

The Unfulfilled Promise of Social Rights in Crisis EU [*working title*]

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Draft Paper

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The economic and financial crisis which hit the eurozone in 2009 and EU responses to it have, it is widely acknowledged, dealt a significant (further) blow to the notion of a social Europe. The crisis and the EU designated austerity policies that followed from it have eroded national welfare settlements and threaten to continue so doing. For many this is consistent with a more longstanding erosion of various forms of post-war welfare and social policies at national level which has been underway since at least the Single European Act and the explicit promotion of a competitive state in the European context.

In particular, the hardening of an ordo- or neo- liberal economic oversight of member states - and particularly eurozone member states -- in response to the euro monetary crisis might be seen as the realisation of what Stephen Gill termed a neo-liberal 'new constitutionalism'. This is represented in the European Semester and its accompanying enforcement mechanisms, the Excessive Deficit Procedure and the Macroeconomic Imbalance Procedure, in which executive decision-making has become the norm in the governance of the Eurozone. How to combat the austerity policies that have come to dominate the governance of the Eurozone has led to numerous academic debates (Countouris and Freedland, 2013; Streeck, 2012; Habermas, 2012). Whilst we do not deny that extensive re-shaping of the entire European Union is necessary, the proposals we make here are designed to be practical and feasible in the short-term. We propose to draw on EU-level social rights developments that have hitherto been under-utilised and incorporate them into the European Semester in a bid to both open up the policy process to more socially orientated actors and to socialise the process from the inside. This would help to shift policy in the Eurozone away from an obsessive focus on liberal economic values towards social values by opening up the policy process to more socially orientated actors and embedding mechanisms to ensure rights are respected.

This paper proceeds in three steps. First, we outline how the European Semester functions and how this has hardened economic governance in the EU. Second, we highlight the developments on fundamental social rights in the EU in the 2000s. Third, we set out how fundamental rights mechanisms can be incorporated into the European Semester and demonstrate the application of rights to Eurozone policies by drawing on the case-law of the European Committee of Social Rights.

1) Crisis EU: The fulfillment of a Neo-Liberal New Constitution?

Whilst the history of EMU does not suggest that it has been entirely successful as a new constitutionalist project, arguably this is changing in the crisis context. Generally speaking, the economic governance structures that have emerged during the crisis have hardened to the point that Gill's new constitutionalism thesis is becoming more plausible than it was throughout EMU's first decade. Indeed, the legal and governance architecture suggests a further rebalancing away from any social dimension at the EU level. However, we also highlight in this section that it is important not to overstate the extent to which this orientation has foreclosed all possibilities for manoeuvre in economic policy making at European and national levels.

Across all member states (excluding those with MoUs), the central feature of the governance structure of EMU is now the European Semester, which was introduced in 2011 and has been reformed in accordance with waves of legislation that emerged following the crisis. It is primarily concerned with the fiscal sustainability targets enshrined in the Stability and Growth Pact (SGP) and new targets on macroeconomic balance and economic competitiveness. Technically (and legally) policy coordination mechanisms around Europe 2020 (which includes the social OMCs) and the Stability and Growth Pact remain separate, but in practice they function under the framework of the European Semester in which economic considerations are prioritised. When member states are not experiencing any excessive debts, deficits, or imbalances, the European Semester functions as a process of reporting and surveillance overseen by the Commission. The Commission publishes an Annual Growth Survey (AGS) on the whole of the EU economy along with recommendations on general policy direction and later issues Country-Specific Recommendations (CSRs) containing specific policy direction to each individual member state. Both of the AGS and CSRs are backed by detailed thematic Country Reports, which account for the socio-economic situation in each member state and the implementation of reforms from previous cycles of the European Semester. National governments discuss and endorse the AGS and CSRs in the Council, but rarely change any policy recommendations, leaving the Commission as the primary actor in charge.¹ Member states submit national reforms programmes detailing how they will meet the macroeconomic and growth objectives set out in the AGS, which are taken into account in the CSRs. Governments of the Eurozone states have to go even further and submit their annual budgets for approval from the Commission, before they are even debated in their respective national parliaments (Articles 3-7, Council Regulation (EU) 473/2013) and, under the rules of the Fiscal Compact, are expected to discuss and negotiate all major policy reforms with implications for public debt with the Commission and Council (De la Porte and Heins, 2014: 18).

