Chapter 6 Transnational solidarity in European monetary integration: Unpacking the deep connection between money and solidarity

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Introduction

In a remarkable book, late David Graeber and David Wengrow claim that our understanding of evolution in the history of humanity is misleading: when considered from the point of view of equality among the members of society, ours is not the most refined of civilizations.[1] According to their view, our balancing between freedoms and authority, based on the idea of violence being inherent to human beings,[2] is inaccurate. After discussing different historical examples, they wonder what made societies get stuck into a specific form – the one most readers of this book may live in – in which private property coexists with liberties.[3] This chapter offers a tentative answer to their question that, formulated on the simplest of terms, relies on a single word: money. Or, to provide a more precise answer, a type of money that, as an infrastructure of certain power relations, locked us up into intrinsically unequal societies and, therefore, constitutes the ultimate foundation of (the need for) solidarity.

Not all human societies are subjected to these monetary arrangements. In the African plains exist nowadays forager communities that, in close connection with their environment, rely on instant satisfaction of their individual demands to subsist. In these societies, "the obligation to share [i]s open-ended and the amount of stuff that you g[i]ve away [i]s determined by how much stuff you have relative to others".[4] Interestingly enough, such well-established concepts in our socio-economic system as property and

1 David Graeber and David Wengrow, *The Dawn of Everything: A New History of Humanity* (Allen Lane 2021).
2 Thomas Hobbes, *Leviathan: Or the Matter, Form and Power of a Commonwealth, Ecclesiasticall and Civil* (Andre Crooke 1651).
3 Graeber and Wengrow (n 1) 115.
4 James Suzman, *Work: A History of How We Spend Our Time* (Bloomsbury 2020) 154.

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hierarchy do not exist in these communities. Instead, these demand-sharing societies, based on what in mainstream anthropology was labelled as an 'immediate return economy',[5] create social structures combining material equality with individual freedom. Without authority, because no one is "subject to the coercive authority of anyone else",[6] and "granting individuals the right to spontaneously tax everybody else",[7] these forager communities guarantee:

> "firstly, that material wealth always ended up being spread pretty evenly; secondly, that everyone got something to eat regardless of how productive they were; thirdly, that scarce or valuable objects were circulated widely and were freely available for everyone to use; and finally that there was no reason for people to waste energy trying to accumulate more material wealth than anyone else, as doing so served no practical purpose".[8]

When observed from the viewpoint of current capitalist societies, solidarity seems deeply engrained in the socio-economic arrangements of these forager societies. Within them, all members of the community, regardless of their productivity, are entitled to eat and make use of tools as much as they need. Moreover, the membership of the community is not determined by blood, status, or years of settlement. Hence, newcomers will be subjected to the very same rules as any other member – meaning that the food and tools they bring with them will also be enjoyed and used by the rest of the community. Therefore, one could argue that in forager societies solidarity is unbounded. However, the core assumption of this contribution is precisely the opposite, namely that solidarity in those communities is not needed (and therefore does not exist) since there are no systemic inequalities resulting from the socio-economic structure of that society.

Capitalist societies, on the other hand, are based on very different premises. They result from key transformations in the relation between humans and nature that, in the context of new forms of human settlement designed to ease the domination of the population via the erection of

5 James Woodburn, 'Egalitarian Societies' (1982) 17 Man 431.
6 Suzman (n 4) 156.
7 ibid.
8 ibid 157.

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walls,[9] forced subjects to put personal effort and resources into certain works, particularly in farming. While contributing to the consolidation of the established power, with time, a farmer could eventually provide food sustenance for a whole family and even produce additional returns. Importantly, the farmer's expectation for return became proportional to the effort made. Hence, this 'delayed return economy'[10] represents a different socio-economic model that is more prone to individualism and relying on legal institutions like private property. It is possible to find here the foundations for exclusion of the others and for the limitation of their participation in the use of goods, problems that lay precisely at the core of the concept of solidarity.

This chapter suggests that in 'delayed return economies' money, reflecting the shared constitutional project of the polity,[11] is the main responsible for the existence and shaping of such constraints and limitations. It therefore argues that money must be a central concept when studying solidarity, its manifestations and its structural limitations. Accordingly, to explore the features of Europe's transnational solidarity the study of the foundations of and constraints imposed by Europe's transnational money is crucial. The argumentation will thus depart from the explanation of the infrastructural power of money, elaborating the deep connection between money and solidarity from a historically informed theoretical perspective, and will subsequently expand the scope of the theoretical reflection to the specifics of European monetary integration and its impact on transnational solidarity.

2. Revealing the link between money and solidarity

Although apparently unrelated, money and solidarity are concepts inextricably connected, even if in a different way than one may initially consider. It is true that manifestations of solidarity may be quantified and therefore expressed as a monetary cost – especially once public policies of solidarity have been formally implemented. However, the link between the two concepts suggested in this chapter goes beyond such a merely quantitative dimension. The main argument is that solidarity is the outcome of the

9 James C. Scott, *Against the Grain: A Deep History of the Earliest States* (Yale University Press 2017).
10 Woodburn (n 5).
11 Christine Desan, *Making Money: Coin, Currency and the Coming of Capitalism* (Oxford University Press 2014).

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monetary infrastructure that determines certain social, political and economic features of capitalist societies. To phrase the idea differently: money currently in operation determines the need for solidarity in order to address the inequalities that unavoidably emerge as a result of the socio-economic arrangements encapsulated in the currency. Or, in a nutshell: money, as consolidated form of structural power relations, is the ultimate foundation of solidarity. This statement nevertheless requires the unravelling of several ideas and assumptions contained in both concepts (money and solidarity) that, despite appearances, keep them deeply entangled.

