The Legal Case for a Central Bank Labour Mandate*

Jonathan Benchimol[1] and Samuel Dahan[2]

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Abstract

A consensus has emerged among economists that central banks cannot ignore employment and how monetary policies affect workers and employers. However, there is no agreement on the extent to which labour issues should be incorporated into operational frameworks or whether central banks should support structural reforms. In fact, more than 80% of the world's central banks have no explicit employment objective. That said, given that labour issues can directly cause macroeconomic imbalances, many central banks, even those without explicit dual objectives, have incorporated labour indicators into their core policy frameworks. We assess the implicit mandate of the Bank of Canada and the European Central Bank, which, unlike the Federal Reserve, do not have an express labour mandate. To scrutinize modern central banking practices, we investigate the historical, legal, and extra-statutory data with regard to the primary objectives of central banks and how they interact with secondary objectives in practice. Our analysis shows that both the Global Financial Crisis and the recession triggered by COVID-19 have had tremendous impacts on the workforce, requiring immediate action and eventually changing the policy environment in which central banks operate. However, while neither the Bank of Canada nor the European Central Bank have an explicit dual mandate, the latter has been much more aggressive in pursuing labour objectives. We discuss the legality of this mandate transformation in light of the Bank of Canada Act and the European Union Treaty. Finally, we make a legal case for a more human-developmental approach to central banking, one that involves greater social and labour dimensions.

Keywords: central bank law, central bank objectives, price stability, labour market.

JEL Classification: E58, K23.

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[1] Bank of Israel, Research Department.

[2] Queen's Law, Cornell Law, Conflict Analytics Lab, and Deel Lab for Global Employment.

Introduction

Central banks play a key role in regional economic integration. Both the Global Financial Crisis (GFC) and the recession triggered by the COVID-19 pandemic have illustrated this well. As the financial shock of the COVID-19 pandemic reaffirmed, central banks are the “first responders” when it comes to economic policy, including labour and employment. This raises important questions for workers, employers, and, incidentally, labour and constitutional lawyers. Can central banks encroach on governments’ prerogative to go beyond their strict price stability mandates and advocate structural reforms? If so, the question arises as to how central banks might reach objectives such as “aiming at full employment” and whether such secondary objectives interact with the primary objective of price stability.

While addressing these questions, we will focus on the labour law dimension. We will refer to the economic issues pertaining to the matter of dual mandate – targeting both inflation and employment – to assess its labour law implications. However, we will not engage in the intricacies of the economic issues.

A consensus has emerged that central banks cannot ignore employment indicators and how their policies affect workers and employers.[3] However, there is no agreement on the extent to which labour issues should be incorporated into operational frameworks, or even whether central banks should play a role in promoting structural reforms.[4]

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[3] Tiff Macklem, ‘Our monetary policy framework: Continuity, clarity and commitment' (Bank of Canada, 15 December 2021) <https://www.bankofcanada.ca/2021/12/monetary-policy-framework-continuity-clarity-and-commitment/> accessed 5 January 2023; Claus Brand and others, ‘Employment and the Conduct of Monetary Policy in the Euro Area’ (2021) Occasional Paper Series 275, European Central Bank <https://www.ecb.europa.eu//pub/pdf/scpops/ecb.op275~e76a79539d.en.pdf> accessed 05 January 2023; Irving Fisher Committee, ‘Indicators to support monetary and financial stability analysis: data sources and statistical methodologies,’ IFC Bulletins (Bank for International Settlements 2015); Dr. Econ, 'What labor market indicators do the FOMC members look at when making their decision?' (Economic Education Group, Federal Reserve Bank of San Francisco, October 2013) <https://www.frbsf.org/education/publications/doctor-econ/2013/october/labor-market-indicators-monetary-policy-unemployment-rate/> accessed 5 January 2023;

[4] Keeping inflation low and stable, and controlling the financial system's stability, should contribute to solving most labor issues. In addition, only one central bank in the OECD, the Bank of Israel, is mandated to advise the government and research and recommend structural reforms.

Historically, the role of central banks has evolved considerably, and shifts have often occurred in response to economic shocks. For instance, both the GFC and the subsequent Eurozone crisis triggered a series of changes in the broader mandates and governance of central banks. The GFC, and now the COVID-19 crisis, have both had tremendous impacts on the workforce, requiring immediate action and once again changing the policy environment in which central banks operate.[5]

How far central banks can go in supporting labour policies very much depends on their legal mandate. Currently, more than 80% of the world's central banks have no employment goal.[6] According to the IMF Legislation Database,[7] most central banks do not have an explicit employment mandate. Exceptions include the US Federal Reserve (the Fed) and now the Federal Reserve of New Zealand, which have explicitly adopted dual mandates.[8]

That being said, given that labour issues can directly cause macroeconomic imbalances, many central banks, even those without explicit dual objectives, have incorporated labour indicators into their core policy implementation frameworks. We note that both the European Central Bank (ECB) and the Bank of Canada (BoC), which do not have express labour objectives, have incorporated labour dimensions into their mandates in order to efficiently and successfully safeguard macro-financial stability.[9] We also show

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[5] Bill English and others, Monetary Policy and Central Banking in the Covid Era (CEPR Press 2021).
[6] Adam S. Posen, 'Central bankers need to overhaul outdated thinking on labor markets' (Nikkei Asia, 3 September 2020) <https://asia.nikkei.com/Opinion/Central-bankers-need-to-overhaul-outdated-thinking-on-labor-markets> accessed 5 January 2023.
[7] IMF, 'IMF Updates Central Bank Legislation Database' (IMF News, 16 August 2016) <https://www.imf.org/en/News/Articles/2016/08/15/NA081516-IMF-updates-central-bank-legislation-database> accessed 5 January 2023.
[8] IMF Central Bank Legislation Database (Section 2.02, Objectives of the Central Bank, April 2022 version).
[9] Samuel Dahan and others, 'Whatever It Takes? Regarding the OMT Ruling of the German Federal Constitutional Court' (2015) 18 Journal of International Economic Law 137; Rosa María Lastra and Kern Alexander, 'The ECB Mandate: Perspectives on Sustainability and Solidarity' (2020) Monetary Dialogue Papers, European Parliament, Committee on Economic and Monetary Affairs <https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/648813/IPOL_IDA(2020)648813_EN.pdf> accessed 05 January 2023; René Smits, The European Central Bank's Pandemic Bazooka: Mandate Fulfilment in Extraordinary Times. in Dolores Utrilla and Anjum Shabbir (eds), EU Law in Times of Pandemic: The EU's Legal Response to the COVID-19 Crisis (EU Law Live Press 2021); Marc Lavoie and Mario Seccareccia, 'Going beyond the Inflation-Targeting Mantra: A Dual Mandate', Choosing the right target: Real options for the Bank of Canada's mandate renewal, a conference held by the Max Bell School of Public Policy, Mc Gill University, Montreal (2020).

that crises – for instance, both the GFC and the COVID-19 pandemic – seem to create learning opportunities, especially for the ECB, to engage in mandate expansion.[10]

This analysis will thus highlight that central banking activities depend in practice not only on a formal mandate but also on its interpretation. This research seeks to contribute to the understanding of how labour policy issues relate to the operational frameworks of monetary authorities. In particular, we look at the implicit labour mandates of the BoC and the ECB.

To this end, we conduct an empirical assessment of the implicit mandate of the BoC and the ECB, which, unlike the Fed, do not have an express labour mandate. Both the BoC and the ECB constitute relevant case studies, as they have undertaken different approaches to labour objectives. The ECB has a unique legal and regional framework that makes it relevant for economists and lawyers interested in central banking. While the ECB has, in principle, a rigid legal mandate narrowly focused on price stability, it has implemented bold programs with a significant impact on labour markets. The BoC, in the meantime, has a flexible legal mandate in principle, but has taken a more modest approach regarding labour objectives.

To investigate the relevant modern central banking practices, we analyze the historical, legal, and extra-statutory data with regard to central banks' primary objectives and how they interact with secondary objectives in practice. Our analysis shows that while neither the BoC nor the ECB has an explicit dual mandate, the latter has been much more aggressive in pursuing a labour mandate.

We then discuss the legality of this mandate transformation, particularly in light of the Bank of Canada Act and the European Union Treaty. Our findings show that while the ECB's expansionary mandate has triggered a crisis in European Union (EU) law, the Court of Justice of the EU (CJEU) found that the ECB has not violated its mandate. As for the more modest approach of the BoC, it has not raised legal issues vis-à-vis the

[10] Lastra and Alexander (n 9); Dahan, Fuchs and Layus (n 9).

Bank of Canada Act; and should the BoC decide to adopt a dual mandate, it would appear to be within the broad legal mandate defined by the Act. Finally, we explore a revised version of the dual mandate, one in which labour policy is not relegated to a secondary priority.

The paper is organised as follows. In Section I, we explore the theoretical legal foundations of central banking law and practice. In Section II, we explore the role of labour policy within modern macroeconomics theory. In Section III, we empirically investigate central banking practices and their legality in light of EU law and the Bank of Canada Act. Finally, in Section IV, we make a legal case for a labour mandate, one that does not relegate labour policy to a subsidiary role.

I. A Brief History of Central Bank Mandates

Central banks' tasks and goals should be consistent with economic science, but at the same time, they must be constrained by their legal mandates —the Bank of Canada Act in the case of the BoC, and the Lisbon Treaty in the case of the ECB. The aim of this section is to reconstruct the normative concepts upon which central banks' mandates have been shaped in the modern context of regional and economic integration.

1. The Origins of Central Banking

Originally, the *raison d'être* of the first central banks – the Sveriges Riksbank (1668) and the Bank of England (1694) – was to address financial instability. In the case of Sweden, it was a response to the failure of the first European private bank to print banknotes, Stockholms Banco. While Sweden had the first central bank, key innovations emerged from the Bank of England, innovations that form part of the framework of modern central banking as we know it.[11] One of those major innovations was crisis lending. The

[11] See more in-depth discussion on the origins of central baking, Stephen D. Williamson, 'The Role of Central Banks' [2020] 46(2) Canadian Public Policy 198-213.