When a Eurozone state does experiences economic imbalance – something that has been rather common in the history of the Eurozone -- two enforcement mechanisms spring into action. These are the Excessive Deficit Procedure (EDP) and the Macroeconomic Imbalance Procedure (MIP). Though the EDP has been in existence for far longer, the recent Six-Pack (2011) and Two-Pack (2013) reforms have considerably enhanced its ability to utilise sanctions, whilst the MIP was introduced in 2011. The difference between these mechanisms is primarily the indicators upon which they are activated. The EDP is launched if member states breach thresholds on deficit (3% GDP) and debt (60% GDP). The MIP relies on a broader non-exhaustive array of indicators determined by DG ECFIN in the Commission and premised on economic competitiveness, including measures on current account balance, export market share, and unit labour costs (De la Porte and Heins, 2014: 16). These procedures actually overlap as reforms to the EDP in 2013 introduced Economic Partnership Programmes, in which member states have to implement a far broader programme of reforms to enhance economic competitiveness through structural reforms in order to ensure long-term fiscal stability. Previously the EDP had been focused more towards the immediate correction of excessive deficit through means of fiscal consolidation. In situations where a member state is under both the MIP and EDP processes, the Economic Partnership Programme can be incorporated into the MIP process in order to avoid overlap and confusion (Article 9, Council Regulation (EU) 473/2013).

¹ Interview with official in DG Employment, Summer 2015

Both EDP and MIP procedures function through a combination of direct policy guidance from the Commission and by having the member states in question submit their own corrective plans. Power lies with the Commission. Even when submitting their own corrective plans, member states are under 'implicit conditionality' whereby it is made clear by EU actors what the acceptable types of policy are (Sacchi, 2015). In any case, under the MIP procedure member states can be compelled to resubmit corrective plans and be fined if the Council, on recommendation of the Commission, determines the re-submitted corrective plan to be insufficient (Article 3(2) Council Regulation (EU) 1174/2011).

The EDP and MIP are both backed by financial sanctions. Unlike traditional EU policy, which relies on judicial enforcement by the ECJ, these mechanisms are enforced by through executive decision-making in the Commission. Even oversight by member states in the Council has been curtailed, as when the Commission proposes sanctions they can only be *actively blocked* by a qualified majority in the Council. This process, called 'reverse qualified majority voting', was designed to streamline the use of sanctions. The financial sanctions themselves are rather hefty, amounting to 0.2% GDP under the EDP and 0.1% of GDP under the MIP, as well as restrictions on access to EU structural funds.

The governance of the Eurozone has become increasingly reliant on executive decision-making backed by financial sanctions. This represents a hybrid type of integration, resting between the coordination- and rules-based models (Armstrong, 2013). Under this governance style of executive decision-making, economic indicators have been privileged and policy areas beyond traditional economic policy, such as labour and welfare policy, have been reoriented towards economic goals.

2) The Unfulfilled Promise of Social Rights

The dominance of an economic constitution in the European context is nothing new even as the crisis has, as described in the previous section, hardened that constitution. To the extent that the social dimension has been promoted via legislative measures, it has tended to focus on issues of social regulation and non-discrimination. While for some the Lisbon strategy in 2000 amounted to the (re)-emergence of the social dimension, we would concur with those who regard it as a recasting of 'the social' in a manner that was subservient to the broader neo-liberal agenda of competitiveness promoted by the strategy. Europe 2020 followed in a similar vein while offering more substantive proposals on combatting poverty in Europe. Subsequent programmes that were grafted onto Europe 2020, the Euro Pact Plus and Social Investment Package, have also been developed under a paradigm that subordinates social and labour policy to neo-liberal economic values (de la Porte and Heins, 2015). Most recently, a scoreboard of social indicators has been incorporated into the European Semester that includes measures of unemployment, risk of poverty, and inequality. These social measures are based on co-ordination minus the sanctioning measures that we see in the area of economic governance. Indeed, the poverty targets are arguably, in any case, incompatible with the orientation towards austerity that has been prioritised in the crisis context.