2.1. Solidarity

Our argumentation starts with the unpacking of the idea of solidarity. Resulting from our daily experience, we *prima facie* consider it a concept attached to the very essence of what being human means for us, as expressed and represented by certain feelings towards others. Hence, with this term we usually refer to the relation between members of a community towards other human beings, either part of the same community or aliens to it. However, despite our general impression, solidarity is not by default attached to the nature of human beings, but just to the experience of collectively organized human beings *in a given socio-economic context*. In fact, solidarity was only formulated and elaborated as a concept after the consolidation of the nation-state and in the light of the social transformations imposed by the industrial revolution.[12]

The emergence of the concept of solidarity in this particular context responded to the sum of a number of developments and transformations resulting from the advance of capitalism. For instance, whereas throughout history all kind of physical tasks were usually assigned to slaves or to manpower captive and subject to some form of public authority (bosses, priests, chiefs, lords, or kings),[13] in the new industrial context workforce was instead subordinated to private owners of means of production. Moreover, if a century earlier revolutionaries in France were able to free themselves from the strong grip of the king in the name of freedom, equality and fraternity, by the dawn of the industrial revolution the privatization of the relations

12 Émile Durkheim, *De la division du travail social* (8th edn, Presses Universitaires de France 2013).

13 Scott (n 9).

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of dominion questioned the actuality of such an achievement. And all this even though, inspired by the ideals of the revolution, the development of constitutionalism and its language of rights revolved around the idea of equality of all men before the law. Hence, solidarity was only conceivable when, contradicting certain collective and legally based aspirations, social inequalities became manifest and blatant within Western societies. Solidarity is, therefore, intrinsically connected to those inequalities – they actually are its *raison d'être*. Seen from this perspective, it is easy to understand why forager communities in Africa, egalitarian at their core, lack such a concept.

2.2. Money

If solidarity was conceived where and when society proved unequal despite legal mandates and social demands for equality, its full comprehension requires deciphering in first place the reasons why those manifestations of inequality emerged. It is at this point that we should return to the concept of 'delayed return economy' and, more specifically, to the origin of money (around 3000 BC) and its historical development.[14] Of course, far from being exhaustive, in this section we can only distil the outcome of millenary processes and trajectories. Our focus will be on certain specific features able to reveal monetary developments critical for our argument, which can be condensed in three aspects: debt as foundational content of money, money's hybrid nature at the intersection of social dichotomies, and its incorporation of a specific understanding of property. To understand in full the theoretical implications of each of these features a historical approach is followed.

2.2.1. Money comprises credit

The first of those features is the realization that money encapsulates a debt relation; in other words, that credit is an integral part of money.[15]

14 David Graeber, *Debt: The First 5000 Years* (Melville House 2012).; Michel Aglietta, *Money: 5000 Years of Debt and Power* (Verso 2018).

15 Henry Dunning Macleod, *The Theory of Credit* (Longmans, Green, and Company 1889).; Alfred Mitchel Innes, 'What is Money?' (1913) The Banking Law Journal 377.; Alfred Mitchel Innes, 'The Credit Theory of Money' (1914) The Banking Law Journal 151.

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Continuing with the example of the farmer from the introduction, since the goods resulting from the farming effort will only become tangible in the future, their amount and quality are always dependent on undetermined factors and therefore remain uncertain at the present moment. However, reasonably expected returns can be used for obtaining goods and services in advance, giving rise to credit and thus fuelling the economy through finance.[16] On the other hand, perishable agricultural products must be used right after being harvested or collected; otherwise, they lose value or expire. Payment in kind to the owner for the use of the farming lands must therefore be done at that precise moment. In such a case, the boss or authority gave a token in return that could be used to redeem the actual debt when the tax collector arrived.[17]

These two operations of the farmer, one with providers and the other with the authority, have in common that they reallocate economic value through time, unfolding in the actual moment part of the effects of a payment to occur in the future, or postponing those effects for the future.[18] To the eyes of a private lawyer, each of these operations could be seen as two different legal transactions: an actual purchase of goods, acquisition of services or payment of taxes, and a debt/credit relation financing the operation (the farmer becoming debtor to the good or service provider, and creditor to the authority). The claim here is that money encapsulates these two legal transactions -an economic activity and its financing operation- into a single concept, objectified in the token given by the authority to redeem the payment of taxes. That token, including first a mark of the house and later engraving the face of the boss, and with time made of malleable precious metals to prevent counterfeit, became generally accepted as mean of payment due to its ability to redeem tax obligations.[19] By doing so, money encapsulates a singular contractual right (a right *in personam*) and transforms it into a right enforceable against everyone else (right *in rem*),[20] with the implications that will be explored below. In any case, whatever object is chosen to physically represent money, it circulates because

16 William N Goetzmann, *Money Changes Everything: How Finance Made Civilization Possible* (Princeton University Press 2016) 34.
17 Desan (n 11).
18 Goetzmann (n 16).
19 Desan (n 11).
20 Jongchul Kim, *Modern Money and the Rise and Fall of Capitalist Finance: The Institutionalization of Trusts, Personae, and Indebtedness* (Routledge 2023) 17.

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of an underlying debt relation.[21] We can thus say that in 'delayed return economies' credit operates as currency.

2.2.2. The hybrid nature of money

A second feature of money that our argumentation needs to emphasize is its hybrid nature suspended between the state and the market.[22] Continuing with our example, the two legal transactions in which the farmer engages show how money, as an encapsulation of a credit relationship, enabled the market by fostering exchanges between economic actors *and* constituted and reinforced the structural power of public authorities – that, through identification with the king, will eventually become the state. Money therefore allows individuals to establish bonds, in the form of debt relationships, with other fellow individuals (as market actors) and with their political community (as taxpayers). Again, in a centuries-long evolution of intense experimentation with form and matter, at some point money finally coalesced this double nature into a single physical token able to encapsulate market and state debt relations together.

This hybrid nature of money has relevant implications because each soul of the currency may be emphasized depending on the context in which it is used. Hence, when operating within the polity, where the authority demands payment of taxes only in the currency it has previously issued and released, money can circulate smoothly, because all market actors will accept those tokens or, for that matter, coins as means of payment to redeem subsequently their tax obligations. The domestic dimension of money seems therefore unproblematic.[23] However, increased trade and commerce with actors coming from other polities required money to be detached from any specific political community if third parties were not to accept as a medium of payment a currency unable to redeem their taxes. For this reason, in commercial transactions of transnational character, the value of money became intrinsically connected to the value of the precious metal of the coin, rather than to the nominal value determined by the domestic authority.

