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The Eurosceptic Mobilization of Constitutional Law



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1. The book by Pablo Castillo-Ortiz and Giuseppe Martinico, *The Eurosceptic Mobilization of Constitutional Law*, published by Oxford University Press in the *Oxford Studies in European Law* series, edited by Paul Craig and Gráinne de Búrca, addresses an issue of particular relevance in the current political and legal climate: the strategic use of constitutional law by Eurosceptic actors.

The Authors' starting point is that contemporary Euroscepticism is no longer expressed solely through political rejection of the European Union, calls for withdrawal, or criticism of its economic and social policies. It is also articulated through a more sophisticated mobilization of categories and arguments that belong specifically to constitutional law.

The book therefore examines how constitutionalism is used "against" European integration or, more precisely, against some of its structural principles: the openness of domestic legal systems, the primacy of EU law, the authority of the Court of Justice and, more generally, the multilevel architecture of European constitutionalism.

The central concept around which the inquiry revolves is that of Eurosceptic constitutional counter-narratives, an expression used by the Authors to identify the constitutional discourse through which Eurosceptic actors portray the European Union as an external, technocratic, anti-democratic constraint, allegedly incompatible with sovereignty and national identity.

According to the thesis developed in the volume, these narratives are only apparently legal; in substance, they perform an essentially political function, transforming the lexicon of constitutionalism into a tool for delegitimizing EU law and, more broadly, supranational and international organizations.

After an initial chapter devoted to the relationship between constitutionalism and Euroscepticism, the Authors reconstruct the meaning of European constitutionalism in the post-war period, emphasizing in particular the principle of constitutional openness. This principle is presented not as an accessory

or contingent feature, but as a constitutive element of the European constitutions that emerged from the tragedy of totalitarianism and war.

From this perspective, the process of European integration is not an extraneous body within national legal systems but, rather, one of the instruments through which those systems pursue their own constitutional objectives: limiting power, protecting rights, guaranteeing peace, fostering international cooperation, and overcoming an absolute conception of sovereignty. It is precisely on this ground that the book locates the theoretical divide separating European constitutionalism from Eurosceptic narratives. By claiming a closed, self-sufficient, and tendentially exclusive form of sovereignty, such narratives ultimately betray the deeper spirit of contemporary European constitutionalism.

The second chapter develops the conceptual framework of the Eurosceptic mobilization of constitutional law. Castillo-Ortiz and Martinico identify three lines of argument: an exclusionary conception of the *demos*, in which the terms nation and people are often used interchangeably and the "national people" is opposed to European institutions; the use of the categories of constitution, sovereignty, and identity as tools of resistance to integration; and the assertion of the supremacy of the national constitution as an insurmountable limit to the primacy of EU law. These elements are accompanied by criticism of European courts, especially the Court of Justice of the European Union and, in certain contexts, the European Court of Human Rights. Constitutional law is thus mobilized not only as a political language, but also as an instrument of judicial politics.

The third chapter offers a comparative, partly empirical, analysis of Eurosceptic parties, with a view to understanding when and why these actors resort to constitutional arguments. This part of the volume shows that the mobilization of constitutional law is a recognizable political strategy, characterized by certain common elements, while varying according to context, the electoral strength of individual parties, and the structure of national political systems.

The following four chapters are devoted to national case studies: the United Kingdom, Italy, Spain, and Poland. This allows the Authors to compare very different experiences: a legal system marked by Brexit; two Southern European legal systems traditionally open to integration but affected by growing forms of sovereignism; and a Central and Eastern European legal system in which mobilization against EU law has become intertwined with processes of rule of law backsliding.

The British case shows how the constitutional lexicon of parliamentary sovereignty can be used to portray both the European Union and Convention-based systems such as the ECHR as threats to democracy.

The Italian case is perhaps the one in which the transformation of Euroscepticism into constitutional sovereignism emerges most clearly:

criticism of external constraints, European economic governance, and the primacy of EU law is combined with a strong assertion of the Constitution's identity.

The Spanish case, by contrast, allows the Authors to examine a traditionally Europhile legal system in which the economic crisis, constitutional reform, and territorial tensions, particularly those concerning Catalonia, have favored differentiated uses, from both the left and the right, of constitutional arguments against Europe.

Finally, the Polish case illustrates the most radical manifestation of the phenomenon: there we see constitutional law mobilized by illiberal actors not only to criticize the Union, but also to resist its instruments for the protection of the rule of law.

The final chapter returns to the fundamental question of whether constitutional law can become an instrument of disintegration. The Authors' answer is nuanced. They do not deny that legitimate conflicts between national legal systems and the EU legal order may exist; indeed, they recognize that European constitutionalism also develops through such conflicts, as well as through resistance and dialogue between courts. However, they insist on the need to distinguish between constructive constitutional criticism and destructive Eurosceptic mobilization: the former may contribute to the development of the EU, whereas the latter seeks to delegitimize the supranational order from within, using constitutions as instruments of closure, exclusion, and systemic opposition.

