

**This is much of the text delivered as the keynote for the conference:**

**“EU Trade Policy as a Case of New Constitutionalism”**

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**Slide 1: Title slide**

**Conference: EU Trade Policy at the Crossroads: between Economic Liberalism and Democratic Challenges, 4 – 6 February 2016**

**C3 – Centre for International Development 1090 Vienna, Sensengasse 3**

In requesting me to deliver this presentation to open the conference, Werner Raza, Director of ÖFSE, asked me to try and do two sets of things in response to the following questions:

**Slide 2: Questions**

**1. Address how the new trade agreements are related to wider changes in the global political economy? And:**

**Slide 3: List of Questions**

**2. Relate trade agreements to the concepts of “new constitutionalism” and “disciplinary neoliberalism”, and to questions including:**

**A. The conceptual underpinnings of European Union integration over the past 30 years and EU trade policies;**

**B. The key proponents of this process and their projects;**

**C. The current potentials for counter-hegemonic forces and its relationship to the strong resistance movement to trade policy projects like the TTIP.**

Of course in a short talk it will be very difficult to do anything more than sketch answers to some of these big questions, however we can follow these up in question-and-answer and in subsequent discussions throughout the conference.

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<sup>1</sup> I thank Michele Benericetti for research assistance and suggestions, and for making the powerpoint slides.

**Q1: 1. Address how the new trade agreements can be related to wider changes in the global political economy?**

The new trade and investment agreements need to be understood in the context of a global political economy and geopolitical situation where communism and the lefts have been weakened in a **remarkable and truly global restructuring of power**. This is reflected in extraordinary, accelerating concentrations of capital and wealth in the hands of a tiny proportion of the world's population – a **global plutocracy supported by a governing class that principally rules on behalf of capital**.

This is partly reflected in following graphic.<sup>2</sup>

Go to:

**Slide 4: Trade Agreements and the Global Political Economy:**

Today, **capital is increasingly concentrated in key sectors** of the capitalist world market: e.g. media, computing, energy, pharmaceuticals, autos, finance. The corporations that are the key players in those markets are the primary beneficiaries of the new trade agreements.

These agreements form part of the neo-liberal shift whereby previously state owned or public enterprises are being rapidly privatized, amid a general process of commodification of social life, as well as of public goods, knowledge forms, education, healthcare and public services.

**This new capitalist world order is structured hierarchically: simultaneously it is class-based, racialized, and gendered. It operates to systematically empower privileged social strata and the affluent.**

**“Market civilization” is now the dominant model of capitalist development – one that is possessively individualistic, me-oriented, consumerist, exploitative of human beings and nature, unequal, carbon-intensive, wasteful and ecologically myopic.**

**Since 9/11 this pattern of development has gone with increasing securitization of world capitalism under continuing conditions of political and economic emergency.**

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<sup>2</sup> Retrieved from <http://www.theguardian.com/business/2015/jan/19/global-wealth-oxfam-inequality-davos-economic-summit-switzerland>.

Market civilization is, by definition, crisis-ridden and exclusive and can be only available to a minority of the population of the planet, but is nevertheless a form of development serving to consume the vast bulk of global resources. New trade and investment agreements tend to lock in this destructive logic by embedding them in constitutional law.

This does not mean that the neo-liberal market civilisation model and the disciplinary power of capital that governs, it primarily through market mechanisms, is uncontested; indeed **one of the reasons why such power is not hegemonic is because of its distributional consequences, which raise fundamental issues of inequality and social justice.** I will return to this issue and the Q of political alternatives at the end of my talk.

Go to:

**Slides 5, 6 & 7: How do the trade agreements of the past 30 years relate to "new constitutionalism" and "disciplinary neoliberalism"?**

Here I would make three points:

- 1. The new trade and investment agreements form part of a shift to neoliberal governance and regulation of the global political economy.**

This world-wide market revolution – some would call it a **counter-revolution** – **is premised on the primacy of capital** and the private interests of the affluent in the determination of economic and social policy and the geopolitical initiatives, such as so that they are **governed by the categorical imperatives of privatization, competitiveness and market discipline.**

- 2. At the heart of this process is what I call disciplinary neoliberalism, namely a framework of political economy to intensify and extend the disciplines of capital into economic and social life, by promoting free capital mobility and the widening of private property rights, and by extending the discipline of market forces in the governance of public policy and in socio-economic life. Disciplinary neo-liberalism is both a stage of capitalist development as well as a particular form of the structural and behavioural power of capital.**