21 Samuel A. Chambers, *Money Has No Value* (De Gruyter 2023).
22 Stefan Eich, *The Currency of Politics: The Political Theory of Money from Aristotle to Keynes* (Princeton University Press 2022) 5.
23 Johann Gottlieb Fichte, *The Closed Commercial State* (SUNY Press 2012).

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As a result, it is possible to identify a tension between the territorial scope of the market and state dimensions of the currency: in market operations beyond the borders of the polity, the function of money differs from the one it plays within the state because the market bond prevails over the state bond – or, to phrase it according to private law terms, the geographical scope of the right *in rem* money gives rise to is, paradoxically, limited rather than universal. In addition to this, the conflict between the form and matter of coins gave rise to numerous socio-economic and political tensions during the Middle Ages. For instance, individuals could scrap and clip coins to reserve a portion of the precious metal for further transactions while still purchasing for its nominal value; and the state could debase the currency or mint new coins to adjust the amount of metal per unit to its own interests.

These situations exemplify how the two souls of the currency are in permanent tension and how they forced actors with different interests to engage in power games depending on the specific historical context: abundance or lack of precious metals, need to mint coins for paying war efforts, or drain of coins to other polities where the same amount of metal resulted in higher nominal value, are but some examples of situations provoking reaction from either private or institutional actors. Hence, the tension between the market and state souls of the currency, manifested in conflicts between the nominal and the metallic values of the coin, has been a constant in monetary developments, determining the arc of its history.[24]

Interestingly enough, money is not only suspended between the state and the market, but it also hangs in between many other well-established dichotomies. What we understand as separate entities, dimensions, or approaches, are indeed subject to the totalizing force of the bundle of social relations encapsulated in money – a bundle that works as a mechanism of social integration. Therefore, politics and economics, state and banks, or national autonomy and international cooperation are, because of money and despite appearances, as closely interrelated to each other as state and market.[25] Importantly, the accompanying mediator in these relationships is a complementary, but equally relevant mechanism of social integration, namely law. The different historical development of private law, focusing on market interactions, and of public law, organizing and limiting public

24 Desan (n 11).
25 Eich (n 22) 174.

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power, paralleled the functions that money plays in the market and state dimensions. But if the currency is an integrative force joining these two dimensions together, law represents the rational force setting the borderlines between them. And it does so by simultaneously *limiting the action of the state* (constraining its powers through public law) and *regulating the markets* (establishing through private law the contours within which economic actors can operate freely). Law and money are thus complementary mechanisms of social integration.[26] The third feature of money that we need to highlight results precisely from the specific content that, due to this complementary character of their relationship, law has uploaded into money.

2.2.3. Money reflects property

A key element of the legal design of the marketplace is the content and features it assigns to the right to property. The property regime that has prevailed in modern economies and from which results the expansive force of markets has its roots in Rome. Whereas in previous civilizations debts were at a certain point cancelled, thus re-establishing the social balance between creditors and debtors and allowing a fresh start for all members of the community, in Roman law the supreme interest was to guarantee the observance of the right of creditors to be paid. Accordingly, rather than cancelling debts, Rome resorted to coinage to increase the resources available for making those payments. By increasing the money supply, it was thus possible to address debt crises while guaranteeing the integral protection of property.[27]

Regarding the substantive content of the right, the Roman concept of property differed from alternative models, widespread in other civilizations, that put the emphasis on the use of things in harmony with the environment or in line with common goods recognized by the society, thus embedding property in its social and cultural context. By contrast, Roman law recognized property as a right of absolute free disposition over the thing and, accordingly, as comprehending a right to legitimately limit, or even to plainly exclude, the participation of others in the use of the good

26 Fernando Losada, ‘Towards a Constitutional Theory of Money: Opening Europe’s Money Up to Public Discourse’ (2022) 1(4) European Law Open 1025, 1029.

27 Graeber (n 14).

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in question. The absolute disposition over the property has an additional feature that Graeber and Wengrow describe in raw terms:

> "What makes the Roman Law conception of property – the basis of almost all legal systems today – unique is that the responsibility to care and share is reduced to a minimum, or even eliminated entirely. In Roman Law, three are the basic rights relating to possession: *usus* (the right to use), *fructus* (the right to enjoy the products of a property, for instance, the fruit of a tree), and *abusus* (the right to damage or destroy). If one has only the first two rights, this is referred to as *usufruct*, and is not considered true possession under the law. The defining feature of true legal property is that one has the option of *not* taking care of it or even destroying it at will."[28]

A complementary understanding results from focussing on the relation between the good and its context rather than on the content of the right to property itself. From that point of view, in all property regimes the good possessed is always subjected to the supreme will of the legitimate owner. The difference between regimes would then lie on the identification of the owner either as a member of a community or part of a shared ecosystem (as is the case with alternative conceptualizations of property described by anthropologists),[29] or as a natural person (later even a juridical person) who, by virtue of the property regime, is able to rule over those collective interests. According to the Roman regime of property (whose development is intimately connected with slavery and the need to consider some human beings as things and thus completely detached from any social, family, or affective bond),[30] in all aspects related to the possession and use of the good, the owner is legitimately entitled to proceed to the legal fiction of detaching the possessed thing from any social tie. Hence, Roman ownership severs the bonds that anything has with nature, if such is its origin, or with society in case it has been manufactured. And it does so, importantly, without the consent of any other person.[31]

By freeing physical things (and human beings considered as such) from any ties, this legal understanding of property allowed the unfolding in full

28 Graeber and Wengrow (n 1) 161.
29 ibid.
30 Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Harvard University Press 1982).
31 Kim (n 20) 18.

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of the innate potential intrinsic to each thing, although at the price of detaching both good and owner from their social and environmental context. Understood in that way, property becomes an emancipatory tool for owners, who get rid of any social responsibility resulting from possession and, therefore, turn into individual sovereigns over whatever is owned.[32] Money follows this same logic, providing its possessor with the ability to get anything from society while transcending social relations.[33] The outcome is the triggering of the exponential growth of capitalism based on economic materialism, and the promotion of individualism.