Bank of England developed the concept of central banks as “lenders of last resort” during panic episodes.[12] By the late nineteenth century, the Bank of England had three features that are shared by most modern central banks today. First, the central bank was a monopoly supplier of physical currency, a principal means of retail payment; second, the central bank was a principal lender to the government; and third, the central bank served as a lender of last resort for individual banks in temporary distress.

However, central banks’ objectives have changed over time.[13] The Fed was founded in 1913 in response to damaging banking crises, and it was entrusted with powers to act as lender of last resort[14] and to supervise banks. Unlike with the Bank of England, lending to the federal government—or to governments at the state or local levels, for that matter—was not initially seen as part of the Fed’s role. Also, the history of the Fed reflects fluctuations in US economic development. During the Great Depression and its aftermath, the emphasis was on growth and employment, not on controlling inflation (similar to the GFC). However, during the oil shock of the 1970s, price stability became a primary concern. This new rationale marked the end of the post-war era in which governments tried to buy growth by encouraging inflation – a phenomenon known as the Phillips Curve.[15]

The main rationale for the creation of the Bundesbank in Germany in 1957 was price stability, a mandate that the ECB inherited in 1999. The thinking behind setting price stability as a primary goal for monetary policy is that stable prices are a prerequisite for longer-term economic prosperity.

[12] Henry Thornton, An Enquiry into the Nature and Effects of the Paper Credit of Great Britain (George Allen and Unwin 1802); Walter Bagehot, Lombard Street: A Description of the Money Market (Henry S King 1873).

[13] Rosa María Lastra, International Financial and Monetary Law (Second Edition, Oxford University Press 2015) Chapters 5 and 7

[14] For instance, the discount window, the Fed’s lending facility to support commercial banks manage short-term liquidity needs.

[15] The inverse relationship between the rate of inflation and unemployment. The latter being inversely related to growth, inflation and growth are usually correlated. See Alban William Phillips, 'The Relation Between Unemployment and the Rate of Change of Money Wage Rates in the United Kingdom, 1861–1957' [1958] 25(100) Economica 283-299.

As for Canada, the driving force behind the creation of its central bank was quite different from the forces that motivated the framers of the Federal Reserve Act in the US.[16] There was no widespread view that the Canadian monetary system was unstable or inefficient, which was very much the case in the US.[17] Yet the *Report of the Royal Commission on Banking and Currency* claimed that Canada needed to establish a central bank for the following reasons.[18] First, while Canada was a stable economy, there was concern about the importation of financial instability. Second, a public financial institution was needed to ensure optimal macroeconomic management (as agreed at the time). Third, central banking became common practice abroad and especially in the Commonwealth. Finally, having a central bank was necessary to participate in international financial coordination, a precursor to modern economic integration projects.

2. Asymmetric-Monetarist Framework

Before examining the evolution of central banking and its legal implications, we discuss the theoretical framework underlying central banks' legal mandates in the modern context of regional integration. In addition, we will look at the legal framework of the ECB and the BoC insofar as they both constitute key drivers of regional integration.

Most integration projects, including the North American Free Trade Agreement (NAFTA) and the European Economic and Monetary Union (EMU), are multi-layered processes that combine both social and economic aspects. We argue that price stability in such undertakings has often been (and still is) seen by many as a precondition to growth, whereas the social and labour dimensions have been relegated to secondary priorities.[19] While integration projects were originally conceived as open projects

[16] United States. 1913. Federal Reserve Act, 12 U.S.C. 221 et seq. 1913.
[17] Williamson (n 9) 201.
[18] Government Canada. 'Report of the Royal Commission on Banking and Currency in Canada/Lord Macmillan, Chairman' (1933). Ottawa: Privy Council Office of Canada.
[19] Samuel Dahan, '(Re-)Designing institutions for EMU wage setting: Strengthened coordination between Monetary and Economic Institutions' [2017] 8(4) European Labour Law Journal 281–305; Samuel Dahan, 'A Path-Dependent

capable of achieving non-economic objectives such as social welfare, they have also taken place within a particular economic framework.

In particular, most central banks, including the BoC and the ECB, are governed under an asymmetric macroeconomic framework, according to which political authorities pursue growth and employment directly through fiscal and other instruments of economic policy. At the same time, price stability and monetary policy are delegated to the independent central banks.

There is no grand theory that encompasses the NAFTA and EU integration projects, but over recent decades their legal economic framework – especially the EMU – has been influenced by two underlying paradigms. On the one hand, neoliberalism,[20] and its European-Germanic variant ordoliberalism, argue that "markets always perform optimally" and that public policy and law disturb "well-functioning markets".[21] On the other hand, the Keynesian approach, which was the dominant approach in the post-war era, argues that markets do not always work well, nor do they self-correct.[22]

One of the problems that Keynes recognised in the crisis of the 1930s was that wages could be too flexible. When wages fall, individual and household incomes also fall, along with consumer demand. Imposing more wage flexibility can then exacerbate the underlying problem of lack of aggregate demand. Accordingly, the Keynesian model assigns a primary function to fiscal policy, which is supposed to expand aggregate demand through tax cuts and deficit-financed expenditures in times of recession. Monetary policy plays only an accommodating role, namely the financing of

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Deadlock: Institutional Causes of the Euro Crisis' [2016] 14(2) Cornell International Law Journal 309–367 Go back and edit info

[20] The term 'neoliberalism' was originally coined in 1938 by the German scholar Alexander Rüstow at the Colloque Walter Lippmann. The concept draws on different schools of thought (the Freiburg school, the Austrian school, the Chicago school of economics, and Lippmann's realism). See Philip Mirowski and Dieter Plehwe, The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective, With a New Preface (Harvard University Press 2015).

[21] Ronald Schettkat, 'Will only an earthquake shake up economics?' [2010] 149(2) International Labour Review 185-207.

[22] John Maynard Keynes, The General Theory of Employment, Interest and Money (Palgrave Macmillan 1936).

expansionary policy at low interest rates to prevent domestic demand collapse during fiscal retrenchment.

This model fell apart during the "Great Inflation" of the 1970s.[23] Specifically, the oil crisis of the 1970s collapsed the Bretton Woods systems and plunged the Keynesian compromise into a structural crisis. The Bretton Woods system of 1944, which comprised autonomous monetary policies, fixed exchange rates and increasing liberalisation of international trade, became increasingly inconsistent with the globalisation of financial markets and the spread of new technology.[24]

During this era of "Great Moderation," monetary policymakers seem to have discovered the sorcerer's stone of macroeconomic policy, notably with the development of the *income distribution* and *natural rate* theories.[25] According to the former, the market ensures that factors of production are paid what they are worth, obviating the need for institutions of social protection and trade unions. In practice, this has taken the form of deregulatory pressure on the labour market – albeit with a lower impact in Europe, where the Keynesian model of redistributive economic policy held sway at the Member State level.[26]

As for the natural rate hypothesis developed by Milton Friedman, monetarism's leading exponent, government intervention should be minimal, and the money supply (the total amount of money in an economy, in the form of coin, currency and bank deposits) is key to fighting the effects of inflation. It argues that excessive expansion of the money supply is inherently inflationary, and that monetary authorities should focus solely on

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[23] The European 'Great Inflation' of the 1970s was a period characterised by 'stagflation' – the simultaneous rise of inflation and unemployment.

[24] The flow of capital in circulation 'became simply too high to continue to coexist with a regime of fixed exchange rates and monetary sovereignty'. See Kathleen R. McNamara, 'Consensus and Constraint: Ideas and Capital Mobility in European Monetary Integration' [1999] 37(3) Journal of Common Market Studies 455-476; also, for more details on the decline of Keynesianism, see Thomas I. Palley, From Keynesianism to Neoliberalism: Shifting Paradigms in Economics (Pluto Press 2005).

[25] From the mid-1980s to the GFC, macroeconomic volatility declined substantially across the US and many advanced economies, becoming known and documented as the Great Moderation. See also Ben S. Bernanke, Fed Governor, 'The Great Moderation' (Speech at the Eastern Economic Association, Washington, DC, February 20, 2004) <https://www.federalreserve.gov/boarddocs/speeches/2004/20040220/> accessed 5 January 2023.

[26] Simon Deakin, The Lisbon Treaty, the Viking and Laval Judgments and the Financial Crisis. in Bruun and others (eds), The Lisbon Treaty and Social Europe (Hart Publishing 2012).

maintaining price stability.[27] In the 1980s, policymakers sought to follow strict Chicago School monetarist prescriptions and abandoned Keynesian interest-rate fine-tuning in favour of money-supply targeting. Monetarists rejected the idea that restrictive macroeconomic policies were the cause of unemployment, focusing instead on the role of market institutions.[28] In parallel, unemployment in Europe persisted at high levels after each recession without returning to pre-recession so-called equilibrium.

