better at that time, so the goals of the SGP seemed attainable. The thought was that the beginning of the EMU was so quickly approaching that Member States' economic policies could be tweaked and teased into falling into the SGP's guidelines.⁷⁰ Finally, soft-law policies of enforcement like those in the SGP proved to be ineffective in practice once the EMU was established. France and Germany both violated the SGP and avoided sanctions, and other countries continued to violate the SGP and receive sanctions that did not alter their decision making process.⁷¹

The articles of the TFEU to which Pagones cites are similar in nature to those in the SGP; that is, they are soft-law measures that hinge upon the assumption that, during economically stable circumstances, Member States will be able to influence other Member States to fall in line through diplomacy, without the European Union's intervention. Economic policy, and labor law in particular, was deemed such a crucial element of national sovereignty that to give it over to the European Union would be unacceptable.⁷²

While the laws as they exist do not appear to permit the labor-based austerity measures that the European Union imposed on Greece, the present dire condition of Greece and the other GIPSI countries demand that the laws be adapted. This would be done using the "ordinary revision procedure" in a similar fashion as the one outlined in the proposed reform of the ECB above. The consequences of having a monetary union comprised of countries with their own economic policies have gone on far too long and have been far too catastrophic for the economic policy laws of the EMU to remain the same.

V. LESSONS LEARNED ABOUT GLOBAL GOVERNANCE

In studying the effectiveness of any global governance system, the more novel portion of the concept, "global," risks to steal attention from the more mundane half, "governance." When a country opens up its borders and other countries begin to influence both culture and the

69. See McNamara, *supra* note 3, at 339.

70. *Id.*

71. See CRAIG & DE BÚRCA, *supra* note 11, at 710.

72. Pagones, *supra* note 22, at 1549.

marketplace, there is always a fear that feelings of national and regional pride as well as domestic autonomy will stand in the way of integration. However, Pieter Van Houten largely disputes this notion while discussing the reactions of a variety of regions of Europe that were subjected to economic integration strategies in the 1960s and 1970s. Van Houten asserts that demands for regional autonomy in the face of integration mostly arose "from regions with a long history of regionalism (such as Catalonia, Scotland, and Flanders), which are not representative of most European regions. There is no evidence that these developments constitute a general and uniform trend."⁷³ Nevertheless, the expectation persists that a country has the potential for negative reactions domestically when it begins to integrate as a result of globalization, and different remedies for such a conflict are widely advocated and disseminated.

But, because globalization (specifically in the context of global governance structures like the European Union) forces countries to adapt their policies and surrender some policy making to some kind of transnational body, that transnational body must make very important policy decisions. In other words, it must govern, plain and simple, and there is nothing to suggest that the nature of a global governance structure should call for a different general policy-making formula than that used by any other governing body. Policy making at every level is dominated by what has been learned from policies of the past, and as Dyson writes, this is true for the EMU:

The dynamics of policy change in European monetary integration and union have their basis in evolving perceptions of policy failure. Policy learning is driven by these perceptions. A process of learning is indicated when the goals or instruments of policy are adjusted in light of past experiences and new information. In other words, we are studying the way in which ideas about economic and monetary policy are changing: ideas about policy goals, about policy instruments and about the precise use of policy instruments. In doing so, we are able to make judgments about 'levels' of policy learning and change. At the lowest level, there are incremental changes in the way that policy instruments are used – say specific interventions or interest rate changes; then

73. Pieter Van Houten, *Globalization and Demands for Regional Autonomy in Europe*, in *GOVERNANCE IN A GLOBAL ECONOMY: POLITICAL AUTHORITY IN TRANSITION* 110, 123 (Miles Kahler & David A. Lake, eds., 2003); John Tomaney, *Review of Keating 1998*, 24 *INT'L J. URB. & REGIONAL RES.* 498–99 (2000).

we can identify the 'higher-order' incrementalism of developing new policy instruments, like new mechanisms of intervention or the adoption of wider or narrower margins of fluctuation; and, finally, can be found the level of radical or 'heroic' policy change, in which a new rationale for policy is defined based on changed policy goals as well as instruments. Characteristically, 'heroic' change involved the opening of the policy process to new actors and ideas.⁷⁴

The EMU is currently in need of "heroic" policy change: new policy goals as well as instruments. As of this time, the European Union has been addressing a catastrophe with policies that indicate that it has not learned from history. Instead, with Germany dominating negotiations, policies (like austerity measures) are implemented with an aim to keep the crisis contained within the countries that caused it.