2.3. Money and solidarity

It is within this framework that we should conceptualize, to complete our reconstruction, the link between money and solidarity. The combination of the three features of money highlighted above results in a currency that seals up a socioeconomic system founded on an absolute understanding of private property, enabling its use in the marketplace to obtain future gains based on current wealth. This monetary arrangement is structurally prone to creating and consolidating inequalities, not only because the prospect of such gains is usually available to those already owning things, but mostly because the legal system and its absolute understanding of property consistently protect creditors. Moreover, guaranteeing debt repayment by increasing the money supply minimizes risks for creditors and assigns the payment effort to debtors, whose only choice in case of lacking assets is to sell their workforce to obtain the resources with which to pay back what they owe. Accordingly, labour becomes by design a critical way to guarantee in the long term the value of capital.

2.3.1. Attempts to stabilize society and finance…

The damaging outcomes of the unbalance between the legal position of debtors and creditors ingrained into this monetary design started to become noticeable with the developments associated to the Industrial Revolution. Growing social inequalities based on ownership and implicitly resulting from the burden imposed on labour were soon manifest, leading to class conflicts between capitalists and workers and, eventually, to episodes

32 Pierre Crétois, *La parte commune: Critique de la propriété privée* (Éditions Amsterdam 2020).

33 Kim (n 20) 20.

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of social unrest. Against the risk of political instability, nation-states put emphasis on designing policies to counterbalance class inequalities and contribute to the appeasement of social relations. Importantly, against labour movements' attempts to internationalize the conflict with capital, policies implemented were mostly national. The immediate outcome of these tensions was the establishment and legal protection of workers' rights. Only at a later stage other social inequalities were addressed by active policies, gradually extending the protection to guarantee the living standards of all citizens to a minimum threshold. These policies were considered a manifestation of solidarity towards those members of the political community in need and represent the origin of what, in the end, would be the welfare state.

Despite this relief, class inequalities were simultaneously aggravated with the emergence and flourishing of finance, a legal development[34] allowing the full exploitation of the monetary framework by the banking sector and the incipient financial industry. Whereas coins, encapsulating the two legal transactions described above, were previously minted by, or at least in the name of the state, now a capitalist form of money was generated when law directly granted creditors, who usually enjoy rights *in personam*, with rights *in rem*. Such a configuration enabled the creation of money out of any concrete obligation or asset and without the intermediation of the state,[35] a development that banks and other financial institutions exploited *in extenso* motivated by the extremely lucrative output of such operations. Hence, what originally was the monopoly of the state in minting coins, as manifested by the institution of the seigniorage, gradually transformed into a prerogative of banks, who issued their own banknotes and, nowadays, merely create new money via keystrokes.[36]

In principle, this mechanism for money creation is infinite due to the lack of debt jubilees. However, the whole system relies on the trust of creditors in being eventually repaid, which can be put into question in case of liquidity crises or actual defaults. To prevent those situations from happening, the viability of the whole monetary design depends on an anchoring mechanism, which was established through the unlimited guarantee of liquidity provision by a bank operating at the top of the system, and usually

34 Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019).

35 Aaron Sahr, *Keystroke Capitalism: How Banks Create Money for the Few* (Verso 2022) 54.

36 ibid 94.

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representing the sovereign power of the state to issue money. Working as a backstop for all the rights *in rem* distributed among the economy, this central bank guaranteed the value of capital assets and, consequently, contributed to the stability of the financial system.

2.3.2. …that are nevertheless prone to increasing instability

However, the increase in the pool of rights *in rem* that, facing an eventual risk of depreciation due to defaults, were considered legitimate and therefore worth of deserving liquidity recognition, resulted in an expansion of the amount of assets obtaining the status of money. Hence, by solving punctual crises through the provision of liquidity, the number of assets that could deserve such status raised, accordingly spreading among economic actors a false feeling of security. The price to pay for the expansion of stable money through a lender of last resort was the creation of the conditions for further instability,[37] because the expectation of an unlimited liquidity provision encourages innovation and risk-taking in the financial sector.[38] Such innovation ultimately results in the creation of new forms of money (ie. new social relations, freshly established bonds between debtors and creditors) that, since jubilees are excluded for systemic reasons, have to be either repaid or, eventually, guaranteed by the lender of last resort. Hence, the exacerbation of assets worth the status of money further promotes inequality due to the artificial increase of legitimate claims for creditors, its direct connection with the ownership of certain assets, the uneven access to the mechanisms of monetary creation and, last but not least, because it exposes the system to further crises able to overload, and thus jeopardise, the active policies of welfare – required to assuage the social unrest resulting from the burden imposed on labour within the monetary design.

It is thus possible to identify two areas that, since the Industrial Revolution, demanded from the nation-state the application of innovative but radically different stabilization policies resulting from the monetary design. On the one hand, the combination of creditor protection and the absence of jubilees eventually redeeming debtors from their burdens underpinned the structural need for welfare policies to stabilize labour. On the other hand, to guarantee the value of capital assets and the ultimate repayment of all debts,

37 Hyman P. Minsky, *Stabilizing and Unstable Economy* (McGraw-Hill 2008 [1986]).

38 L. Randall Wray, *Why Minsky Matters: An Introduction to the Work of a Maverick Economist* (Princeton University Press 2017) 83.

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a central bank had to provide liquidity and act as a lender of last resort to stabilize the currency in punctual moments of crisis. Accordingly, solidarity operates by supporting debtors in two situations, although through different mechanisms, principles, and procedures. During normal times, it compensates all members of the polity through welfare state policies so they can focus on guaranteeing with their work the final payment of all debts, and when times of instability jeopardise the actual value of assets, it supports their owners through punctual liquidity assistance. These two mechanisms of solidarity towards debtors differ notably: welfare policies are constrained by limitations imposed by the factual availability of the resources to be redistributed (goods, services, monetary transfers), whereas in liquidity provisions, for which ownership of assets is the qualifying factor, solidarity does not depend on physical constrains and is therefore virtually infinite (see Table 1).