These economists claimed that generous unemployment benefits, aggressive unions, strict employment protection laws, and a more compressed wage structure were among the causes of dysfunctional labour markets. At the same time, structural reforms were introduced: unemployment benefits were reduced, eligibility became stricter, union power declined, and employment laws were relaxed in many countries. However, there was little or no evidence that these institutional changes led to a lowering of "natural" unemployment rates.[29] Yet, despite ever-increasing "natural employment" rates, the view of the labour market that considers unemployment as arising from the supply side of the economy, rather than resulting from (Keynesian) deficient demand, has influenced the legal design of NAFTA and the EMU.[30] This rigorous vision may have constrained central banks to an inflexible price stability mandate.[31]

The EMU founders have embraced this logic. The argument underlying this legal framework is that a stable value of the currency among participant countries would remove the basic uncertainty hindering the deepening of a single market. It was expected by the drafter of the Maastricht Treaty that transaction costs would simultaneously be reduced, enhancing both external trade between Member States and

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[27] Milton Friedman and Anna J. Schwartz, A Monetary History of the United States, 1867-1960 (Princeton University Press 1971).
[28] Robert M. Solow, Broadening the discussion of macroeconomic policy. in Ronald Schettkat and Jochem Langkau (eds), Economic Policy Proposals for Germany and Europe (Routledge 2008).
[29] Schettkat (n 21).
[30] See, e.g., Céline Carrère and others, 'Trade and Frictional Unemployment in the Global Economy' [2020] 18(6) Journal of the European Economic Association 2869–2921.
[31] Jean-Claude Trichet, ECB President, 'Supply side economics and monetary policy' (Speech at the Institut der Deutschen Wirtschaft, Kőln, 22 June 2004) <https://www.ecb.europa.eu/press/key/date/2004/html/sp040622_1.en.html> accessed 5 January 2023.

the profitability of firms. It was also a commonly held view that investors sought low inflation[32], as well as preservation of the value of the currencies in which bonds were denominated.[33] To this end, monetary policy had to be entirely removed from the political process.[34] This involved the establishment of independent central banks that could pursue a low-inflation target, with rules to prohibit government deficits through debt monetisation and encourage fiscal prudence.[35]

In the case of Canada, the BoC is constrained by the Bank of Canada Act,[36] which seems to offer a much broader mandate to maximize aggregate economic welfare by mitigating aggregate fluctuations and stabilizing prices. Interestingly, the act offers no specifics as to how the bank should go about achieving this broad objective. In line with the ECB, central bankers in Canada (and the US) seemed to be in agreement that inflation should be brought down. However, the BoC's approach to reducing inflation is different from the US monetarist experiments under Volcker.[37] The BoC, along with other central bankers, was discouraged by the monetarist framework and decided to simply target inflation directly, rather than relying on some intermediate variable such as money growth. Inflation targeting was first implemented in New Zealand in 1989, and Canada followed suit in 1991.[38] The BoC inflation targeting regime has remained essentially unchanged since 1991. The BoC targets headline CPI inflation at 2% per year, in a range of 1% to 3%.[39]

Accordingly, it is currently difficult to find elements of monetarism in central bank communications in Canada and elsewhere. However, monetarism has had long-lasting

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32According to neoclassical economists, high inflation has a negative impact on growth rates.
33 Hence the term 'sound money'.
34 Alberto Alesina and Roberta Gatti, 'Independent Central Banks: Low Inflation at No Cost?' [1995] 85(2) American Economic Review 196-200.
35 Monetarisation involves the purchase of government debt by the central bank, which in turn increases the money supply.
36 Canada. 1985. Bank of Canada Act. RSC 1985, c B-2.
37 Stephen D. Williamson, 'Neo-Fisherism and inflation control' [2019] 52(3) Canadian Journal of Economics 882-913.
38 Stephen D. Williamson, 'The Role of Central Banks' [2020] 46(2) Canadian Public Policy 198-213.
39 It does not announce a specific legal rule, but press conferences are given by the Governor and Senior Deputy Governor after four of the Governing Council's eight meetings to explain its decisions.

effects on central banking practice, including the fact that price stability is sometimes the central banks' only job.[40]

3. Contested Employment Objectives

A general consensus suggests that central banks cannot ignore unemployment rates and the state of the labour markets.[41] However, there is no agreement on the extent to which central banks should play a role in supporting broad macroeconomic policy, including labour and employment policies.[42] Only the Fed[43] – and, more recently, the Reserve Bank of New Zealand[44] – have formally adopted a dual mandate of maximizing employment and achieving price stability. The US Congress established a dual mandate in the Employment Act of 1946 and the Full Employment and Balanced Growth Act of 1978. The Fed's dual mandate is typically characterized as specifying that the Fed pursue price stability and maximum employment.

As for the Eurozone and Canada, central bank regulation does not assign an explicit dual mandate to central banks. However, along with the price stability objective, central banking statutes have recognized some role for central banks in supporting macro-objectives in addition to price stability. For instance, Article 127 TFEU makes clear reference to Article 3 (paragraph 3) of the TEU that broadly defines the ESCB's secondary objectives to support the economic policies of the EU as follows:

"The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection

[40] This was not the consensus in the 1980s. James Tobin, 'Stabilization Policy Ten Years After' [1980] 11(1) Brookings Papers on Economic Activity 19-90.
[41] Dr. Econ (n 3); Tiff Macklem (n 3); Claus Brand and others (n 3).
[42] Samuel Dahan and others (n 9); David Archer, Roles and objectives of modern central banks. in Central bank governance group (ed), Issues in the Governance of Central Banks (Bank for International Settlements 2009).
[43] Williamson (n 38) 208.
[44] Rene Vollgraaff and others, 'The world's central banks are debating whether to change their strategies' (Bloomberg Professional Services, 9 August 2019) <https://www.bloomberg.com/professional/blog/worlds-central-banks-debating-whether-change-strategies/> accessed 5 January 2023.

and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced."

While price stability is an objective in EU law, the secondary objectives, including employment, rely on domestic fiscal and employment objectives subject to some mechanism of coordination at the EU level.[45] In addition, the ECB should "promote general economic policies" and "contribute to the objectives of the Union." These objectives, enshrined in Article 3.3 of the TEU, include in particular "sustainable growth", "full employment", and the "improvement of the quality of the environment."

Thus, EU law provisions suggest a "subsidiary" role for the ECB in supporting the broad general economic policies of the EU – also known as the ECB's "secondary objectives". Unlike the Fed, the Treaty does not include a dual mandate for the ECB insofar as labour and employment remain a national competence of member states. This makes it difficult to reconcile the pursuit of primary and secondary objectives. However, despite having a narrower focus on its primary mandate than its counterpart in the United States, the ECB considers price stability to be best achieved through broad macroeconomic stability.

As for the BoC, its founding statute – the *Bank of Canada Act* – states the following:

"WHEREAS it is desirable to establish a central bank in Canada to regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of

[45] There is evidence that these soft mechanisms of coordination may be effective in some cases. See Dahan S, 'The Legal Framework for New Economic Governance and Its Implications for Wage Policy Learning' (2014) 16 Cambridge Yearbook of European Legal Studies 39.

*production, trade, prices and **employment**, so far as may be possible within the scope of monetary action, and generally to promote the **economic** and financial welfare of Canada . . .”*[46]

We note here that similarly to the ECB, price stabilisation seems to be a broad official objective. However, the preamble seems to make the twin goals of employment and economic welfare equal. Accordingly, the document gives the BoC a broad mandate to maximize aggregate economic welfare by mitigating aggregate fluctuations and stabilizing prices, and does not specify how the BoC should proceed.

In fact, the BoC takes a unique democratic approach to refining its mandate on a regular basis – a notable difference from the ECB. Every five years, the Government of Canada undertakes a unique process of renewing the mandate of the BoC. However, we note that this renewal process is not a replacement for or an amendment to the Bank of Canada Act. The BoC’s mandate is not a piece of government legislation that is debated and adopted every five years by the Canadian parliament, as is the case with the federal budget annually.[47] There are no special missing goals or add-ons included through this renewal ritual. Such add-ons would require legislative intervention. At best, the mandate renewal is viewed as an attempt to prioritise one of a number of goals already to be found listed in the preamble to the Bank of Canada Act.[48] Against this background, we argue that, should there be a consensus on the validity of this approach, there is a legal basis for the establishment of a dual mandate.

II. Interconnections Between Macroeconomic and Labour Policies

Macroeconomic and labour policies continue to have a complex interrelationship. While interconnected, there is nevertheless an inherent tension between inflation objectives, long-term unemployment and real wage growth. For instance, central banks’ mandates are, in principle, solely concerned with price stability; but in fact, labour objectives have

[46] Government Canada (n 18).
[47] Marc Lavoie and Mario Seccareccia (n 9).
[48] Ibid.

crept in. However, there seems to be a trade-off between employment and inflation objectives, most often in favour of the latter. As we saw during the GFC and the Eurozone crisis, labour markets played a significant role in the build-up of macroeconomic imbalances in the Eurozone, and the ECB deployed market-lending conditions to encourage structural labour reforms in response to those imbalances.

1. A Changing Role for Labour

This emphasis on price stability needs to be understood in a historical context. When the inflation targeting system was established in the 1990s, the Monetarist theory about the natural rate of unemployment was still *en vogue*. Furthermore, central banks and governments entered into an anti-Keynesian era when fiscal policy was relegated to a marginal role and monetary policy was seen as the most powerful policy tool to achieve macroeconomic stabilisation. This model relied upon the pursuit of one objective, namely price stability, using one instrument, namely monetary policy. In the opinion of most central bankers, since monetary policy was essentially a single instrument, it could not simultaneously be assigned to more than one objective.[49] According to this view, there must be one tool for each policy goal, and when there are fewer tools than policy goals, some goals will not be achieved. For instance, a mechanical monetary policy rule targeting inflation would fail to achieve the objective of full employment and price stability simultaneously.[50]

However, this approach – as with most economic theories – had flaws. Indeed, a single-goal inflation-targeting system can deliver price stability, but at the cost of high long-term unemployment and a distribution of income that had become skewed against labour income even before the GFC.[51] In fact, single-focused inflation-targeting

[49] This is known as the Tinbergen Rule, named after Dutch economist and Nobel Laureate Jan Tinbergen, which states that for each and every policy target there must be at least one policy tool.
[50] Jan Tinbergen, 'The Influence of Productivity on Economic Welfare' [1952] 62(245) Economic Journal 68–86; Jan Tinbergen, 'On the Theory of Economic Policy' [1954] 36(3) Review of Economics and Statistics 344-345.
[51] See Najib Khan, 'Does Inflation Targeting Really Promote Economic Growth?' [2022] 34(3) Review of Political Economy 564-584; Undershooting the inflation target also involves large unemployment costs, see Lars E. O.

frameworks tend to condemn real wage growth to long-term stagnation or decline unless it is possible to pressure real wages to grow with productivity.[52] Accordingly, it is argued that there is an inherent bias against labour under the current inflation-targeting framework, which is still the dominant system for the ECB and the BoC.[53] Inflation-targeting may not ensure that real wages grow in line with productivity.[54]

Against this background, it is argued that central banks need a rebalanced framework of macroeconomic policy, with both fiscal and labour policy assuming a greater role in central banking practices. In particular, the issue of the dual mandate for central banks has once again become part of the contemporary discussion for economists. For instance, the Fed renewed its commitment to the dual mandate in the wake of the GFC. And in 2013, research by the Federal Reserve Bank of Boston claimed that in advanced countries, central banks with a dual mandate have better records on employment than single-mandate central banks, and equally good records on price stability.[55]

More recently, Federal Reserve Chair Jerome Powell has been more forthright than his predecessors regarding the importance of pursuing an employment goal as part of the central bank's operational objectives. While the law of the Fed has listed 'full employment' as one of its goals for more than half a century, the Fed leadership has tended to focus on the inflationary risks of overheating labour markets.[56] This approach views employment as a means to achieve price stability rather than an end in itself.