Other key points:

**New constitutionalism is the principal legal and juridical dimension of disciplinary neoliberalism. It seeks to make disciplinary neoliberalism the sole future development model.**

**New constitutionalism embodies a most peculiar version of the rule of law: one that guarantees private property rights including full entry and exit options for capital (“free trade”) with full security for capital whilst simultaneously preventing democratic control over the political economy.**

To achieve this goal involves the remaking or transformation of state forms and also mandates strict disciplines on the making of public policy as well as freedoms and guarantees for capital by protecting and extending their private property rights. Thus the **new trade and investment agreements are principally intended to ensure that corporations and investors are free to operate and accumulate across jurisdictions** and to ensure that the conditions and regulations for accumulation are harmonized – so that for example, large corporations can benefit from greater economies of scale.

**3. Returning to the question of democracy, by separating the commanding heights of economic policy from any significant popular political contestation, and specifically from representative democracy, the new constitutionalism seeks to lock out popular/democratic forces from the governance of the economy.**

For example, neo-liberal trade and investment agreements are mainly negotiated, **concluded and subsequently adjudicated in secret**, and the evidence is this is largely in accordance with the priorities of corporations. Here it is worth pointing out that international trade agreements take the form of treaties that are **constitutionally binding on their signatories** and they typically **mandate ever-greater commodification, privatization and liberalization** of trade and services and related activities. Moreover, **once entered into, such agreements are very difficult to change.**

In this sense, the vast alphabet soup of bilateral and multilateral new constitutional trade agreements such as NAFTA, and the proposed TTIP, TPP, CETA; potentially TSA would serve to govern the prevailing and ultimately unsustainable model of capitalist development.

Moving onto the question of Europe in an era of crisis, please go to:

**Slide 8. What are the conceptual underpinnings of European Union integration and what is its relation to EU trade policies?**

**European integration project was simultaneously a transatlantic project under conditions of American hegemony in the non-Communist world**, and was linked to the attempt to bring peace to a warring continent, contain communism and it formed part of the development of a transatlantic ruling class. It was **transformed into a neoliberal project partly as a result of the crisis of Fordism** during the 1970s and early 1980s and the struggles over what would succeed it.

The **Atlantic ruling** class that emerged has developed its political consciousness and strategies partly by means of private political forums and networks in organizations such as the Trilateral Commission and World Economic Forum.

Such **private and public institutionalized co-operation** was reflected in the enormous and swift responses to the meltdown on Wall Street in 2007-08 when the **categorical imperative of saving global capitalism mobilized the responses**.

Here it is worth noting that the earlier membership of the **Delors Committee responsible for coming up with the blueprint for the EMU was nevertheless dominated by the neo-liberal ‘epistemic community’ of central bankers who were part of the networks of various public as well as private ‘Atlanticist’ forums**, e.g. associated with the Bank for International Settlements, the IMF, the US Treasury and US Federal Reserve.

**Slide 9: Delors Committee**

**Slide 10: Technocracy and Economism in Europe**

A shift away from the earlier grand visions of European integration as a vehicle for peace and prosperity emerging from the ashes of WWII and the Cold War.

**Slide 11: The “Silent Revolution”**

New constitutionalist principles and neo-liberal governance were subsequently elaborated and extended by the **Maastricht Treaty of 1992** and the **1999 Stability and Growth Pact, which instituted the EMU**. Such measures were further locked in the aftermath of the global financial crash, particularly **after 2010 in what EC President Barroso called the “Silent Revolution” to create a new “economic government” for the EU**.

The “Silent Revolution” involves not only new measures associated with the European Central Bank and statutes that impose and centralize control over fiscal discipline of Member States (such as the 2013 Fiscal Compact) but also imposition of the kinds of **shock therapy and structural adjustment policies previously associated with the global South and the Former East Bloc**. **Harsh disciplines** have been imposed on the relatively fragmented subaltern forces of the European Union.

### **Slide 12: Democracy, Legitimacy and Crisis Constitutionalism**

There is of course a **loud silence with respect to democracy among the elites at the heart of the prevailing EU integration project**. The Silent Revolution has involved **unaccountable technocratic and state-of-emergency measures and legislation put in place outside of democratic debate or deliberation**, European coordination of budget deadlines and budget rules, and Troika Memoranda of Understanding with subordinated Member States such as Greece, Ireland and Portugal. Together these measures involve a crisis of legitimacy and they **have morphed into** what might be called a **crisis form of new constitutionalism**.