It is at this point that the book formulates its main thesis: a defense of open constitutionalism, understood as a model capable of bringing together national constitutions, EU law, regulatory pluralism, and supranational cooperation.

2. One of the volume's principal merits is that it is situated at the crossroads of several strands of research: studies on Euroscepticism, the literature on European constitutionalism, and the debate on the crisis of legitimacy affecting international organizations and jurisdictional mechanisms.

The political science literature on Euroscepticism is now extensive and has examined its partisan, electoral, ideological, and discursive manifestations. Less developed, however, is the analysis of Euroscepticism as a strategy pursued *by* law, and particularly *by* constitutional law. From this perspective the book makes an original contribution, because it shows that law is not only the object of Eurosceptic protest, but also one of its principal instruments.

The study also engages with the debate on multilevel and pluralist constitutionalism in the European Union, addressing the relationship between the primacy of EU law and the role of national constitutions. The Authors contribute to the existing literature on constitutional pluralism by showing how theoretical categories originally developed to describe the complexity

of the EU legal order may be distorted and exploited by actors seeking to limit the effectiveness of EU law. In this sense, the volume also belongs to the more recent debate on the abuse of constitutional identity and the illiberal use of pluralism.

Particularly relevant is the implicit comparison with the literature on the rule of law crisis in the European Union. In the Hungarian and Polish cases, for example, appeals to constitutional identity and national sovereignty have been used to resist European instruments designed to monitor compliance with the values enshrined in Article 2 TEU. Castillo-Ortiz and Martinico's book helps explain why this strategy is effective: it is not presented directly as a violation of EU law, but rather as a defense of the national Constitution against an external power. Its rhetorical force lies precisely here: the Constitution, which in liberal constitutionalism should limit power and protect pluralism, is transformed into an instrument for legitimizing national majority power.

This perspective has significant affinities with studies on judicial sovereignty and the crisis of legitimacy of international dispute-settlement systems. Consider, for example, the *Weiss* case, in which the judgment of the Bundesverfassungsgericht of 5th May 2020 was interpreted as a possible manifestation of "judicial sovereignty": a challenge to the interpretative authority of the Court of Justice that does not merely invoke counter-limits, but claims the power to scrutinize externally the correctness of the interpretation of EU law provided by the Luxembourg judges. From this perspective, the problem is not the existence of conflict between courts, which is physiological in a multilevel system, but the way in which that conflict is constructed: not as dialogue, but as a rejection of the authority of the common interpreter of EU law (see G.M. Ruotolo, Hail to the king! *Sovranismo giudiziario e Corte di giustizia dell'Unione europea: alcune considerazioni a margine del caso* Weiss, in M.L. Tufano, S. Pugliese, M. D'Arienzo (eds.), *Sovranazionalità e sovranismo in tempo di COVID-19*, Bari, 2021, p. 121 ff.). Castillo-Ortiz and Martinico's book offers a broader theoretical framework for understanding this phenomenon, showing how constitutional adjudication may itself become a means of producing, or at least legitimizing, Eurosceptic counter-narratives.

The volume also contributes to the analysis of a broader framework: the crisis of legitimacy of international dispute-settlement systems. In the contemporary climate, characterized by the resurgence of nationalist and sovereignist claims, many States tend to challenge, weaken, or abandon international adjudication mechanisms, especially when they are effective, binding, and capable of limiting the discretion of national governments. As is well known, this crisis has affected the World Trade Organization (WTO), but also certain forms of investment arbitration, some African regional systems, and even the European Union. The book reviewed here enables a clearer

understanding of the latter context: the attack on the primacy of EU law and on the authority of the Court of Justice may be read as part of a more general crisis in the legitimacy of supranational and international constraints. In the case of the Union, however, this attack assumes particular intensity because it affects a supranational legal order characterized by primacy, direct effect, widespread judicial protection, and the immediate relevance of individuals.

There is also a further aspect that, in my view, connects the volume to the literature on disinformation, hate speech, and the regulation of the digital public sphere. Eurosceptic constitutional counter-narratives circulate within a communicative ecosystem characterized by polarization, simplification, the accelerated circulation of content, and, not infrequently, disinformation. The digital dimension profoundly alters the conditions under which freedom of expression and political participation are exercised, amplifying false, misleading, or discriminatory content and making it more difficult to distinguish legitimate criticism from propaganda and manipulation. From this perspective too, Castillo-Ortiz and Martinico's volume offers an important contribution, showing that the crisis of European integration is not only institutional or jurisdictional, but also narrative.

The events in Belfast on 12th June 2026 provide a telling example. Following the serious stabbing of a person, attributed to a Sudanese citizen with refugee status, anti-immigration groups promoted protests through social media; those protests subsequently degenerated into racist violence, arson, and attacks on businesses and homes belonging to, or associated with, non-white people. Facebook and X played a significant role in disseminating calls for mobilization. The case illustrates how xenophobic narratives and identity-based simplifications can circulate rapidly in the digital space, with significant effects on democratic processes and social cohesion.

