

ELJ's *For and Against Series* #2

Most academic writing comes in the form of a long monologue. But all fundamental problems are by definition complex both in factual and in normative terms. The *For and Against Series* of the European Law Journal aims at thinking problems *in between* two opposite views. Each session is organised around one topic and two speakers who will engage with each other and will encourage the audience and later the readership to look at the two (or more) sides of each fundamental question being debated.

THE TOPIC

“Is constitutional pluralism still relevant to make sense of the constitution of the European Union?”

The European Union is undergoing what may be labelled as an existential crisis. Economic, financial, fiscal and political crises have overlapped and mutually reinforced each other since 2007. While the European Union and European constitutional law remain in flux, it is fairly clear that the European Union that will emerge from the crises (if it manages to overcome them) would be rather different from the European Union *before* the crises. Both the crises and the decisions taken and the reforms adopted to overcome them have resulted in what could be described as a deep and thorough constitutional mutation, characterised by three main features: *the massive centralisation of power* (in particular, fiscal, macroeconomic and regulatory powers), *the empowerment of the least representative of the supranational institutions* (the European Central Bank, the new quasi-intergovernmental Euro Council, the Commissioner for Economic and Monetary Affairs, even the IMF as part of the so-called “troika”) and *the end of equality among Member States* (resulting from the radicalisation of differentiated integration and from the different prerogatives proper of debtor and creditor states under the new economic governance of the Union).

As the European Union literally keeps on mutating, European scholars try to keep on making sense of the Union. Before the crises started, “constitutional pluralism” was the constitutional theory most widely perceived to provide the concepts and tools with which to make sense of European constitutional law. Constitutional pluralism assumes that European law is grounded in an overlapping set of legal social practices which presuppose different understandings of the validity basis of Community law. In lieu of obsessively focusing on which of the two alternatives is right (*the national constitutional practice* which claims that the European legal order rests upon the 28 national constitutions; *the supranational constitutional practice* which propends to assume that integration has led to a mutation into national legal orders, now absorbed

into a single European constitutional order framed by the constitutional law of the Union), European scholarship should occupy itself also if not mainly with determining why and how the European legal order does indeed keep on discharging its basic social tasks despite the co-existence of such practices. The really intriguing question is not which one of the two standpoints is right (both of them *are* from their own perspective) but why a legal order can be pluralistic without descending into chaotic diversity. No matter how intellectually exciting constitutional pluralism may be, the crises and the ongoing transformations of the European Union seem to challenge its very foundational premises. Moreover, some of the most known advocates of constitutional pluralism before the crises have put forward policy proposals to overcome the crises that have been regarded as being at odds with their previous pluralistic views. It is thus proper if not urgent that we reassess the capacity of constitutional pluralism both to reconstruct the European constitution and to provide a normative blueprint for its development (or eventually, reconstitution)

THE SPEAKERS



Neil Walker is Regius Professor of Public Law and the Law of Nature and Nations and of the most sophisticated and prolific theorists of constitutional pluralism. He has just published *Intimations of Global Law* (Cambridge, 2014) and was editor of *The European Constitutional Mosaic* (Hart, 2011) and *Sovereignty in Transition* (Hart, 2003).

Julio Baquero is a member of the legal services of the European Commission and teaches European Union law at Sciences Po (Paris). In his work he has criticised the ‘pluralist movement’ as an impossible and indefensible legal position. He is the author of *Between Competition and Free Movement* (Hart, 2002)



THE VENUE

ARENA

Tuesday April 27th, 2015

13 hours

ELJ Debates Series #2 is made possible by the generous sponsoring and hosting of ARENA, the European Studies Centre of the University of Oslo. Series #1 takes place at the Law School of the University of Oslo, on April 27th, 2015. Series #3 and #4 will take place at leading European institutions to be announced in late 2015.