Whether this will lead the way for other central banks to broaden their employment mandates is beyond the scope of this chapter. What is certain is that there is a growing

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Svensson, 'The Possible Unemployment Cost of Average Inflation Below a Credible Target' [2015] 7(1) American Economic Journal: Macroeconomics 258-296.

[52] This phenomenon is not unique to North America. There is evidence of real wage decline in Germany and France, both leading Eurozone economies, after the introduction of the euro. Ibid; Nathalie Chusseau and Joël Hellier, 'Is the German Experience Applicable to France?' [2017] 2-3(211-212) Économie & Prévision 139-161. Ian Traynor, 'German Role in Steering Euro Crisis Could Lead to Disaster, Warns Expert' The Guardian (28 April 2013) <http://www.guardian.co.uk/world/2013/apr/28/german-role-euro-crisis-disaster> accessed 5 January 2023.

[53] Williamson (n 38) 378.

[54] Jacob Greenspon and others, 'Productivity and Pay in the United States and Canada ' [2021] 41 International Productivity Monitor 3-30.

[55] Eric S. Rosengren, 'Should Full Employment Be a Mandate for Central Banks? Remarks at the Federal Reserve Bank of Boston's 57th Economic Conference' [2014] 46(S2) Journal of Money, Credit and Banking 169-182.

[56] Posen (n 6).

number of economists and lawmakers, both in North America and in Europe, that advocate a greater role for central bankers. For instance, tying policy to labour force participation would give a more accurate assessment of inflation risks and distance to full employment than focusing on the unemployment rate.[57] In 2014, then-Federal Reserve Chair Janet Yellen spoke about looking at a multi-dimensional labour market dashboard to better determine labour market slack.[58] In the midst of the COVID-19 unemployment crisis, Canadian Senator Diane Bellemare argued that monetary policy could boost employment while simultaneously maintaining price stability.

In the context of the Eurozone, the ECB itself stated that it will, in addition to price stability, also evaluate how "other considerations, such as financial stability, *employment* and environmental sustainability, can be relevant in pursuing the ECB's mandate." Additionally, in its monetary policy strategy statement, the ECB reiterated that its policy is bound by the Treaty, and that while the primary objective of the ECB is to maintain price stability in the Eurozone, the Eurosystem will support its general economic policy objectives. These include "balanced economic growth, a highly competitive social market economy aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment."[59]

Along these lines, there is evidence suggesting that the GFC has unveiled institutional flaws in the EMU,[60] and that price stability is not sufficient to prevent external imbalances.[61] When objectives are complementary, the ECB can achieve other objectives

[57] Christopher J. Erceg and others, 'Some Implications of Uncertainty and Misperception for Monetary Policy' (2018) Finance and Economics Discussion Series 2018-059, Board of Governors of the Federal Reserve System.
[58] See also Janet L. Yellen, Fed Vice Chair, 'Challenges Confronting Monetary Policy' (Speech at the National Association for Business Economics Policy Conference, Washington, D.C., 4 March 2013) <https://www.federalreserve.gov/newsevents/speech/yellen20130302a.htm> accessed 5 January 2023.
[59] 'The ECB's monetary policy strategy statement' (European Central Bank, 2021) <https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_statement.en.htm> accessed 5 January 2023.
[60] Gary A. Dymski and Annina Kaltenbrunner, 'Financial oversight, the third flawed pillar of the European Union: the missing piece in the Arestis-Sawyer critique of EMU macropolicy design' [2021] 35(3-4) International Review of Applied Economics 371-388.
[61] Christophe Blot, Jérôme Creel, Paul Hubert, 'Setting New Priorities for the ECB's Mandate' (2020) Monetary Dialogue Papers, European Parliament, Committee on Economic and Monetary Affairs <https://op.europa.eu/en/publication-detail/-/publication/a57c8eb6-e1c2-11ea-ad25-01aa75ed71a1/language-en> accessed 5 January 2023.

while still maintaining price stability. That being said, there are arguments against assigning the ECB highly political tasks for which it cannot be held accountable.[62] In addition, recent ECB studies suggest that both objectives cannot be achieved together, so they are substitutable and generate a trade-off. When the ECB follows its objective of price stability, it can increase financial fragmentation by increasing the dispersion of interest rates on housing loans.[63]

This shift in mindset can be explained by the fact that the economic context has substantially changed since the creation of the ECB. The GFC, the subsequent Eurozone debt crisis, and now the exogenous shock of the COVID-19 pandemic have exposed an institutional flaw in the EMU: a centralised monetary policy framework combined with decentralized fiscal and labour policies. A consensus has emerged that keeping Eurozone inflation close to the 2% target may not be sufficient to promote convergence and prevent the build-up of imbalances, which resulted in a sovereign debt crisis.[64] Accordingly, the ECB has endorsed new responsibilities that go beyond its monetary policy mandate since 2012. While price stability has remained a primary goal, other major challenges have crept in, among them macroeconomic stabilisation, including wage inflation and income inequality.

This priority shift is exemplified by the 2015 speech of former ECB Governor Mario Draghi, when he stated that *"within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough"*.[65] In this speech, he announced that the ECB intended to play the role of lender of last resort for banks, but also for the sovereign market through the bond-buying programme known as Outright Monetary Transactions (OMT).[66]

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[62] Ibid.
[63] ibid 20.
[64] Dahan (n 19).
[65] Mario Draghi, ECB President, 'Verbatim of the remarks made by Mario Draghi' (Speech at the Global Investment Conference hosted by the British Business Embassy in London, 26 July 2012) <https://www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html> accessed 5 January 2023.
[66] Dahan, Fuchs and Layus (n 36).

With the OMT programme, the ECB declared itself ready to buy government bonds from Eurozone countries that had no more access to credit and were thus at risk of default. However, there would also be a formal element of conditionality, as the Member States in question would need to comply with its conditions (macroeconomic reforms negotiated at the time between the Member State and the so-called Troika: the Commission, the ECB, and the IMF). In fact, Draghi argued forcefully in favour of structural reforms, indicating that it is legitimate for the ECB to press governments to adopt increasingly ambitious reforms. This permitted the ECB to purchase – without limits but subject to certain conditions – bonds issued by Eurozone countries on secondary markets. Those conditions included EU-imposed structural reforms on Member States in exchange for financial assistance. [67]

The statement was applauded by the markets.[68] It was argued that such measures were necessary to safeguard financial stability and to ensure the transmission of monetary policy to all parts of the monetary union in order to be able to deliver price stability in the Eurozone. However, many – including the German Federal Constitutional Court (FCC) and many Eurozone members[69] – have seen this measure as an attempt by the ECB to expand its mandate by directly interfering with national social preferences. Many of the reforms suggested by the EU (and the ECB) amounted to changing the economic and social institutions underpinning a society and therefore involve choices that only an elected body should make. Additionally, structural reforms are caricatured as an implicit plea for a particular policy agenda involving the reduction of employee protections and cuts in welfare entitlements.

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[67] Conditionality in the EU is a novel legal concept that has found its way into the jurisprudence of the CJEU and the European Stability Mechanism Treaty (an intergovernmental agreement). It is a concept borrowed from the IMF. See Lastra, 2015, chapter 13. IMF conditionality is not a simple concept. There is hard conditionality and there is soft conditionality, and some facilities come with no conditionality.

[68] Simon Deakin, 'European Court's Pringle judgment: good law, bad economics' (Economists' Forum, Financial Times, 8 March 2013) <https://www.leceonline.org/en/european-courts-pringle-judgment-good-law-bad-economics-prof-simon-deakin-economists-forum-blog-financial-times-2013/> accessed 5 January 2023.

[69] Dahan, Fuchs and Layus (n 9).

2. Labour Objectives… but Within Reason

In Section I, we have established that central banking regulations in both Canada and the EMU offer a degree of discretion to central banks when it comes to addressing employment objectives. However, according to mainstream economics, employment is an acceptable objective only if it does not conflict with price stability objectives. This not problematic when there is a "divine coincidence" and all objectives can be served by the same policies; but what should central banks do if there is a trade-off between employment and price stability objectives, as seen in 2009 when many governments decided to implement harsh austerity measures in response to the GFC?

In the EU context, the trade-off was clearly to the detriment of labour insofar as the EU responses to the Eurozone crisis strongly encouraged the implementation of structural deregulatory reform, such as wage moderation. The objective was to address the issue of macroeconomic imbalances, support output growth and preserve price stability.[70] Along these lines, it was argued that the ECB would contribute to financial stability by keeping inflation low. This was the prevailing consensus before the GFC. The experiences of the GFC and the EMU crisis are, however, at odds with this conventional wisdom. The period before the GFC was in fact characterized by low and stable inflation, although the dispersion of real wages has been significant, leading to diverging growth path and diverging labour competitiveness. As argued elsewhere, this fed macroeconomic imbalances and ultimately led to the Eurozone crisis.[71] Further, many have argued that a lack of labour coordination at the EU level contributed to the build-up of macroeconomic imbalances.

With this in mind, many economists have challenged the mainstream view concerning what should be done in the context of a trade-off. While high inflation is certainly

[70] Dahan (n 45). See also Michael Kumhof and others, 'Wage Moderation in Crises: Policy Considerations and Applications to the Euro Area' (2015) IMF Staff Discussion Notes 2015/022, International Monetary Fund <https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2016/12/31/Wage-Moderation-in-Crises-Policy-Considerations-and-Applications-to-the-Euro-Area-43162> accessed 5 January 2023.