3. From the perspective of an international and EU law scholar, the book is particularly interesting because, although neither Author writes primarily as an international lawyer, it makes it possible to understand constitutional Euroscepticism not as an isolated phenomenon, but as a regional manifestation of a broader tension between State sovereignty and external legal constraints.

Today this tension assumes new forms. Contemporary sovereignist rhetoric is not limited to demanding greater manoeuvre space for national political decision-making; rather, it tends to present every external constraint – whether deriving from EU law, the ECHR, a treaty, or an international court – as an undue limitation on democracy. The book effectively demonstrates that this rhetoric becomes particularly powerful when it appropriates legal language.

In my view, one of the most useful passages in the book is therefore the one in which the Authors recall that post-war European constitutions are profoundly marked by an awareness of the limits of the State, presuppose

international cooperation and openness to the outside world, and aim to construct systems capable of preventing the return of absolute forms of sovereignty. From this perspective, European integration is not an antagonist of these constitutions, but rather one of their most coherent developments.

This certainly does not imply that the EU is immune from criticism, nor that its legal order is free from unresolved tensions. It does, however, imply that criticism of the EU cannot rest on a purely mythological conception of national sovereignty.

The book is therefore particularly valuable because it distinguishes criticism of the European Union from constitutional Euroscepticism. Not every form of national resistance to EU law is pathological; not every invocation of counter-limits is sovereignist; and not every conflict between courts is a sign of disintegration. On the contrary, the history of EU law is also a history of conflict: one may think of the *Solange*, *Frontini*, and *Taricco* sagas and, more generally, of the sometimes difficult but fruitful dialogue between national courts and the Court of Justice.

The problem arises when resistance does not seek to improve the system, but to deny its functioning or even its existence. From this perspective, the Eurosceptic mobilization of constitutional law may be understood as a form of dysfunctional disobedience: it does not contribute to the evolution of the European legal order, but rather calls into question its very presuppositions.

At this point, there is room for further reflection. The volume privileges the perspective of comparative constitutional law and EU law. From the standpoint of international law, the inquiry could be broadened further by situating constitutional Euroscepticism within the general crisis of multilateralism and the contestation of international organizations.

The rejection of the Court of Justice, criticism of the ECHR, the paralysis of the WTO Appellate Body, the denunciation of investment treaties, resistance to regional mechanisms for the protection of human rights, and challenges to international economic organizations are not identical phenomena. Yet they share a common trait with the dynamics examined in the book: the growing difficulty of accepting decisions adopted by independent bodies situated outside the national political circuit.

From this perspective, Eurosceptic constitutional law may be read as a specific chapter in a broader contestation of international adjudication.

A second aspect that could be explored further concerns the relationship between constitutional counter-narratives and the digital public sphere.

The book convincingly analyzes the constitutional narratives of Eurosceptic actors, but further reflection could be devoted to the channels through which these narratives circulate, are amplified, and become common sense. The political construction of Europe as an intolerable external constraint largely takes place through digital platforms, coordinated campaigns, simplified messages, disinformation, and forms of emotional

polarization. This is especially evident when the discourse on constitutional sovereignty is connected to sensitive issues such as immigration, security, national identity, pandemics, war, economic crisis, or platform regulation.

Constitutional Euroscepticism, therefore, is not only a doctrinal or partisan strategy; it is also a communicative strategy. From this perspective, the connection with the Digital Services Act and with European policies aimed at countering systemic risks to democratic processes could be explored further.

A third aspect that could be developed further concerns the external dimension of the European Union.

While the book demonstrates how European integration is contested *from within* through the language of national constitutional law, the question remains how this contestation affects the Union's capacity to act *externally*, as an international actor.

A Union whose internal legal authority is under threat may appear less credible in its external promotion of the rule of law, fundamental rights, and multilateralism. The crisis of the primacy of EU law and of the authority of the Court of Justice is therefore not only an internal problem of the Union legal order, but also a matter of international relevance: it concerns the Union's stability as a subject of international law capable of producing, defending, and projecting regulatory models.

Overall, the volume represents an important and timely contribution.

Its strength lies in demonstrating that the most insidious form of Euroscepticism is not necessarily the one that advocates withdrawal from the Union, but rather the one that seeks progressively to undermine its legal framework while remaining within it. From this perspective, the Eurosceptic mobilization of constitutional law is more insidious than any withdrawal policy: it does not formally eliminate the EU legal order, but subtly erodes its legitimacy through a selective and polemical use of legal categories.

The conclusion to be drawn is that the defense of European integration cannot be limited to the formal reaffirmation of the primacy of EU law. It must also proceed through a clear and persuasive legal narrative capable of demonstrating that openness, cooperation, regulatory pluralism, and the supranational protection of rights are not deviations from constitutionalism, but among its mature expressions.

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