Aim of solidarity	Socio-political stability	Financial stability
Provision of	Public support – to guarantee ultimate repayment of debts through work	Liquidity – to guarantee the value of property
Institutionalized practice	Public policies (welfare state)	Lender of last resort
Debtors addressed	All members of the polity	Owners of certain assets
Resources available	Limited	Potentially infinite
Intervention	Permanent	Punctual
Articulated through	Right-based procedures	Discretionary decisions

TABLE 1 – Articulations of solidarity within the nation-state

We can thus conclude by highlighting that the need for welfare policies and financial stability are inextricably linked to the monetary design. Despite emerging in the same period, these two manifestations of solidarity nevertheless contribute to the stabilization of the polity through different mechanisms: the former by addressing daily social needs structurally resulting from the design of money, the latter guaranteeing as punctual backstop that such (unequal) monetary arrangement could continue operating in the future. Solidarity in the form of welfare policies works as the correcting mechanism that capitalist societies unavoidably need to prevent social unrest, whereas solidarity in the form of financial stability funnels society's potential of money issuance towards a common good from which debtors

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who own certain (compromised) assets and, even most prominently, their creditors are direct beneficiaries.

In the aftermath of World War II, constitutional thinking acknowledged the relevance of the first dimension of solidarity (welfare state policies) by recognizing the transformation in the functions of the state it entails.[39] The liberal state therefore evolved into a social state in charge of ensuring production and, subsequently, of providing enough to cover citizenry's basic needs through redistribution.[40] Within this framework, solidarity was theoretically elaborated as both a principle of social organization and an entitlement for state intervention.[41] However, the second dimension of solidarity, the one resulting from the key connection between the state and the ability to issue money through a lender of last resort, remained overlooked by constitutional theory – or at least was not as explicitly recognised as was one of its key implications: the ultimate acceptance of capitalism as the economic system.

3. Transcending national borders: European money and transnational solidarity

Against the backdrop of the monetary framework designed for the national context, the remainder of this chapter moves the analysis to the transnational dimension, in particular to the specific case of the European common currency. If solidarity in the national context is fleshed out by the reaction to inequalities (welfare policies) and the systemic needs (a lender of last resort) resulting from the monetary design, establishing a transnational currency may eventually lead to specific forms of transnational solidarity. Paradoxically enough, the original design of the euro was precisely focused in preventing such a development: the foundational assumption of the Economic and Monetary Union (EMU) was national responsibility over all kind of redistributive policies, allegedly removing the shared currency from the sphere of politics. Following the evolution of the monetary design in European integration to our current days nevertheless reveals the peculiar workings of solidarity in the Eurozone and the specific arrangements it is subjected to in such a transnational framework.

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39 Manuel García-Pelayo, *Las Transformaciones del Estado Moderno* (Alianza Editorial 2009 [1977]).

40 Ignacio Sotelo, *El Estado Social: Antecedentes, origen, desarrollo y declive* (Trotta 2010).

41 Carlos de Cabo Martín, *Teoría Constitucional de la Solidaridad* (Marcial Pons 2006).

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3.1. The European market: Solidarity confined to national borders

Our starting point is the stage of development of the process of European integration before the actual agreement on the establishment of a common currency. Summing up the developments conducive to that moment, two were the key elements for the purposes of our argument. The first one is that European integration, while creating a common market for all Member States, contributed to the consolidation of the nation-state[42] and in particular to its acceptance as a framework of reference for redistributive policies. Although with variations among states, solidarity mechanisms proper of the post-war social state were arranged and managed at the national level, guaranteeing social rights through a mix combining the protection of fundamental rights, the implementation of social policies, and the provision of public services.[43] At this point, the relationship between the project of European integration and its Member states was still of a symbiotic nature: the European level contributed to economic prosperity, providing revenue for redistribution through welfare policies "at the expense of indulging in nationalistic economic policies".[44] Policies related to this first dimension of solidarity were, therefore, a national competence, but to a great extent they worked in close connection with and actually depended on achievements resulting from, European economic integration.

Another significant feature of European integration at that point was the key relevance of law in its development. The initiative of lawyers and judges was critical to characterize the European project not only as enshrining a community *of* law but, more importantly, a community established and developed *through* law.[45] Accordingly, law was the driving force of European integration and lawyers, with their rhetorical and argumentative abilities, were critical for steering the process. The rational authority of law and the audacious legal reasoning of the Court of Justice in key cases, relying on the autonomy of the new legal order, allowed for the shaping of the community

42 Alan S. Milward, *The European Rescue of the Nation State* (Routledge 1992).
43 Fernando Losada, 'European Integration and the Transformation of the Social State: From Symbiosis to Dominance', in Toomas Kotkas and Kenneth Veitch (eds), *Social Rights in the Welfare State: Origins and Transformations* (Routledge 2017).
44 Gunnar Myrdal, *Beyond the Welfare State: Economic Planning in the Welfare States and its International Implications* (Yale University Press 1960) 119.
45 Antoine Vauchez, *L'Union par le Droit: L'invention d'un programme institutionnel pour l'Europe* (Presses de Sciences Po 2013).

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in strict accordance with legal procedures and requirements, but at the price of obscuring the actual political nature of the outcomes.[46]

3.2. The original design of the euro: A shared currency without solidarity mechanisms

When negotiating the EMU, Member states resorted to the expertise of lawyers and economists to seal an agreement about its constitutional features and institutional design. Both lawyers and economists shared their perception about the allegedly neutral nature of, respectively, law and money. Hence, due to the disparities in the level of economic convergence between the partners and their discrepancies regarding the concrete strategy to follow towards monetary integration,[47] negotiating efforts revolved around what at the time was a general consensus on the pertinence of sound money. Accordingly, the core foundation of the common currency was the detachment of monetary policy from the rest of economic policies and its uploading to the European level. The shared goal was to codify in the European treaties a currency severed from politics to guarantee price stability, actually fleshed out in an institutional design isolating monetary authorities from all political influence.[48] Prevention of transfers of financial burdens between Member states[49] was equally important for preserving the political neutrality of EMU – a decision contributing to the consolidation of the nation-state as the framework of reference for all redistributive issues.