[71] Dahan (n 19). See also Erik Jones, Competitiveness and the European Financial Crisis. in James A. Caporaso and Martin Rhodes (eds), The Political and Economic Dynamics of the Eurozone Crisis (Oxford University Press 2016).

detrimental to economic growth in the long run, evidence seems to question the relevance of the Phillips curve.[72] In fact, global supply chain issues, including those caused by the COVID-19 pandemic, and international drivers of inflation, suggest that the link between inflation and output may have vanished, as would seem to be indicated by a simple correlation analysis.[73]

Also, during the Maastricht era, it was argued socioeconomic disparities would be adjusted in the longer term. However, as we have argued elsewhere,[74] instead of promoting convergence, the asymmetric design of the EMU exacerbated national divergences, which in turn became macroeconomic imbalances. One obvious solution to the crisis would therefore be to strengthen the EMU's social dimension.

The Canadian context is different, with the BoC having a pragmatic and somewhat flexible mandate. However, this flexibility also leaves important policy questions open to ad hoc revision. For instance, modest real wage growth, in line with productivity growth – a phenomenon that has not been seen in a while – need not generate inflationary pressures and thus does not call for action by the BoC. However, if labour markets are tight – as in the post-COVID context[75] – employees might try to catch up on some of the productivity gains they have missed out on for many years, putting a squeeze on profits. Employers would try to avoid this by raising prices. Whether they succeeded would largely depend on how competitive product markets are, but if they are not perfectly competitive, profit squeeze might generate some inflationary pressure. In any event, if the profit squeeze continues for long enough, employers would eventually have to pass on costs to consumers in order to maintain sustainable margins.

At each point, important policy decisions would be required. If pressures are strong enough to set off a spiral of accelerating inflation increases, the central bank would have

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[72] See, e.g., Olivier Coibion and Yuriy Gorodnichenko, 'Is the Phillips Curve Alive and Well after All? Inflation Expectations and the Missing Disinflation' [2015] 7(1) American Economic Journal: Macroeconomics 197-232; Marco Del Negro and others, 'What's up with the Phillips Curve' [2020] (Spring) Brookings Papers on Economic Activity 301-373.
[73] Blot and others (n 61).
[74] Dahan (n 19).
[75] Vacant jobs are plentiful and available workers are scarce.

to intervene in the interest of economic stability. In addition, assuming that inflation rates were simply higher but stable, not threatening an accelerating spiral, then the choice would become one between protecting the value of currency-denominated assets, and allowing real wage gains.

This could be accelerated, to the extent that asset prices were sustained by speculation on price rather than demand for asset returns. This would in turn reinforce instability, such that the BoC might be required to choose between the interests of labour and capital or between maintaining Canadian policy autonomy, and yielding to the pressures of global capital markets. These are perhaps choices that are inherently political rather than technocratic.

This raises an important question: should central banks be making these choices, or should they be specified in legislative mandates? Many legislators would prefer to avoid taking responsibility for these decisions; and while some central bankers are willing to step in to fill the gap, they would prefer not to be seen to be doing so. Thus, vague mandates may suit everyone’s purposes.

III. Central Banking in Action

This section discusses the gap between legal objectives and central banking practices. Central banking activities are driven by their formal mandate but also by its interpretation. Even when a dual mandate has been put into practice, as in the United States, central bankers appear disinclined to address the employment dimension of the mandate explicitly, although public statements by the Fed typically speak to the dual mandate in some fashion. This section presents whether the ECB and the BoC, which do not have explicit or implicit dual objectives, have incorporated labour and employment-related issues into their core policy implementation frameworks (or at least into their communications). Against this backdrop, we will examine legal considerations related to the changing mandates of the ECB and the BoC. We will also touch on the legitimacy concerns raised by this "moving-target" model and the lack of clarity in the law.

1. The Implicit Dual Mandate of the Bank of Canada

It has been argued that the BoC should follow the path of central bank leaders such as the Fed and the Reserve Bank of New Zealand, which have created formal monetary policy committees and enshrined the dual mandate (price stability and full employment) into their law and policy targets. In fact, some consider the dual mandate an important improvement in transparency regarding monetary policy objectives.[76] However, the important question for us is not whether the BoC should include labour objectives; rather, the question is whether the BoC has done so implicitly, and what the attendant legal implications may be.

The BoC's early years – from the Great Depression to the 1990s – show that governors and various members of the governing council of the BoC were guided by the multi-goal commitment in the preamble to the *Bank of Canada Act*, 1934, (c. B-2, Preamble). For over 50 years, the BoC has shown a degree of flexibility in including a multi-goal mandate. However, in the mid-1970s the BoC moved from the multi-faceted mandate reflected in the 1934 legislation to a narrow mandate focused on inflation. At the time, there was no official mandate. It was understood that the preamble of the act had given all the flexibility to the monetary authority to adjust its mandate to macroeconomic conditions.[77] It is clear that by the mid-1970s, price stability had become a pre-eminent objective.[78]

However, the monetarist debacle of the 1980s marks a shift in the BoC's thinking. The money supply had not been seen as a monetary policy instrument for long. Instead, the administered rate – the overnight rate – became the main monetary policy tool used to

[76] Asya Kostanyan and Douglas Laxton, *Time to Change the Bank of Canada's Mandate* (London School of Economics and Political Science, Institute of Global Affairs 2020).
[77] Lavoie and Seccareccia (n 9) 8.
[78] Unlike the ECB, we note that this choice was driven by pragmatic and conjectural reasons (see, ibid.).

achieve the inflation target. This new inflation-targeting model remained loyal to the old monetarist ideology: central banks should control inflation, but real variables such as employment – although enshrined in the Bank of Canada Act – should remain a secondary priority.

However, both the GFC and the COVID-19 crisis challenged the conventional wisdom that the economy converges towards a natural rate or unique equilibrium. Evidence from before the GFC already shows a relatively steady rate of inflation associated with significant fluctuations in the unemployment rates together with flat or declining real wages. With only a few exceptions – in 2009 and post-2020 – the annual inflation rate remained relatively stable within the 1%-3% target.[79] However, real variables such as unemployment have shown significant fluctuations since the GFC and have justified activist monetary and fiscal policies that would have been unthinkable a decade ago.

In this context, there is evidence that the BoC has shown a high degree of pragmatism, even if it was officially still wed to inflation targeting. For instance, the BoC brought the overnight rate close to its lower bound and kept its real rate within negative territory under Governor Mark Carney, even if inflation expectations and the inflation rate remained within the target. Thus, it could be argued that the BoC has in fact been implementing a dual mandate.[80]

Interestingly, the BoC did not explicitly acknowledge the existence of additional objectives in its renewed policy frameworks of 2011 and 2016. According to Lavoie and Saccareccia,[81] the BoC made significant efforts to deny that it has in fact pursued a multi-goal mandate. Essentially, the BoC claimed that lowering the nominal rate at the lower bound was justified to address the deflationary spiral of the post-GFC era. Along these lines, many economists, including Larry Summers, have argued that central banks

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[79] This is consistent what a phenomenon called the "flat" Philips curve

[80] See Michael D. Bordo and Pierre L. Siklos, 'The Bank of Canada and Financial Stability: A New Mandate?' (2019). C.D. Howe Institute Commentary 557 <https://www.cdhowe.org/sites/default/files/2021-12/Commentary%20557.pdf> accessed 5 January 2023.

[81] Lavoie and Seccareccia (n 9) 11.

had to implement very low or negative neutral real rates to lead to secular stagnation.[82] For Lavoie and Saccareccia, this is an excuse to deny a shift in the BoC's mandate.

Furthermore, it is argued that the BoC has disguised its dual-mandate actions with new vocabulary that showed its apparent commitment to underlying inflation-targeting concepts. For instance, even before the crisis, the BoC began to conduct "flexible" inflation targeting rather than strict inflation targeting.[83] Again, the rationale was that real variables would remain unaffected by flexible or expansionary monetary policy. In the short run, the BoC could justify such discretionary measures – as it did during the GFC – as long as the inflation rate remained steady and within the target range.

However, in addition to concrete policy actions, one may wonder whether these other concerns deserve to be acknowledged officially by the BoC. A preliminary assessment of central bank communications shows that there is evidence that other objectives, including employment, solidarity, and even green finance, have crept into the policy goals of the BoC. While this may not reflect what the BoC is actually doing, numerous official documents support this claim. For instance, Senior Deputy Governor Tiff Macklem reiterated this in a 2012 speech entitled "A Measure of Work": "The mandate of the Bank of Canada is to mitigate fluctuations in the general level of production, trade, prices and *employment* [emphasis added], so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of Canada."[84]

As argued in Section I.1, the BoC has a broad mandate to maximize aggregate economic welfare. Accordingly, we argue that should the BoC decide to implement a dual mandate into its policy frameworks, it would not be in violation of its legal powers.

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[82] Lawrence H. Summers, 'The Age of Secular Stagnation: What It Is and What to Do About It' [2016] 95(2) Foreign Affairs 2–9.

[83] Lars E. O. Svensson, Sveriges Riksbank Deputy Governor, 'Flexible inflation targeting - lessons from the financial crisis' (Speech at the workshop "Towards a new framework for monetary policy? Lessons from the crisis", organized by the Netherlands Bank, Amsterdam, 21 September 2009) <https://www.bis.org/review/r090923d.pdf> accessed 5 January 2023.

[84] Government Canada (n 18).

That being said, evidence from extra-statutory data suggests that inflation is the primary objective. Low, stable and predictable inflation paves the way for solid economic growth and a well-functioning, stable and healthy labour market.[85] In particular, the BoC seems mostly concerned with how its inflation-targeting policy has affected labour market performance. It is argued that inflation targeting has reduced the cyclical fluctuations in unemployment for workers in all age brackets and educational categories, and the most vulnerable workers have benefited the most. In line with the conventional view on the role of monetary policy, it is argued that it has helped dampen economic cycles and mitigate fluctuations in employment compared with the 1970s and 1980s.