However, the broader *acquis* is not unambiguously neo-liberal and might offer the basis for a more robust challenge of the economic constitution at EU level. The so-called 'horizontal social clause' introduced into the Lisbon Treaty requires all EU actions to take into account 'the promotion of a

high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9 TFEU). It might therefore offer the basis for a 'social' mainstreaming (Vandenbroucke). For current purposes it is particularly notable that the clause has been largely ignored in the context of economic governance conducted in accordance with the European Semester, despite the obvious impact of such governance on domestic social and welfare policies. As Vandenbroucke, has noted, "[t]his [situation] requires the social dimension to be mainstreamed into all EU policies, *notably into macroeconomic and budgetary surveillance*, rather than being developed as a separate 'social pillar'."

One way in which such mainstreaming could be achieved would be to monitor social and economic rights. This may be most feasible in the short term in the specific context of the European Semester, which, as noted above, is largely built on the basis of EU law and managed by the Commission. There are two reasons why social rights are appropriate for this. First, such an approach is consistent with the EU's own rhetorical and legal commitment. Social rights are enshrined in the EU's Charter of Fundamental Rights which was granted legal value in 2009 with the Lisbon Treaty and the Commission's Strategy on the Charter (2010) outlines various mechanisms that were intended to ensure that rights were given due regard in all political activities of the Commission. Maduro (2003: 285) argues that one of the motivations behind introducing social rights to the EU legal order was as a guarantee that economic imperatives would not lower domestic social standards (in the manner that they are currently doing). Second, extant practice by the European Committee on Social Rights, under the auspices of the Council of Europe is indicative of how such rights questions might be practically dealt with in the context of the semester (see section 3).

The EU Charter of Fundamental Rights (EUCFR) contains multiple social rights, including, but not limited to, the freedom to choose an occupation and right to engage in work (Article 15), right to collective bargaining and action (Article 28), protection in the event of unfair dismissal (Article 30), fair and just working conditions (Article 31), protection of young people at work (Article 32), and social security and social assistance (Article 34). To give practical meaning to these rights, the Commission published a strategy on the implementation of the Charter in 2010. The strategy commits the EU to being 'exemplary' in the field of rights and outlines a range of governance reforms to this end, including mainstreaming rights in impact assessments, a fundamental rights check-list, preparatory consultations with relevant stakeholders, processes for inter-institutional dialogue, and explanatory memorandums to detail how rights issues are affected (European Commission, 2010: 4-8). The Commission also committed itself to publishing an annual report on the situation of rights in the EU. In addition to this, an EU Fundamental Rights Agency was established in 2007 with the remit to provide reliable and relevant information on rights issues to the other institutions of the EU (De Schutter, 2009). In short, these are governance mechanisms that are designed to ensure that fundamental rights are given due regard and that any interference with rights is legitimate and justified through both *ex ante* and *post hoc* means.