Within this design, full national responsibility over fiscal policy was pivotal. Consequently, as part of the agreement about EMU, Member states on the one hand established the foundations for the coordination of their respective economic policies,[50] while on the other renounced to monetary financing through the new European Central Bank[51] and to any kind of privileged access to services offered by financial institutions.[52] By design, Member states were thus forced to collectively coordinate their economies

46 Anne-Marie Burley and Walter Mattli, 'Europe Before the Court: A Political Theory of Legal Integration' (1993) 47(1) International Organization 41.

47 Kenneth Dyson and Kevin Featherstone, *The Road to Maastricht: Negotiating Economic and Monetary Union* (Oxford University Press 1999).

48 Consolidated version of the Treaty on the Function of the European Union (TFEU) art 130.

49 TFEU art 125.

50 TFEU art 121, 126.

51 TFEU art 123.

52 TFEU 124.

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and to individually rely on market prices when financing themselves. In turn, through their individualized assessment of each Member state's economic situation, markets were supposed to work as enforcement mechanism of last resort in the event the coordination of national economic policies had been disregarded.

The legal and institutional decoupling of monetary and economic policies had meaningful implications for the structure and features of European transnational solidarity. Such a decoupling and, more specifically, the appeal to rules to constrain national economic and monetary sovereignty, and to markets to enforce them in the last instance, entails the formation of a new grey area, peculiar to the Eurozone, between the domestic and international dimensions of the currency that rearranges the roles to be played by state and market in the European polity. The euro creates a negative space where Member states, by ratifying the European treaties, have renounced their prerogatives to issue money autonomously, to determine the exchange rate vis-à-vis partner countries sharing the currency, and to resort to money issuance in order to pay their sovereign obligations. Whereas social policies, critical for Member states' socio-political stability, remain national competence, these constraints define a peculiar monetary arrangement that constitutes the foundation of new structures of transnational solidarity.

The critical feature in this regard was the lack of a lender of last resort for sovereigns in EMU's original design, an absence that, at the time, was not perceived as a major problem. First, because prudential supervision, the administrative monitoring of financial sector activities in search of potential systemic risks, was a matter of national competence. Hence, national authorities were in charge of assessing and eventually addressing the risks for financial stability coming from solvency problems in the financial sector. If needed, liquidity assistance was provided by the ECB, but Member states were expected to conduct prudential supervision according to sound standards since they would be responsible of eventual bailouts. Second, and more importantly, because risks to financial stability coming from Member states' eventual defaults were allegedly neutralized by the EMU's constitutional design. Although the competence over defaulting on debt obligations was not conferred to the European level and consequently remained national, the political assumption underlying the whole design was that all sovereign debts expressed in euros would be always repaid. In other words, despite the lack of any formal or legally binding agreement, the default of a member of the Eurozone on its sovereign debt obligations was

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politically inconceivable. Finally, the combination of the structural principle of national responsibility over economic policies with constitutional theory's neglect of financial stability as an implicit dimension of solidarity were additional factors potentially contributing to obscuring the need for a lender of last resort.

Whatever the reasons may have been, by renouncing the privileges related to monetary issuance while excluding a backstop for the whole monetary system, Member states committed, although implicitly, to mobilize their own resources to guarantee full repayment of their sovereign debts. In the same way as in current monetary systems debtors must allocate resources or workforce to the payment of their obligations, in the framework of EMU Member states must gather money *before* spending it. Accordingly, by conferring the competence to issue euros to the extremely independent ECB, Member states became regular "money users" instead of privileged "money issuers".[53] This feature, presented in the positive as relying on, and even encouraging national responsibility, has a major impact on the budgetary and fiscal policies of Eurozone members, who are forced to depend exclusively on the revenue collected through taxes, complemented with borrowing from the markets, for the financing of national expenses.

The original design of EMU therefore ignored the close connection between money and solidarity in the two dimensions previously identified for the nation-state context. On the one hand, there was a mismatch between the scope of the new transnational currency and that of the solidarity mechanisms required to appease the social contestation of the inequality intrinsic to any monetary regime protective of creditors, that were only national. Moreover, those national welfare policies were subject to extreme pressure due to the budgetary constraints required to avoid excessive deficit and debt, and thus to stabilize the Eurozone economies. On the other hand, the absence of a lender of last resort deprived the new monetary system of the final anchor at the top of the system required to backstop the whole monetary regime in the event of Member states' insolvency, a risk for financial stability disregarded and allegedly neutralized through the combination of rules and, ultimately, the assignation of national responsibility. The upshot is that the establishment of the new transnational currency relied on national solidarity mechanisms, either in the form of social policies or

53 Pavlina R. Tcherneva, 'Money, Power and Distribution: Implications for Different Monetary Regimes' (2017) 5(3) Journal of Self-Governance and Management Economics 7.

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through the assumption of costs in case of sovereign debt insolvency. This design was put to the test through a number of crises that triggered the integrative force of money.

3.3. Post-crises Eurozone: New form of solidarity through conditionality

The nature and features of transnational solidarity in the current Eurozone are a direct consequence of the deep transformations that the financial, sovereign debt and pandemic crises provoked on the EMU. A concatenation of factors led to such transformations. Without being exhaustive, they are summed up in few ideas before detailing the actual configuration of transnational solidarity in the Eurozone.

3.3.1. The transformation of the Eurozone

The establishment of the euro encouraged financial services to engage in cross-border activities. Sovereign bonds from Eurozone countries were perceived as a safe investment, especially for banks from the exporting economies, which needed to recycle massive trade surpluses resulting from a more integrated market with a single currency. Within the Eurozone, deeper debt relations started to flourish across the public-private divide and regardless of borders. Accordingly, the exposure of Member states to private sector risks coming from the whole Eurozone increased exponentially, with dramatic consequences.