Furthermore, we have found no evidence signalling a desire to shift toward a proactive labour mandate. While labour productivity and competitiveness are a growing concern, the BoC has never advocated structural labour reforms (e.g., cutting wages and loosening labour standards).

Even during the GFC and COVID-19 pandemic, evidence from the BoC's announcements suggests that its implicit dual mandate remains limited to supporting sustained growth in output, employment, and productivity through monetary policy.[86] Interestingly, before renewing its agreement with the government on Canada's monetary policy framework, the BoC conducted a broad range of public outreach activities between 2019 and 2021, including public consultation.[87] For the first time in 30 years, the BoC compared inflation-targeting frameworks with other mechanisms, including the dual mandate. Evidence from this consultation suggests that many respondents saw value in the alternatives. In particular, labour group members viewed access to stable employment and a liveable wage as most important and relevant for

[85] Tiff Macklem, Bank of Canada Senior Deputy Governor, 'A Measure of Work' (Speech at the Winnipeg Chamber of Commerce, Winnipeg, Manitoba, 4 October 2012) <https://www.bis.org/review/r121005a.pdf> accessed 5 January 2023.

[86] Tiff Macklem (n 3).

[87] Bank of Canada, 'Toward 2021: Consultations with Canadians' (2021) <https://www.bankofcanada.ca/core-functions/monetary-policy/monetary-policy-framework-renewal/toward-2021-outreach/lets-talk-inflation/consultations-with-canadians/> accessed 5 January 2023.

Canadians and favoured this approach. However, a dual mandate was the most polarizing option. Some respondents questioned the effectiveness of a dual mandate in a situation such as the COVID-19 pandemic, where the higher unemployment rate is attributable to containment measures and lockdowns. Other participants thought a dual mandate might go a step too far and cause the BoC to become influenced by political considerations.

Accordingly, in a 2021 speech, the BoC's governor, Tiff Macklem, stated that the BoC has examined the performance of a dual-mandate structure as requested by Canadians in the 2021 consultations.[88] However, evidence showed that the dual-mandate approach performed similarly to flexible inflation targeting and had only a modest effect on employment, likely because employment already plays a crucial role in the flexible inflation-targeting framework.[89] Governor Macklem thus reiterated that the primary objective of monetary policy is to maintain low and stable inflation over time.

2. The ECB's "Bazooka"[90] Approach …Within Its Mandate

The Eurozone has taken a very different path. The Treaty is clear on what the policy stance of the ECB should be: monetary objectives are the priority and thus should not interfere directly with economic policy objectives, which are a national competence.

However, the GFC paved the way for the ECB to play a more assertive role, with Mario Draghi and many others arguing that structural reforms are indispensable for the safeguarding of the EMU. In fact, it was argued that the absence of coordination contributed to divergent labour market development, real exchange-rate misalignment and large current-account imbalances, which is what happened during the Eurozone

[88] Ibid.
[89] Tiff Macklem (n 3).
[90] René Smits (n 9).

crisis.[91] Critics claim, however, that Eurozone members are capable of implementing their own supply-side policies,[92] and the ECB has no place in this discussion. In addition, should a country fail to implement the correct policy, its citizens should bear the consequences alone, and that country should not count on other members for financial solidarity.[93]

With that said, we note that there is little evidence that the members of the executive boards of the ECB, or the governors of national central banks, have been pushing for specific reforms. Instead, we have seen evidence of a more modest approach. This is what Blanchard calls a "divine providence"[94] which takes place when the various macroeconomic objectives of the ECB – including price stability, financial stability and employment – all point in the same direction and towards the same policies. This is confirmed by the following statement on the ECB website: "*Given that monetary policy can affect real activity in the shorter term, the ECB typically should avoid generating excessive fluctuations in output and employment if this is in line with the pursuit of its primary objective*."[95]

More recently, the ECB has reiterated its commitment to its bazooka[96] approach during the COVID-19 pandemic.[97] Some of its components could reflect the implicit dual mandate of the ECB.[98] In a letter to the Financial Times, Draghi stated that the economic shock of the pandemic required "a significant increase in public debt" similar to that undertaken "in times of war." The ECB Governing Council has responded to the

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[91] Céline Allard and Luc Everaert, 'Lifting Euro Area Growth: Priorities for Structural Reforms and Governance' (2010) IMF Staff Position Notes 2010/019, International Monetary Fund <https://ideas.repec.org/p/imf/imfspn/2010-019.html> accessed 5 January 2023.
[92] Supply side policies aim to increase economic productivity and efficiency, enabling higher economic growth in the long run by shifting aggregate supply to the right.
[93] Jean Pisani-Ferry, 'Central Bank Advocacy of Structural Reform: Why and How?' [2015] Inflation and Unemployment in Europe 185, 3.
[94] Olivier Blanchard and Jordi Galí, 'Real Wage Rigidities and the New Keynesian Model' [2007] 39(S1) Journal of Money, Credit and Banking 35-65.
[95] See ECB, Introduction <https://www.ecb.europa.eu/mopo/intro/objective/html/index.en.html> accessed 5 January 2023.
[96] Smits (n 9).
[97] ibid.
[98] Annelieke M. Mooij, 'The role of the European Central Bank in response to COVID19 An evaluation of its mandate' [2022] Forthcoming, Journal of European Integration.

economic fallout as a response to the unfolding COVID-19 pandemic by adopting, on March 12, 2020, an additional envelope for its asset purchase programme of 120 billion euros until the end of 2020. The ECB followed this up by announcing an additional asset purchase programme on March 18 entitled the Pandemic Emergency Purchase Programme (PEPP). This was followed by still further measures on April 30, 2020,[99] when the ECB announced that two ECB bank lending programmes would be utilised to combat the economic downturn. It is worth noting that thanks to these measures, Member States were able to use an enhanced "pandemic" credit line with the European Stability Mechanism (ESM). Under this arrangement, they could borrow up to 2% of their gross domestic product on "direct and indirect" costs relating to the health crisis, with no attached conditions regarding post-crisis macroeconomic structural reforms.[100]

3. Considerations for Economic Governance: Legal and Legitimacy Concerns

The fact that labour objectives have crept into central bank mandates is not a problem – at least from a legal and governance standpoint – even if banks have arguably integrated labour objectives in favour of the interests of investors over workers. While this is debatable from an economic standpoint, it is acceptable from a legal standpoint as long as central banks' decisions fall within the legal framework established by the Treaty. However, that is the essence of the problem here: central bank mandates have become a moving target, and this raises both legal and legitimacy concerns.

In fact, central bank legal frameworks have been interpreted broadly by the BoC, and in Europe by the CJEU, in ways that allow banks to influence employment/social policy outcomes. This has raised significant legal issues in the EMU. For instance, the decisions

[99] On 12 March 2020, the Governing Council also agreed to 13 additional Long-term Refinancing Operations (LTROs) providing bank funding at the very low deposit facility rate (currently -0.5%).

[100] See also Charles Michel, European Council President, 'Conclusions of the President of the European Council following the video conference of the members of the European Council' (Statements and remarks, 23 April 2020) <https://www.consilium.europa.eu/en/press/press-releases/2020/04/23/conclusions-by-president-charles-michel-following-the-video-conference-with-members-of-the-european-council-on-23-april-2020/> accessed 5 January 2023.

of the ECB, after the GFC and during the COVID-19-triggered recession, have caused a backlash by the FCC against both the CJEU and the ECB.[101]

Legal challenges have been mounted in Germany following the announcement of two ECB asset-purchase programmes: the Outright Monetary Transactions programme (OMT), announced in 2012 but never implemented, and the Public Sector Purchase Programme (PSPP), launched in 2015. The CJEU was consulted twice – *Gauweiler*[102] and *Weiss*.[103] In both cases, the matter had been referred by the FCC. It concerned the powers of the ECB and, more broadly, the conflict between different interpretations of the constitutional principles underlying the EMU.

As noted in Section I.3, with the OMT programme, the ECB declared itself ready to buy government bonds from Eurozone countries that had no more access to credit and were thus at risk of default. There was also an element of conditionality, namely that participating countries were expected to agree to a set of policy commitments, including labour reforms aimed at improving competitiveness, reducing public debt, and strengthening the financial sector, among others.

There are two main legal criticisms of the OMT programme – criticisms which were also levelled against the PSPP programme. The first criticism is that the OMT programme exceeds the ECB's mandate under EU law and violates the prohibition on monetary financing of governments, which is set out in the EU Treaty.[104] In fact, the ECB is attempting to circumvent the Treaty's prohibition against the direct financing of a Member State (Art. 123 TEU), even if indirectly, in the secondary market. The second criticism is that with the OMT, the ECB is indirectly encroaching on national competences through the imposition of conditionality.

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[101] Dahan, Fuchs and Layus (n 9); Dana Burchardt, 'Backlash against the Court of Justice of the EU? The Recent Jurisprudence of the German Constitutional Court on EU Fundamental Rights as a Standard of Review' (2020) 21 German Law Journal 1.

[102] Judgment of the Court of 6 June 2015, Gauweiler and others, 62/14, EU:C:2015:400.

[103] Judgment of the Court of 11 December 2018, Heinrich Weiss and Others, 493/17, EU:C:2018:1000.

[104] Dahan, Fuchs and Layus (n 9); Alicia Hinarejos, 'El Diálogo Judicial En Curso y Los Poderes Del BCE: La Sentencia Weiss' [2019] 63 Revista de Derecho Comunitario Europeo 651.

These concerns emerged in a preliminary reference before the CJEU. It was argued that the ECB overstepped its mandate by creating a program that should be viewed as a tool of economic, not monetary, governance as it was originally designed to do. It was also argued that the OMT violated the prohibition against monetary financing.