These rights mechanisms have, to date, not been deployed to any great extent. Of particular note for present purposes, the governance structure through which economic coordination takes place has not included any consideration of fundamental rights, including social rights. At a general level this is because of the constitutional asymmetries between an economic and social constitution discussed above. At a more technical level, there are two primary reasons for this. First, the Commission's

strategy on the Charter is primarily based around the traditional Community method of policy-making, whereas, as noted, economic governance deploys a complex hybrid of co-ordination mechanisms and legal rules. The aforementioned tools incorporated in the Commission's Charter strategy were already deployed in the traditional Community method, but not systematically in the context of other modes of governance, meaning that it is technically not fit for deployment in the area of economic governance (or so it could be argued). This narrow focus is because '[t]he provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States *only when they are implementing Union law*' (Article 51, Charter of Fundamental Rights, emphasis added). The 'extra-EU' legal nature of much of the economic governance architecture described above – notably the Fiscal Pact and MoUs – would seem to place it beyond the scope of rights concerns, however normatively questionable such an exclusion may be. However, Commission activities in the context of the European Semester – which are underpinned by the regulations and directives described above – could be conceived as '*implementing Union law*'. Here, in short, the exclusion of a concern with rights is less easily justified from a legal perspective.

Second, it is notable that social rights are poorly developed in the case-law of the ECJ. This is relevant because although the rights mechanisms highlighted above are non-judicial, it is primarily the jurisprudence of the ECJ that shapes how the Commission engages with rights² (see also De Schutter, 2014: 1644-1645). Prior to the drafting of the Charter and in the absence of any EU source of rights, the ECJ was the sole EU institution to develop standards of rights protection. It did this by drawing on various sources, particularly the ECHR and common constitutional traditions, to write rights protection into its case-law when deciding on cases it felt concerned fundamental rights. The absence of a consensus across EU member states on social and labour rights resulted in the ECJ shying away from utilising these rights in its case-law until quite recently. Furthermore, the ECJ has engaged with rights by developing a 'proportionality principle', which is now also enshrined in the Charter. Interference with rights is only permissible in pursuit of a legitimate purpose provided it is proportionate to what is necessary to achieve that purpose. However, tensions arise when it comes to balancing market concerns (treaty 'freedoms') with rights concerns (fundamental rights). Many have argued that it is market concerns that have been prioritised to the detriment of social and labour rights, which are primarily protected at the national level (Scharpf, 1999; De Vries, 2013; Hopner and Schafer, 2010). The key recent cases at the ECJ that have concerned social rights, the *Viking* and *Laval* cases, ultimately restricted social rights (the right to collective action) in favour of protecting treaty-based market freedoms (the freedom to provide services). The key point for current purposes is that the aforementioned fundamental rights mechanisms were developed with reference to a Community case-law that had not established high standards on social and labour rights.

In summary, there are good legal reasons for extending a concern with fundamental rights to economic governance as it is conceived in the context of the European Semester (and, indeed, good normative reasons for extending this concern to all aspects of economic governance whether rooted in EU law or not). However, the Commission – as the key institution driving the semester process – would need to expand its point of reference beyond the ECJ in order to take social and economic rights seriously in this context.

² Interview with official in DG Justice, Summer 2015

3) Social Rights in the European Semester

There are certainly important questions of legitimacy and democracy that could be raised with respect to the empowerment of the Commission in the area of economic governance outlined in section 1. However, bracketing these for the time being, the fact of its empowerment renders it an important site for the possible re-politicisation of socio-economic governance in Europe. Both its room for discretion and its own rhetorical commitments are extant features that actors promoting a social dimension might seek to productively exploit. Indeed, they might be exploited in a way that would not be possible were the ECJ more actively involved in adjudicating on Commission decision making in this area. Section 1 argued that such discretion exists even within the context of a hardened economic governance or 'new constitutionalism' and section 2 suggested that both a legal basis and rhetorical commitment exist which would justify the incorporation of a concern with fundamental rights, including social rights, into the Commission's economic governance. This section considers how the Commission might begin to engage with social rights issues in the context of the European semester by incorporating governance tools similar to those highlighted above and through better coordination with international expert bodies on rights.