Against the political assumption that each Member state would honour its sovereign debt obligations at all costs, Eurozone leaders faced a dilemma in 2010 when Greek financial situation worsened to the point of insolvency. The subsequent tensions revealed to what extent EMU's design was still half-baked. Market pressure was unbearable, and abiding by the idea of full national responsibility would only increase the damage for the Greek economy and its people without addressing the actual problem. On the other hand, Greek default on its debt, eventually providing some relief to its economy, would also spread unexpected losses across financial institutions from the rest of the Eurozone, which would eventually demand public intervention from their respective Member states. Although defaulting was a sovereign decision formally corresponding exclusively to Greek authorities, the risk of contagion and its repercussions concerned all Eurozone economies and therefore their political leaders actively engaged in the

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discussions to prevent a Greek default or, at least, to minimize its consequences.

The outcome of those negotiations was a political compromise still placing national responsibility at the core of the system. However, to give relief to Greece and ease the pressure from the markets, national responsibility was complemented firstly with financial assistance provided either by Member states directly or by international institutions, secondly with unorthodox monetary policy measures, and only subsequently with partial defaults on Greek sovereign debt. This sequencing is relevant because it provoked changes in economic and political dynamics that transformed the relationship between Member states into confrontational debt relations and got locked up in the institutional system of the Eurozone, since then protective of creditors' interests *vis-à-vis* debtor Member states.[54]

Regarding financial assistance, prohibitions from the European treaties were circumvented by resorting to international agreements, that in the end established a permanent structure, the European Stability Mechanism (ESM), to support Eurozone members in distress without being fully integrated into the EU's institutional and legal system. On the monetary side, the inability to purchase sovereign bonds directly from Member States forced the ECB to buy those at market price in the secondary market. Purchasing bonds under those conditions diminished the impact of the help because in the end it mostly benefited investors on the brink of assuming losses in case of sovereign default. The upshot was that rather than alleviating the pressure from markets over Greek debt, those purchases only created concerns among the financial sector about how to qualify for them, without addressing uncertainties about the value of bonds still in the market. The costs of building the Eurozone without a lender of last resort started to become evident. Only when the possibility of unlimited bond purchases by the ECB was announced, on the grounds that the transmission mechanism of monetary policy was clogged in recipient countries, the pressure from markets eased. As soon as default was discarded value of bonds recovered. The possibility of purchasing bonds whenever similar circumstances occur has been since then institutionalized through the Transmission Protection Instrument (TPI) that is currently part of the ECB's toolkit.

54 Fernando Losada 'A Europe of Creditors and Debtors: Three Orders of Debt Relations in European Integration' (2020) 58(4) Journal of Common Market Studies 787, 795.

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However, and this is crucial, all these relief measures were then and are still nowadays inextricably subjected to strict conditionality. Both financial and liquidity assistance were to be implemented only in exchange for the recipient Member state's commitment to implement austere economic policies, pursuing a fiscal consolidation that in the medium or long term would guarantee debt repayment. Without the signature of a memorandum of understanding, a private contract between the recipient and its creditors detailing those conditions, no assistance would be granted. This is a critical aspect of the political agreement that had its institutional manifestation in the amendment of the economic governance of the Eurozone to introduce, through the European Semester, tighter control and recurrent monitoring over national budgets.

The reaction to the pandemic introduced a number of relevant novelties into EMU's design. The major concern was to support national economies to overcome the effects of such a specific crisis. Hence, rather than focusing on fiscal consolidation the goal was, in the very short term, to provide ample resources to support health systems and medicine research, as well as to guarantee employment, whereas in the medium term the objective was to boost economic recovery, promoting the Commission's agenda towards green and digital transformations. Major innovations were thus related to the provision of funds from the Union, which reached unprecedented levels through the 'Next Generation EU' program. Crucially, the founding for that program was arranged through the issuing of bonds by the Commission in the name of the Union. This exceptional decision allowed the Commission to borrow from the market to then lend again half of that money to the Member states, thus shielding them from country-specific assessments in the markets, and to spend as non-refundable subsidies the other half.[55] The implementation of that program was articulated through the European Semester, now equipped with economic incentives to complement its fiscal monitoring and budgetary auditing tasks. The Commission and the Eurogroup, the main actors in this political process, have thus gained great influence over national economic policy-making.

55 Bruno de Witte, 'The European Union's Covid-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift' (2021) 58(3) Common Market Law Review 635.

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3.3.2. Transnational solidarity in European monetary integration

After mapping the transformation of European monetary integration, we are in a position to address the analysis of solidarity in this particular transnational context, where due to the specifics of the institutional design its workings are rather convoluted. The first manifestation of solidarity, key for remedying the inequalities intrinsic to monetary systems protective of creditors, guarantees socio-political stability through the provision of social policies. In the Union this is a matter of national competence, and therefore the impact of the euro on this first dimension of solidarity may seem negligible. However, rules on economic governance constrain to a great extent the ability of Member states to provide services and guarantee social rights, due to the subjection of national policies to clear fiscal limits. Moreover, in case of financial distress stricter rules towards fiscal consolidation and enhanced supervision of national budgets are applicable, reducing even more the fiscal space available to fund those policies properly. Although it could be argued that the Next Generation EU program could remedy this situation, its financial support focusses on productive investments conducive to the transformation of the economy and not on policies appeasing social needs. Consequently, within the EMU social policies became a dependent variable subordinated to the needs of the monetary system.[56]

The second dimension of solidarity guarantees the provision of liquidity through a lender of last resort, a critical function in any monetary regime oriented towards the structural protection of creditors. In the EMU, the detachment of monetary policy from the rest of economic policies, articulated through a strict division of competences between the European and national levels, resulted in the artificial split of the tasks related to the promotion of financial stability. According to this design, in the private sector liquidity issues would be addressed through the ECB as highest monetary authority, whereas problems of solvency are the competence of national authorities (including eventual bailouts) on the basis of Member states' responsibility over all financial matters. Meanwhile, no lender of last resort was foreseen for Member states, which had to address solvency issues exclusively through default on their sovereign debt obligations. Moreover, within EMU's original framework, Member states' exclusive dependence on markets may easily transform liquidity issues into solvency problems.