In its preliminary ruling, the CJEU decided that the OMT – then the PSPP in *Weiss* –[105] was compatible with the Treaty. First, the Court confirmed its position, which was adopted in *Pringle*, arguing that the OMT programme was, indeed, a measure of monetary policy rather than economic policy. It did so by investigating the programme's objectives and instruments. According to the Court, conditionality only constitutes measures of economic coordination deemed necessary to ensure the existence of "sufficient safeguards" against fiscal profligacy.[106] Second, the Court conducted a proportionality assessment by examining the technical features and safeguards built into the OMT. The Court concluded that the OMT did not violate the Treaty's ban on monetary financing of Member States, because it would not have an effect equivalent to the direct acquisition of a Member State's bonds, nor deter Member States from pursuing a prudent budgetary policy.

We note that the OMT was never activated. However, had the ECB decided to impose labour reforms as OMT conditions, even prior to *Gauweiler* and *Weiss*, it would have been compatible with the Treaty as decided by the CJEU in *Pringle*.[107] In fact, the *Pringle* judgement is mostly concerned with the legality of the ESM, a stability support system for Eurozone Member States experiencing severe financing problems due to the ongoing sovereign debt crisis.[108] The judgement raises many important questions of EU

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[105] We are not going to discuss Weiss here because it is in many ways a re-run of Gauweiler. The measures challenged were of a similar nature and — according to the national court — raised similar legality concerns.

[106] Dahan, Fuchs and Layus (n 9); CJEU (2015) Case C-62/14, Gauweiler v. ECB <https://curia.europa.eu/juris/liste.jsf?num=C-62/14> accessed 5 January 2023; CJEU (2018) Case C-493/17, Weiss v. ECB <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-493/17> accessed 5 January 2023.

[107] Thomas Pringle, an anti-austerity Independent MP (Teachta Dála) in Ireland, claimed that the ESM was unlawful because it exceeded the EU's exclusive competence for monetary policy and went beyond the Treaty on the Functioning of the European Union (TFEU) powers. Judgment of 27 November 2012, Pringle, C-370/12, EU:C:2012:756 <https://curia.europa.eu/juris/liste.jsf?num=C-370/12> accessed 5 January 2023. The Pringle judgement, distinguishes between monetary and economic policy measures.

[108] Akin to an IMF for the EU.

law that fall outside the scope of this paper; however, two questions are of particular interest here.

First, the Court answered the fundamental question of whether Member States are allowed, under the EU Treaties, to provide stability support to each other, which is in principle prohibited by Article 125 of the Treaty. Interestingly, a teleological reading of Article 125 TFEU allowed the Court to determine which forms of financial assistance were compatible with the Treaty.[109] The Court held that a Member State might provide financial assistance to another Member State as long as the assistance is attached to conditionality, that is, a commitment by the Member State to adhere to a sound budgetary policy. As mentioned earlier, these conditions can have a direct impact on national and social policy. The CJEU ruled that Article 125 "does not prohibit the granting of financial assistance by one or more Member States to a Member State which remains responsible for its commitments to its creditors provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy."[110]

Second, in line with *Gauweiler* and *Weiss*, the conditionality element raises another important question for labour lawyers as well as constitutionalists. The Court had to answer the important question of whether strict conditionality imposed on beneficiary states encroaches upon national competences in matters concerning economic policy.[111] This is a complex question in EU law, considering that the wording of Article 5(1) TFEU affirms that "the Member States shall coordinate their economic policies within the Union (...)". Economic policy is still a national competence, and the EU has been granted a coordination role. Member States' competences in the economic policy

[109] See *Pringle*. at para. 133.
[110] Case C-370/12 Pringle, para 132; See also para 111: "while it is true that the financial assistance provided to a Member State that is an ESM Member is subject to strict conditionality, appropriate to the financial assistance instrument chosen, which can take the form of a macro-economic adjustment programme, the conditionality prescribed nonetheless does not constitute an instrument for the coordination of the economic policies of the Member States, but is intended to ensure that the activities of the ESM are compatible with, inter alia, Article 125 TFEU and the coordinating measures adopted by the Union".
[111] See *Pringle* at para. 68.

framework are still significant.[112] The judgment states that “the ESM is not concerned with the coordination of the economic policies of the Member States, but rather constitutes a financing mechanism.”[113] The Court distinguishes between the ESM’s conditionality and economic policy coordination. Even if the ESM has an economic policy element – the conditionality – it should be compatible with the TFEU-based coordination of economic policies.[114] It holds that the nature of the ESM is not to formulate economic policies; it is meant “to mobilise funding and provide stability support to the benefit of ESM Members who are experiencing, or are threatened by, severe financing problems.[115]

We note here that the Court has given some consideration here to the role of the ECB and monetary financing. Prima facie, it seems to exclude any financing instruments from the ECB when asked whether the ESM was intended to circumvent the prohibition on monetary financing of the Member States that is laid down in Article 123 TFEU. The CJEU held that that was not the case, because that prohibition is addressed to the ECB and the central banks of the Member States, rather than to the ESM or the Member States themselves.

However, it can be argued that in this judgement the Court laid the groundwork to establish the legality of the ECB’s OMT. In fact, drawing upon preparatory works to the Maastricht Treaty, the CJEU concluded that the Treaty merely prohibited financial aid that reduces the incentive of a Member State to conduct sound budgetary policy. Accordingly, financial aid – even if coming from the ECB – would be compatible with the Treaty if subject to strict conditionality and if granted only when indispensable to safeguard the stability of the Eurozone as a whole. Against this background, one can argue that both the ESM and OMT/PSPP reinforce the true mandate of the ECB insofar

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[112] Rainer Palmstorfer, ‘To bail out or not to bail out ? : the current framework of financial assistance for euro area member states measured against the requirements of EU primary law / Rainer Palmstorfer. n°6 2012, December 773 <https://documentation.insp.gouv.fr/insp/doc/SYRACUSE/199298/to-bail-out-or-not-to-bail-out-the-current-framework-of-financial-assistance-for-euro-area-member-st> accessed 20 December 2022.
[113] See *Pringle,* para. 110.
[114] See *Pringle,* paras. 111-112.
[115] See *Pringle*, para. 110.

as these "bazooka" measures are nothing less than a subordination of labour and social objectives to the monetary priorities. In that sense, the fact that the OMT/PSPP conditions might constitute measures of economic policy is of secondary importance insofar as the true objective of these programs is to safeguard the stability of the Eurozone as a whole, the true primary objective of the ECB.

More recently, on May 5, 2020, the FCC ruled that the ECB had acted beyond its legal powers with regard to the COVID-19 emergency lending program PEPP.[116] In the view of the Court, the CJEU did not sufficiently assess the proportionality of the ECB's actions. They gave the Eurosystem, the monetary authorities of the Eurozone, three months to produce a proportionality assessment demonstrating that the "economic and fiscal policy effects" of its programme do not outweigh its objectives. With this sentence, which runs counter to a CJEU ruling, the FCC is in breach of the primacy of EU law, and the Commission may open an infringement procedure against Germany.

While the details of this judicial battle between the FCC and the CJEU fall outside the scope of this paper, once again, these rulings raise important questions for labour lawyers. Do these programs constitute monetary policy or economic policy instruments, and does the Court therefore endorse a policy shift toward a dual mandate? We argue that this question was already answered in *Pringle.* Indeed, while it is true that "financial assistance provided to a Member State … is subject to strict conditionality", it is "only a financing mechanism," which "does not constitute an instrument of coordination of the economic policies of the Member States."[117] The Court therefore establishes that conditionality – EU-imposed structural reforms in exchange for financial assistance – does not infringe upon the economic competence of the Member

[116] Possible opening of an infringement procedure against Germany, Priority question for written answer P-004295/2020 to the Commission <https://www.europarl.europa.eu/doceo/document/P-9-2020-004295_EN.html> accessed 5 January 2023.
[117] Pringle paragraph 96.

States, and, more specifically, that the ECB is not overreaching or exceeding its mandate.[118]

The debate on the legality of the ESM, OMT and other ECB actions represents only one side of the debate. The CJEU's ruling also raises serious issues concerning the legitimacy of the EMU governance system and the EU as a whole. By imposing strict conditionality as a constitutional requirement, the Court and the ECB have imported a concept with a controversial reputation into EU law. In fact, the loss of fiscal and labour sovereignty "undoubtedly give[s] shape to the EU legal order in a broader sense." This radical constitutional shift is likely to have an impact on the democratic and social deficit, which has long plagued the European project.[119] Those indebted states are required to meet stringent budgetary goals and implement stringent labour reforms as a result of debt monetisation of doubtful legality and dubious democratic legitimacy. In this, the ECB interferes with matters that may be politically sensitive and are not necessarily required as technocratic solutions to macroeconomic stabilization problems. Nobel-prize-winning economist J. Stiglitz has argued that Europe's austerity recipe will lead to "enormous suffering," which he qualified as "criminal."[120]

This disjunction between economic and social concerns is an old problem, one that has been reinforced with the EMU crisis, and now the already-fragile balance between economic and social policy is fundamentally overthrown through the imposition of strict conditionality. Despite the controversial nature of this model, the law seems to have played a determining role in allowing these contested norms to be imposed through laws and treaties. The issue with this system is not only that the monetarist rationale was contested by many; the problem that plagues central bank mandates – and especially the ECB as defined by the Maastricht Treaty – is that a sensitive and

[118] Dahan, Fuchs and Layus (n 9).
[119] Joseph H. H. Weiler, 'The Transformation of Europe' [1991] 100(8) Yale Law Journal 2403-2483.
[120] See the discussion of the impact of recent EU economic policy decisions: JosephE Stiglitz, 'After Austerity' (Project Syndicate, 7 May 2012) <https://www.project-syndicate.org/commentary/after-austerity-2012-05> accessed 5 January 2023.

contested issue was facilitated through legal manoeuvring.[121] Policymakers and lawyers should be cautious in making decisions via the medium of the law in a sensitive domain replete with conflicting views.[122] Imposing particular economic reasoning via a supranational legal process may simply increase contradictory tensions within the governance process and deprive the legal outcome of any legitimacy or effectiveness.