As noted above, the Commission's desire to be 'exemplary' in terms of rights is manifest in a desire to broaden consultation on rights issues and ensure transparency in relation to the consideration of rights issues both pre-emptively (through impact assessments and alike) and post-hoc (through, for instance, the annual reports and monitoring by the EU rights agency) assessments of rights issues in the context of its work. The establishment of consultation processes would be easiest to achieve and require the opening of the European Semester cycle to a variety of actors interested in the protection of social rights, including trade unions and other 'stakeholders' such as NGOs at both national and European levels. Such processes of inclusion chime with longstanding Commission views on good governance (Commission 2001, FSU). Indeed, there have already been some steps in this direction. In its 2015 Annual Growth Survey, the Commission stated its intention to better involve European level social partners in the European Semester process and has called for better inclusion of social partners at the national level (European Commission, 2015 (AGS)). Given that the European Semester is a cyclical annual process (as opposed to a once off legislative process in line with the Community Method), such consultation would need to be performed repeatedly. It would offer the opportunity for effective actors to take pre-emptive action to avert policy recommendations and prescriptions that could threaten social rights.

While important, inclusion of this sort will not in itself be sufficient to counter the (neo-liberal) bias inherent in the prevailing approach to economic governance or, indeed, its governance more generally (Parker..). Stakeholders might usefully draw attention to conflicts between economic goals and social and economic rights and contribute to the kind of re-politicisation that we advocate, but the Commission, as an increasingly executive actor, would not need to prioritise such concerns in the context of any pre-emptive and post-hoc assessments of rights issues. As noted in the previous section, as things stand, if the Commission were to consider these rights at all, it would be likely to draw on the case-law of the ECJ in which social rights are rather underdeveloped. However, there are other rights bodies in Europe, but outside of the EU, which do provide more appropriate and relevant standards on social rights. The premier social rights body in Europe is the European Committee on Social Rights (ECSR), which operates under the auspice of the Council of Europe. The ECSR is made up of independent and impartial experts on social rights and is tasked with overseeing

conformity with the European Social Charter (ESC), which was first signed in 1961 and subject to a revision in 1996. In the context of its country reporting, it has established a considerable body of conclusions on how to interpret and implement social rights in Europe, making it a valuable resource.

By increasing institutional links to the ECSR and by drawing on its case-law, social rights could be mainstreamed by the Commission into the European Semester. Incorporating the case-law of the ECSR into the European Semester is not a far-fetched idea as it already enjoys considerable legitimacy in the EU. All member states of the EU are signatories to the ESC; it is cited in the preamble to the Treaty on the European Union and in Article 151 of the Treaty on the Functioning of the European Union; it is listed as a source for several of the rights contained in the EU's Charter of Fundamental Rights; and it has even been referred to on several occasions by the ECJ. Arguably, the incorporation of the ECSR's standards into the European Semester is actually necessary for legal conformity in Europe. European states have both an obligation to adhere to the standards set by the ECSR on social rights and to implement recommendations under the European Semester. When these processes come into conflict, as they have in the context of the Eurozone crisis, states cannot satisfy both international regimes.

Mainstreaming rights would also not involve considerable change to the European Semester. It should first be recalled that it is the Commission that is responsible for drafting the Annual Growth Survey and the Country-specific Recommendations, which determine the policies of the European Semester, and is responsible for taking enforcement action through the EDP and MIP processes. To provide the necessary information for all of this, the Commission also conducts in-depth Country Reports on the socio-economic situation and reform process in each member state. It is in these Country Reports that fundamental rights can be mainstreamed, with rights expertise specific to each individual country available from the ECSR. Any policies that impact on fundamental rights could then be analysed in relation to the rights standards developed by the ECSR. The Commission, with regard to the principle of proportionality that underpins fundamental rights in the EU, would then have to justify any interference with these rights by setting out why the policies are necessary, what steps have been taken to ensure interference is proportionate, and how they respect the principles underpinning the rights in question. This would require some degree of institutional reforms, mainly internal to the Commission. There are already units within the Commission that are tasked with social policy, with ensuring respect for fundamental rights, and liaising with external bodies such as the ECSR. The work of these units would have to be better coordinated and, crucially, integrated into the European Semester process. This would help to reduce the dominance of economic and finance actors in the Commission that has led to the prioritisation of economic measures.