The global executive of the European Union, at least in the context of the EMU, is not an EU-level body. The EU government structure must defer its power in the most critical of economic issues to competing domestic executives that operate according to their own domestic agendas. In times of crisis, their interests are polar opposites: the European Union is concerned with the economic well-being of the entire union, whereas certain Member States are concerned primarily with their own economic well-being; in addition, as discussed above, they feel no sympathy for countries that are in crisis.

This dilemma displays the limits of a global governing structure like the European Union, which are in large part due to the European Union's origins. In essence, the European Union is in the midst of a debilitating identity crisis, and, unfortunately, it is similar to the one that Dyson described in 1994:

The EC's institutional structure creates, at one level, a "supergame" of repeated Council bargaining, removing the incentive to cheat on one's EC partners by the threat of being punished in later or even simultaneous bargaining; at another level, domestic "trigger mechanisms" in the form of withdrawal of political support if the costs of integration are judged to outweigh the benefits.⁷⁵

74. DYSON, *supra* note 7, at 93.

75. *Id.* at 302.

The European Union was formed initially, and continued to take shape heading into the EMU, as a coalition of autonomous governments that agreed to limit their own sovereignty and submit to the control of a transnational government.⁷⁶ Following the world wars, the founders of the European Union (and its former coalitions) theorized that if the countries of Europe were strongly linked economically, the violent and costly events of the first half of the twentieth century would not be able to reoccur.⁷⁷

However, for legitimate and insurmountable political reasons, the Member States insisted that they retain control over many of their own policies, particularly economic ones. Agreeing not to tax imports from other EU countries is one thing, but the Member States wanted to tax their own citizens, operate their budgets, and regulate their financial markets according to the methods they determined on their own.⁷⁸ The result of this power struggle is essentially that Member States could have fiscal policies that were in discord with those of others in the European Union. Fabian Amtenbrink and Jakob De Haan characterized this relationship as "an asymmetric two-pillar structure, splitting competences between the Community and the Member States."⁷⁹ Their analysis continued:

The competence for the execution and, to a considerable extent, also for the formulation of economic policy has been left with the Member States. Arguably, at the time of the drafting of the provisions on EMU this not only reflected the diversity between the Member States' economic structures and economic developments and the different beliefs of what economic policy can and cannot achieve, but also the political conviction of the Member States at large that fiscal policy should essentially remain a national competence.⁸⁰

When such discord persisted after the monetary union took effect, irresponsible fiscal policies in one country weakened the currency of Member States that might have had perfectly responsible fiscal policies.⁸¹

76. CRAIG & DE BÚRCA, *supra* note 11, at 2.

77. *Id.*

78. *Id.* at 88.

79. Amtenbrink & De Haan, *supra* note 17, at 1078.

80. *Id.*

81. *See id.* at 1093.

While minimally effective measures were in place at the EU level to intervene in the Member States that had spent irresponsibly, Member States that had responsible fiscal policies were still mostly in control of those same fiscal policies. Therefore, even if it were in the best interests of the monetary union for the responsible countries to adapt and counteract according to the conditions of the struggling countries, the responsible countries are under no obligation to do so. Instead, they engage in blame shifting, insisting that they are not at fault and should not have to pay for the irresponsibility of others.