In the context of the EMU, Christian Joerges claims that policymakers should not have forced the juridification of the EMU without genuine political bargaining. Doing so created an unforgiving monetary policy operating in a vacuum and prevented any adjustment for socioeconomic disparities within the EU.[123] Yet the Treaty establishes a clear hierarchy of objectives and assigns overriding importance to the price stability objective. This principle was originally laid down in Article 3a of the Maastricht Treaty (Article 119 TFEU) and now constitutes the legal template for EMU macroeconomic management. Price stability was defined in the Treaty as "the primary objective" of the European System of Central Banks (ESCB) and foresaw the establishment of a new and independent ECB that would design and implement a single monetary policy to that effect. In fact, price stability is not only the objective of the ESCB; it is also one of the objectives of the EU, according to Article 119(2) TFEU and Article 119(3), which state that stable prices shall be one of the "guiding principles" of the EU.

IV. A Case of Good Governance

Considering these results, our role as labour lawyers is to discuss the feasibility of alternative solutions from a legal and governance standpoint, not to discuss the validity

[121] Christian Joerges and MariaWeimer, 'A Crisis of Executive Managerialism in the EU: No Alternative?'. in De búrca and others (eds), Critical Legal Perspectives on Global Governance, Liber Amicorum David M Trubek (Bloomsbury Publishing 2015).
[122] Matthias Herdegen, 'Price Stability and Budgetary Restraints in the Economic and Monetary Union: The Law as Guardian of Economic Wisdom' (1998) 35(1) Common Market Law Review 9.
[123] Michelle Everson and Christian Joerges, 'Who is the Guardian for Constitutionalism in Europe after the Financial Crisis?'. in Sandra Kröger (ed), Political Representation in the European Union: Still democratic in times of crisis? (Routledge 2014).

of these solutions from an economic perspective. There are at least two immediate policy responses to be advanced.

One solution is to change the law – that is, the EU treaty and/or the Bank of Canada Act – which, in fact, may not be necessary. As shown earlier, both legal systems have shown a sufficient degree of flexibility to allow a multi-goal central bank mandate. With this in mind, we argue that the question here is not strictly of a legal nature. Rather, it is a matter of governance and especially political will. When modern central banking regulation was established, it was believed there was only a short-term trade-off. In the long term, monetary policy is only supposed to affect prices. Recent evidence, though, suggests that the impact of monetary policy on employment is long-lasting.[124]

However, turning the inflation-targeting mandate of the BoC and ECB into a genuine dual mandate would require significant political will. It is no small matter to change foundational central banking statutes. For instance, in the context of the Eurozone, many have advocated a fully-fledged Social and Political Union whereby the ECB would integrate additional objectives. According to one of its main proponents, Jürgen Habermas, the EU is trapped in a dangerous technocratic dilemma between the economic policies needed to preserve the euro on the one hand, and the political steps necessary to implement these policies democratically on the other. Stated another way, the EU is torn between the need to consolidate regulatory competences by law, and the need to legitimatise these increased powers in a democratic fashion. Habermas argues that "postponing democracy is a rather dangerous move" that might jeopardise the entire unification process before any form of democratic rebalancing appears.[125] Supporting this, several commentators have suggested that a treaty revision is inevitable, because present treaties are already stretched to a breaking point.

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[124] Òscar Jordà, Sanjay R. Singh and Alan M. Taylor, 'The Long-Run Effects of Monetary Policy' (2020) NBER Working Papers 26666, National Bureau of Economic Research <https://www.nber.org/system/files/working_papers/w26666/w26666.pdf> accessed 5 January 2023.

[125] Jürgen Habermas, 'Democracy, Solidarity, and European Crisis' [2014] 339(2) Revue Projet 49-58.

Another argument in favour of a fully-fledged Social and Political Union is that it would help to slow the marginalisation of social policy, and by the same token address the asymmetric design of the EMU. As argued by the European Trade Union Confederation (ETUC), there can be no social dimension without a complete reshuffling of the economic governance framework, including a re-legalisation of the social dimension of the EU.

While many of these arguments have attracted some support post-EMU crisis, many still believe that social policy is a sensitive matter and should not become a supranational competence of the EU. Thus, it would be hard to find a political compromise on a Treaty change, and we do not believe that Social Union through hard law is an effective solution in the short or medium term.[126]

We advocate a more modest solution, a "reflexive approach" that does not have to take the form of hard law. In the short term, a radical paradigmatic shift is unlikely to occur. A more plausible solution would be to draw the correct lessons from the GFC and the COVID-19 recession. We argue that both the BoC and the ECB require neither new powers nor a new treaty to extend their mandates. In fact, empirical data discussed earlier suggests that central banks have already extended their mandates, and this seems very much aligned with recent economic research.

In addition, we argue that there is a legal case for a reflexive approach that can reconcile modern central banking with labour law. Future research must explore how human-developmental theories argue that protective labour law, solidaristic wage-setting and counter-cyclical policies are critical means of channelling economic policy in favour of a set of developmental objectives that go beyond a narrow focus on price stability. All that is needed – in a separate study[127] – is a re-appreciation of the original purposes of our institutions and an associated re-appropriation of those institutions' original mandates. It should be noted that many central banks, including the Fed and the ECB,

[126] Dahan (n 19).
[127] A systematic analysis of the original purpose of central banks – the Fed, the BoC, and the ECB – would require a separate study.

acted as lender of last resort in response to the COVID-19 pandemic. For instance, the Fed's rescue programs have increased their balance sheet to $9 trillion in only six months.[128]

As argued by Robert Hockett, the central tension at the heart of modern capitalism in the United States, as well as in other countries, is that production is ungoverned by labour or by the public. In the context of the US — and a similar argument can be made about the BoC —Hockett argues that we need to "stop restricting the central bank to the role of a macro-monetary modulator and restore its role as a micro-monetary allocator — that is, recreating it as something akin to the network of stripped-down regional finance institutions it once was."[129] For instance, one could direct public credit allocation to productive, labour-beneficial use, thereby ensuring the continuous development of the productive power of working people at the national level. With lessons from history and tools provided by existing law, it is possible to re-found and reconcile capital and labour allocations.

In the case of the BoC, the preamble of the Act, along with the BoC's communications and actions, shows evidence of a growing desire to integrate labour objectives into the BoC's mandate. As for the EMU, despite the dominance of economic rights in the legal construction of the integration project, the EU can be described neither as a purely neoliberal project nor as an ordoliberal project. It is a multi-layered project with a strong social dimension that has remained sidelined and subject to significant pressures, a dimension that could come to the fore at any time given the sufficient political will. Simon Deakin notes that there is no single predominant conception of the state-market relationship in EU law. Instead, several different versions of this idea are present in the

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[128] Gara Afonso and others, 'A New Reserves Regime? Covid 19 and the Federal Reserve Balance Sheet,' (2020) Liberty Street Economics, Federal Reserve Bank of New York, <https://libertystreeteconomics.newyorkfed.org/2020/07/a-new-reserves-regime-covid-19-and-the-federal-reserve-balance-sheet/> accessed 5 January 2023.
[129] Robert C. Hockett, 'Labor's Capital: Why and How to Put Public Capital at the Service of Labor' [2021] 30(1) New Labor Forum 20–31.

corpus of law made up by the Treaties, secondary legislation, case law and so on.[130] The EU shifted from an ordoliberal paradigm in the 1950s to a neoliberal paradigm in the 1990s, which has been further reinforced by the legal economic governance framework.[131]

However, while these reforms have undoubtedly subordinated labour-law systems to a deregulatory process of internal devaluation, the labour-law pillar of the integration project is more relevant than ever. Indeed, the EU's legal framework includes a strong human-developmental component perfectly compatible with a wage-led monetary union. Article 3 TEU, for instance, is not limited to the establishment of the "internal market". The EU shall also achieve "a highly competitive social market economy aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment."[132] Catherine Barnard notes that economic freedoms are no longer placed in a dominant position above social rights.[133]

One could also argue that social rights in the Charter and the Treaty could still, in the longer term, play a significant role in the operation of the ECB and the economic governance process. While there is no relationship of parity,[134] the Charter makes it more difficult to argue that economic freedoms prevail over social rights. Therefore, the human-developmental interpretation of EU law may offer sufficient legal support to counterbalance the internal devaluation dynamic underlying the crisis response. A prominent example can already be found in the Pringle ruling, in that the Court created a constitutional window that could be used to strengthen the social aspects of the EMU.

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130 Simon Deakin and Ralf Rogowski, 'Reflexive Labour Law, Capabilities and the Future of Social Europe.' in Rogowski and others (eds), Transforming European Employment Policy: Labour Market Transitions and the Promotion of Capability (Edward Elgar Publishing 2012).

131 R Rogowski, R Salais and N Whiteside, 'Transforming European Employment Policy: Labour Market Transitions and the Promotion of Capability' (Edward Elgar Publishing 2012).

132 8 Article 3 TEU.

133 Simon Deakin, "Regulatory Competition after Laval" (2008) 10 Cambridge Yearbook of European Legal Studies 581

134 C-515/08 Criminal proceedings against Vítor Manuel dos Santos Palhota and Others. Reference for a preliminary ruling [2010] ECR I-09133.

Moreover, Pringle clearly suggests that EU institutions must comply with the Charter and general principles of EU law.

How this should be achieved is a normative debate that falls outside the scope of this paper. We note, however, that such reconciliation raises many important practical questions for lawyers and economists: should central banks have real wage and employment objectives? Should a dual mandate indicate priorities or proportionality among objectives?

Conclusion

Central banks are successful institutions. Until recently, both the ECB and the BoC had successfully maintained a low and stable inflation rate since the 1990s. However, many economists and politicians have called for a different approach by adopting a dual mandate. Our role as lawyers is to explore the legal implications of this proposed evolution of the mandate. This chapter has shown that there has been an apparent conflict in the past– at least in the legal texts – between price stability and employment. However, our qualitative assessment has demonstrated that central banks – especially the ECB and the BoC – have extended their "implicit" mandate to integrate a greater labour dimension into their policy frameworks. While it has raised legal issues in Europe — surmountable legal issues — we have shown here that there is a legal and economic argument to be made in favour of a dual mandate.