We can get a sense of how the mainstreaming of social rights might work in practice by examining how the ECSR has given substance to social rights and what this means for the types of policies being adopted under the European Semester. Acknowledging that many social rights cannot be attained overnight, the ECSR has, drawing on work by the UN Committee on Economic, Social, and Cultural Rights, highlighted two principles about the application of social rights: minimum obligations and progressive realisation. Minimum obligations include the establishment of thresholds to determine when a state is judged to be in violation of a specific right, regardless of the socio-economic conditions the state may be currently facing. This includes the current Eurozone crisis, as the ECSR has made clear (see ECSR, 2014: 23-24). Progressive realisation, on the other hand, recognises that

states do not always have sufficient resources available to immediately meet the standards of social rights. It commits states to progressively realise social rights over time by working towards a certain standard and by not regressing on standards already met. As demonstrated below, the principle of non-retrogression is particularly important in the context of the European Semester.

One of the primary objectives of the European Semester is the need to ensure the sustainability of public debt through the use of fiscal consolidation. In 2013 every single EU member state received recommendations on public finances (European Commission, 2014: 16) and all but two member states have been under the Excessive Deficit Procedure at some point since 2010. Although policy directions tend not to specify policy areas for fiscal reductions, reductions in public spending to meet EU targets have clear implications for the adequacy of many public services, particular social security and healthcare. The ECSR has developed a rather extensive body of case-law covering social security and healthcare, which has mainly focused around ensuring universal coverage and accessibility, collective financing shared across society, and commitments to progressively improve services (ECSR, 2008: 81-109). The reporting cycle of the ECSR has not allowed it to comment yet on most recent reforms, though it has raised issues with sustainability measures in healthcare that have sought to exclude undocumented foreigners (ECSR, 2013a: 12-14) and the introduction of non-progressive payments for healthcare due to their impact on equitable access (ECSR 2013b: 21). Studies have found that fiscal consolidation has led to deteriorations in services such as healthcare in many EU countries (Ivanković-Tamamović, 2015: 49). Although the Commission has, on occasion, issued recommendations on improving the effectiveness of public services, the prioritisation of fiscal consolidation has led to a number of tensions with fundamental rights to healthcare and social security.

The issue of collective bargaining has been central to the European Semester. The EU's growth strategy, Europe 2020, commits states to set 'the right framework conditions for wage bargaining systems and labour cost developments consistent with price stability, productivity trends over the medium-term and the need to reduce macroeconomic imbalances' (Council of the EU, 2010 economic guidelines). Under the European Semester, this has been taken by the Commission to mean the decentralisation of collective bargaining to the local and firm level (European Commission, 2014: 16, 18).³ This raises a number of rights issues. As a minimum obligation, the ECSR has stated that bargaining frameworks should be established voluntarily and not imposed on social partners (ECSR, 2014: 24). This standard has not been met both in the national implementation of decentralisation (Clauwaert and Schomann, 2012; Lorcher, 2014) and in the formation of this policy at the European level. As highlighted above, social partners have not been adequately incorporated into the European Semester and the ETUC has been particularly critical of current policy in the European Semester. It cannot be said that the decision to decentralise collective bargaining involved the consultation or voluntary consent of social partners at the European level. The ECSR has also highlighted problems with the impact of decentralisation on the effectiveness of collective bargaining. The use of company level derogations has been found in multiple states as a means to decentralise collective bargaining in Europe (Clauwaert and Schomann, 2012), which has led to findings of non-conformity by the ECSR (ECSR, 2014: 24-26; Lorcher, 2014). The ECSR has also stated that bargaining should ideally take place at the national, regional, or sectoral level and that if

³ The 2014 Annual Growth Survey is used here to demonstrate policy direction in the European Semester as it contains an overview of all the CSRs adopted from 2011-2014.

adequate frameworks do not emerge voluntarily the state should take steps to encourage it (ECSR, 2008: 53). This raises problems with the entire premise of the Commission's pursuit of decentralisation of collective bargaining.