**Similar measures inform EU external trade agreements with subordinated third-party countries, such as the MENA region and the Americas**. The EC and the EU has considerable authority in the area of trade; the EU deals with third parties, e.g. the MENA region as well as across the Atlantic. With respect to MENA the EU has increasingly used a neo-liberal approach originating in the 1970s. Indeed, today the **EU defines trade and sustainable economic growth and development in terms of “3 Ms”: money, mobility, market (Baroness Ashton, Vice President of European Commission to President Barroso 2009-14)**. These concepts are fully consistent with those of the Silent Revolution.

### **Slide 13: “Europe will be forged in crises”**

**The method of using crises as a means of extending and accelerating the EU integration project**, using any subsequent contradictions and crises generated by new measures to further deepen integration was identified by Jean Monnet in his memoirs as a key mechanism of European governance:

**“Europe will be forged in crises, and will be the sum of the solutions adopted for those crises”. Jean Monnet (1976), as cited in Pisani-Ferry (2014: 18).**

## **Slide 14: Key proponents of this process and what are their projects?**

I have already indicated some of the key proponents and organic intellectuals associated with these processes. To widen this **I return to the concept of NC, which also sheds light on fiscal and monetary policy. These are also largely insulated from democratic control or scrutiny – and placed in the hands of bureaucrats and politicians that support capital**, notably financial interests, effectively to allow capital to govern directly or indirectly key economic institutions such as central banks.

A quintessential example is the **European Central Bank**, one of the very many “independent” central banks that have proliferated in the neo-liberal era since the early 1980s. Indeed, this independence gave central banks substantial latitude to **act as a lender of last resort and thus to massively bail out banking interests as well as other corporations following the crash of 2008.**

One of the effects of these policies has been to **produce massive transfers of income and wealth from workers/middle classes to big capital and the plutocracy, e.g. via bailouts and now “quantitative easing” which works to the benefit of asset holders.**

Whilst central banks are independent of governments, their boards of governors are largely drawn from the ranks of private financial interests (not from trade unions or from the ranks of progressive political economists).

**Central banks have been the principal drivers in the issuance of massive and rising sovereign debts since the 2008 crash, debts that have now been estimated to have risen by US\$57 trillion (government debts have increased by \$25 trillion) over the last seven years, to stand at \$199 trillion or 286% of GDP.<sup>3</sup>** Much of the public indebtedness has been coupled with harsh austerity measures and other initiatives to further privatize economies in what is in effect a **massive dispossession of the social commons and the general population.**

Much of the monetary expansion has enriched super wealthy plutocrats in the context of rapidly accelerating global inequality to levels last seen in the 1920s. Normally the class-based nature of central banking and monetary policy is rarely debated in mainstream media and political discourse, but it was demystified recently by one of its primary beneficiaries, financier **George Soros** in a speech

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<sup>3</sup> Robert Peston, “Global Debts Rise \$57 Trillion since Crash”. *BBC News Business*, 4 February 2015. These sums are based on a survey by McKinsey and Co. <http://bbctakeaway.herokuapp.com/news/business-31136707>

at the 2015 World Economic Forum in Davos Switzerland. Soros warned that the planned Eurozone stimulus measures and plans (By the ECB to make cheap money available to private banks) in the form of “quantitative easing”, would “increase inequality between rich and poor both in regards of the countries and people”. Soros pointed out that “excessive reliance on monetary policy tends to enrich the owners of property and at the same time will not relieve the downward pressure on wages”.<sup>4</sup>

### **Slide 15: The largest redistribution of wealth from the poor to the rich in history?**

**Note the chart next to Soros.** It shows the European Economic Recovery plan had a mere \$200 billion in bailout allocations after 2008 (1.5% of the EU’s GDP). This contrasts with the huge Euros 4.5 trillion in bailout aid transferred to the European financial sector (37% of total EU GDP) – prior to any additional funds that might come from “quantitative easing.”