56 Francesco Costamagna, 'National Social Spaces as Adjustment Variables in the EMU: A Critical Legal Appraisal' (2018) 24(2–3) European Law Journal 163.

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Hence, by design it was critical that, as mere currency users, Member states took especial care of their fiscal policies.

The division of tasks among European and national levels goes against the very idea of a lender of last resort, which unifies in a single figure the ultimate authority of the monetary system. The renunciation to such an authority for the euro was nevertheless a merely voluntaristic decision because this is an intrinsic feature to all monetary systems that will eventually emerge whenever pressing circumstances, no matter how unexpected, take place. In the case of the Union, the financial and sovereign debt crises worked as the trigger, forcing European institutions to take responsibilities corresponding to a lender of last resort and to address with their own limited means financial stability concerns. Financial stability thus became an overriding political objective mobilizing the whole apparatus of the Union.[57]

Aim of solidarity	*Socio-political stability*	Financial stability (for private sector actors)	Financial stability (for public, not sovereign actors)
Level of intervention	*National*	European	European
Provision of	*Public support – to guarantee ultimate repayment of debts through work*	Liquidity – to guarantee the value of property	Financial assistance – to guarantee sovereign debt repayment
Institutionalized practice	*Public policies (welfare state)*	ECB – liquidity provision	ESM and European Semester
Debtors addressed	*All members of the polity*	Owners of certain assets	Member states
Resources available	*Limited*	Potentially infinite	Borrowed from markets through intermediate institutions
Intervention	*Permanent*	Permanent	Continued until full repayment

TABLE 2 – Articulations of solidarity in the Eurozone

57 Klaus Tuori and Fernando Losada, 'The Emergence of the New Over-Riding Objective of Financial Stability', in Maribel González Pascual and Aida Torres Pérez (eds), *Social Rights and the European Monetary Union: Challenges Ahead* (Edward Elgar 2022).

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Importantly for our purposes, the decoupling on the functions of a lender of last resort resulted in the addition of a third dimension to the workings of solidarity in the Eurozone (see Table 2). This new stream of solidarity results from the specific institutionalization in the Eurozone of the principle of creditor protection *vis-à-vis* Member states, which ceased to have the status of privileged creditors and instead simply operate in their capacity as regular debtors. In this spin-off of the protection of financial stability, solidarity is manifested through the provision of financial assistance to Member states, conditioned to making progress towards fiscal consolidation to guarantee in the end full debt repayment. New elements were added to the institutional framework with this goal in mind. Hence, the establishment of the ESM and the revamping of the process for the coordination of national economic policies, the European Semester. Moreover, the effects of the turn towards the protection of Member states' creditors had a noticeable impact on the legal domain. On the one hand, because the latest layering in the institutional setting, despite deriving from European monetary integration, remained beyond the scrutiny of EU law: the ESM is an international organization independent from the European treaties, and the European Semester monitors actual national competences and its main actor, the Eurogroup, only has an informal status.[58] But on the other hand, because without a lender of last resort financial stability had to be addressed by other means, and due to the existential character of the issues at stake the legal order had to be reinterpreted towards creditor protection. Just like social policies became a dependent variable of EMU, the whole legal order was also subordinated to EMU objectives and, in particular, to financial stability concerns.[59]

4. Conclusions

Money has an intimate but generally neglected connection with solidarity, to the point that monetary arrangements determining the balance between the interests of debtors and creditors in society are the actual foundation of social inequalities placed at the core of the concept of solidarity. In the con-

58 Case C-597/18 P *Council v K. Chrysostomides & Co. and Others* ECLI:EU:C:2020:1028 (ECJ, 16 December 2020).

59 Fernando Losada and Klaus Tuori, 'Integrating Macroeconomics into the EU Legal Order: The Role of Financial Stability in Post-Crisis Europe' (2022) 6(3) European Papers: A Journal of Law and Integration 1367.

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text of the nation-state, monetary arrangements result in the articulation of solidarity through a combination of welfare policies that appease social discontent for the lack of debt reliefs, and consequently for the need to work to pay debts, with a lender of last resort that protects creditors in case of debtor insolvency. In the context of European integration, the common currency added a new layer built on top of these foundations and, due to the content of the political agreement on the EMU, transnational solidarity works in a more convoluted way.

When establishing the euro, Member states wanted to emphasize the market side of the currency, a major step in the culmination of the single market, while limiting its state side to avoid transferring sovereign features of the currency to the European level. Financial stability tasks were therefore divided regarding private actors (ECB providing liquidity, Member states addressing solvency issues), and a lender of last resort for Member states was straightforwardly ruled out. Accordingly, the original design of the euro conceived national authorities as still placed at the apex of their respective national monetary systems, the ECB only providing liquidity assistance at lower levels in the monetary hierarchy. The different crises experienced by the Eurozone turned upside down this monetary design, placing the ECB at the apex of the system. It now plays the role of lender of last resort for Member states, but is constrained by structural limitations: financial or liquidity assistance provided, respectively, through the ESM or the ECB via its TPI program, must be subjected to strict conditionality. This requirement transfers responsibilities over financial stability and conditionality-related functions to other institutions and, importantly, through the reviewing of their actions, to the Court of Justice of the EU and, through the latter's interpretation of legal provisions, to the EU legal order. Financial stability concerns are thus the driving force in European integration.

Transnational solidarity in this context is thus fragmented: social policies are constrained by the specific needs of the monetary design, whereas responsibility over financial stability is scattered among the institutional setting, depending on the type of debtor in distress. Under these conditions, the need for effective solidarity may only increase. However, the structural features of European monetary integration point towards the opposite direction. By renouncing their money issuing abilities Member states placed themselves, as regular debtors, in a subordinated position *vis-à-vis* their creditors. Consequently, the balance between states and markets is currently tilting towards empowering the latter. Despite attempts to constrain

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finance through new regulation, only a major crisis like the pandemic one may lead to major structural changes opening a window of opportunity for reconsidering systemic choices and rebalancing the scale, at least slightly, towards the debtor side.

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