Consequently, the current situation arises because countries are in extreme debt and share a currency with other countries that refuse to cooperate with them. The only way to maintain the overall stability of the euro, then, is for debtor countries to engage in severe austerity measures and suffer long periods of high unemployment to slowly lower wages. However, this results in deflation, which causes the real value of their debt to rise, making their debt seem all the more insurmountable.⁸²

In the absence of a monetary union, Greek citizens would not suffer through such a prolonged period of austerity because their government's fiscal decisions would not have such a strong impact on the currencies of other countries. Furthermore, countries like Germany would be more justified in refusing to adapt to help Greece. The European Union (in its current and former forms) has always had the goal of coordinating the economic policies of the Member States, and from the creation of the European Coal and Steel Community until the implementation of the EMU, it was still feasible for Member States to retain control over their domestic economic policies. However, this feasibility vanished when the Member States agreed to implement the EMU, an agreement that aimed to ensure the well-being of all participants and transform domestic fiscal decisions of Member States into global fiscal decisions affecting the entire EMU.

In forming a monetary union, the EMU took a drastic step toward global governance, yet the strongest Member States are determined to have economic autonomy at the domestic level. The current crisis has shown that effective global monetary governance and domestic autonomy over economic decision making are mutually exclusive. When they coexist, the monetary union actually serves to worsen the conditions of countries in debt. For Greece, this is not progress—it is poverty—a stark contrast to the goals of a monetary union, and indeed, the European Union as a whole.

82. KRUGMAN, *supra* note 18, at 181–82.

CONCLUSION

In the words of John Maynard Keynes: "The boom, not the slump, is the time for austerity."⁸³ That principle remains as true today as it was during the years following the Stock Market Crash of 1929, and the European Union's adherence to strict austerity measures in response to the debt crises of the GIPSI countries has similarly exacerbated the issues facing those indebted countries.

Economic theory is a very complicated and contentious subject of debate, and at the opposite end of the spectrum from this Note's arguments, there are some critics, such as Shawn Tully of Fortune Magazine, who suggest that the European Union could afford to enact even more severe austerity measures.⁸⁴ In his piece criticizing Paul Krugman, Tully focuses in on France, noting that under President Chirac in the mid-2000s, France's economy was competitive with Germany's in many respects, and that Chirac's conservative economic policies had helped bring about that success. Tully insists that France must reduce spending in order to compete with Germany's economy on a global level, arguing that "the benchmark for France's performance shouldn't be Greece, Portugal, and Spain, but Germany, the U.S. and the Asian nations that are both its biggest customers and rivals in world trade." However, as argued in this Note, the relatively stable economic metrics of the mid-2000s are illusory, as many European states, including the ones in crisis now, had stable metrics at that time, which can be attributed to a lack of foresight by investors and banks and the fact that the global economy had not collapsed yet. Moreover, Tully's reference to France's success in the mid-2000s only serves to affirm Keynes's maxim about austerity: of course austerity worked for France back then (the crash of 2008 had not happened yet). Tully's mistake is that he considers France to be a wholly independent state actor, but as evidenced by this Note and the failures of the EU governing body's structure, it is not. France's economy and its fate, like the other Member States', are tethered with a short rope to the ECB and the other Member States.

Tully further insists that "[f]or France, the problem is costs, and that problem divides into two categories: expensive labor and old plants." The proposed alternative solution in this Note seems to address both of Tully's concerns for a country like France, as labor would move to new Greek (and other struggling Member States) plants and the

83. *Id.* at xxiii.

84. Shawn Tully, *Why Paul Krugman Is Wrong about France*, FORTUNE (Nov. 12, 2013), available at http://fortune.com/2013/11/12/why-paul-krugman-is-wrong-about-france/?iid=HP_River/ (Last visited Nov. 3, 2014).

products would be sold at favorable prices in Member States like France.

A "heroic" change in economic policy is in order for the EMU, whether that takes the form of this paper's alternative proposed solution or Soros's proposal of Germany leaving the EMU. At the moment, the European Union has turned Greece into Sisyphus, stubbornly forcing it to push the boulder of austerity up a steep mountain, only to watch in vain as it rolls back down. Instead, Greece needs the European Union to embody Odysseus and use bold and ingenious tactics to lead the way to safety. The everyday needs of the people in Greece and the other GIPSI countries are too pressing to stay the course of the current austerity measures, and the global governance system of the EMU must take political action to resolve its inadequacies.