Europe 2020, similar to the EU's previous growth strategy, also commits states to labour market flexibilisation as a means to reduce labour costs. In the context of the Eurozone crisis and the high levels of unemployment, these flexibilisation policies have been enhanced to some extent (European Commission, 2014: 16, 18). Many states have sought to do this through easing rules on dismissals and expanding the use of atypical contracts (Clauwaert and Schomann, 2012). Again, this has come into conflict with fundamental rights. Employment contracts with excessive probationary periods without protection against dismissal and inadequate notice periods post-probationary period have been found to violate the right to reasonable notice of termination (ECSR, 2014). The ECSR has established a threshold of 26 weeks as the maximum time for probationary periods and has set out a framework for determining notice periods in ordinary contracts based on length of service (ECSR, 2008: 47, 152). More generally, the ECSR has stated that national law should seek to dissuade employers from engaging in unfair practices, provide adequate protection against retaliatory dismissal, and be broad enough to ensure comprehensive coverage of workers.

These insights from the ECSR raise a number of rights-issues with the policies being promoted under the European Semester. Though space does not permit a more comprehensive account of the rights-issues at stake in the Eurozone, such accounts have been reported on by, among others, the UN High Commissioner of Human Rights (2013) and the Council of Europe's Commissioner on Human Rights (2013). These rights issues cannot be simply reduced to problems of implementation by member states themselves. Whilst the examples above show that minimum obligations on social rights have been violated by member states, it is the policy directions determined at the European level that create this risk and run counter to the progressive realisation of many rights. By conducting rights analyses as part of the Country Reports and feeding these findings into the Annual Growth Surveys, Country-specific Recommendations, and enforcement mechanisms, the Commission can ensure that social aims are central to the European Semester.

It would be naïve and contrary to the pragmatic spirit of this paper to think that ESRC standards would suddenly be privileged above an economic agenda intent on fiscal consolidation (austerity). However, the Commission has, in its proposed fundamental rights mechanisms (notably its abovementioned 'explanatory memoranda') demonstrated a commitment in principle to be transparent in highlighting rights issues even where policies infringe upon rights. This amounts to a commitment to justify why in a particular instance it was necessary to infringe upon a particular set of rights and that ought to include social rights. Such publicity would certainly serve to repoliticise discussions even within the Commission and empower actors beyond the Commission to make the case for social rights in the face what is often presented as a 'common sense' logic of austerity.

Conclusion

The core argument of this paper has been that fundamental social rights mechanisms can be incorporated into the European Semester in order to help re-orientate the process towards social goals and temper the socially destructive policies currently being promoted. The discourse of social

rights originally emerged in the EU as an assurance to citizens that European level integration would not negatively impact on their domestic social standards; an assurance not borne out by the experience of Eurozone governance. As the EU saw numerous developments around fundamental rights in 2000s, including its very own charter of rights and governance mechanisms designed to give it practical meaning, there is already a strong basis to build on. As demonstrated by the examples provided by the ECSR, social rights can be directly applied to the types of policy being promoted through the European Semester to ensure that these policies do not undermine the social well-being of European citizens.

This proposed solution would not solve all of the problems of the Eurozone. Social rights can help to reprioritise the constitutional principles away from neoliberal economic values in favour of social goals. This does not suggest that there is no role for economic values, as to claim that the governance of the Eurozone can be shifted to entirely social rather than economic goals would not be feasible. Instead, economic policy must be compatible with social rights by not undermining social standards achieved at the national level. Here there is a strong role for political economists and (neo) Keynesian arguments about the importance of labour and welfare policy to economic growth and high employment. The proposals here to incorporate social rights into the European Semester can be used alongside other arguments that highlight the economic shortcomings of the current neoliberal and austerity based approach to the Eurozone.