### **Slide 16: Accumulation by dispossession**

This massive socialization of the losses and debts of the private financial sector represents arguably the **largest transfer of funds from citizens to private creditors and financial interests – or from the poor to the rich -- in the history of the continent.**<sup>5</sup> Stanley Druckenmiller, the billionaire hedge fund manager, labelled QE: “The biggest redistribution of wealth from the middle-class and the poor to the rich ever.”<sup>6</sup> Another way of capturing this process – is to call it accumulation by dispossession.

### **Conclusions:**

The global situation I have just described – which is **part of a wider global organic crisis of society, political economy and the biosphere** – forms the

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<sup>4</sup> Joe Miller, “Eurozone stimulus reinforces inequality’, warns Soros”. *BBC News Business* 22 January 2015. <http://www.bbc.com/news/business-30943216>

<sup>5</sup> Data is from: Oxfam, *A cautionary tale*. Briefing Paper No.174 (2013), p. 7: See [http://www.oxfam.org/sites/www.oxfam.org/files/bp174-cautionary-tale-austerity-inequality-europe-120913-en\\_1.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/bp174-cautionary-tale-austerity-inequality-europe-120913-en_1.pdf)

<sup>6</sup> Aditya Chakraborty, We’ve been conned by the rich predators of Davos. *The Guardian*. 19 January 2016. <http://www.theguardian.com/commentisfree/2016/jan/19/davos-super-rich-wealth-inequality>

context for considerations of political alternatives and policy space in light of the crisis of representative democracy in Europe.

**So what are the constraints and possibilities for policy space for counter-hegemonic struggles** and its relationship to the potentials of the strong resistance movement to trade policy projects like the TTIP?

### **Slide 17: Pessimism of the intelligence**

This Q involves one of my favourite political maxims from Antonio Gramsci: “Pessimism of the intelligence, optimism of the will”.

#### **Pessimism of the intelligence:**

**1. With respect to class formation, there is relative unity among the transnational and EU ruling classes versus the relative fragmentation of progressive forces.**

**2. The NC constrains the limits of the possible politically by ring-fencing debate within the confines of narrow domains of “ordinary politics” (Buchanan) and by taking key economic policies out of contestation or indeed representative democracy.**

Example: over 400 organizations including trade unions have joined forces to fight TTIP. More than three million people across Europe have signed a petition calling on the EU Commission to scrap the deals. However in September 2014, the **European Commission rejected Stop TTIP’s European Citizens’ Initiative, arguing that citizens can propose laws, but cannot stop laws being signed.** Nevertheless, a number of local authorities across Europe have declared themselves “TTIP-free zones”.

**3. Reactionary forces are gaining** ground in the context of the migration and refugee crisis that is compounded by austerity, DNL and the declining legitimacy of the prevailing European project of integration. **Reflects what Habermas called the tendency towards the “renationalization of politics” in the EU.**

## Slide 18: Optimism of the Will: The Post-Modern Prince

**1. Europe-wide progressive resistance to the new trade agreements is impressive and growing** and can build on the crisis of legitimacy to press for a new kind of Europe, including its trade policies.

**2. Political momentum needs to be translated into the capture of political power** and even then, alternatives based on a progressive form of European integration will be difficult to achieve given the constraints and tendencies noted above, including reactionary forces, in what is the deepest ever crisis of European integration.

**3. The Post-Modern Prince: not a real person but a set of forces that have begun to assert themselves in action.** Its characteristics need to be understood as involving:

- **Plural, democratic & progressive** forces in formation and movement;
- They **do not necessarily provide a unified response to all questions but have relatively shared recognition of common problems and principles**, e.g. Forces fighting DNL and ultimately defeating President George W Bush's project to create an Free Trade Area of the Americas, a regional prototype for TPP and TTIP – mass mobilization and political organization across the Americas, north and South defeats the neoliberals.
- These forces **embrace diversity, difference, recognition, redistribution and emancipation**
- They **encompasses peoples and movements of global North & South**
- They **involve millions of organic intellectuals** and is therefore impossible to decapitate
- Of note is that **much of the new thinking, which involves a long-term view of the planet and its peoples, is spearheaded by intellectuals and leaders drawn from indigenous peoples, woman, landless workers.** Zapatistas: many worlds are necessary, not simply the monoculture of market civilization.

Returning to Europe, the weaker the mobilization of the united European working and popular classes, the weaker also is their impact on the political process. And the weaker the political impact on the agenda of the EU, the stronger are the tendencies to entrench behind the democratically more responsive institutional structures of the sovereign nation state.