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Are You Ready for That? The Next European Elections as a Crucial Moment in the History of the EU

by

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Abstract

This issue of Perspectives on Federalism presents a special symposium devoted to the elections of the European Parliament. The EU has frequently been described as a burden, a threat to national sovereignty or a technocratic subject provided with an indirect legitimacy, but this representation does not give justice to its important role in everyday life. Indeed, the EU is also an added value, thanks to EU law we have enjoyed new rights which we can now claim before national judges. In this sense, although it does not benefit from the kind of legitimacy that national democracies normally have, it for sure participates in the function historically played by constitutionalism

Key-words

European Parliament, elections, Brexit, European constitutionalism



The elections of the European Parliament (EP) are approaching. While traditionally these elections have been described as “second order” elections (Reif, Schmitt 1980) when compared to the national ones, this time they seem of primary importance for European integration, as recently emphasized by Emmanuel Macron (Macron 2019). There are many reasons for this. First of all, they might be the first post Brexit elections. I wrote “*might*” as uncertainty and confusion rule in the UK these days. Repelling the tide in order to come back to the original conformation of English law. The curious phenomenon called “Brexit” is inspired by this goal: a titanic challenge against history which aims to achieve what Lord Denning could not even conceive in the seventies, when he defined the impact the Treaty of Rome over the English system as an “incoming tide”. In theory, anything could happen at this point, since the Court of Justice of the EU has ruled in a recent judgment¹ that the UK could change its mind, by revoking the notification that triggered the Brexit procedure two years ago. This decision is to a certain extent problematic since it risks adding confusion to an already complicated scenario. This sad situation is, after all, consistent with the historical relationship between the EU and the UK, as recalled by Stephen George in his book published at the end of the nineties, emblematically entitled “An Awkward Partner” (George 1998).

However, the next European elections will also be crucial for another reason, i.e. the massive attacks launched by self-declared populist forces to the idea of European integration as traditionally understood. It is not by coincidence that Salvini, one of the two vice premiers in Italy and leader of the “Lega”, has declared that these elections will be “a referendum between the Europe of the élites, the banks and the finance and the Europe of the people”^{II}. The EU has frequently been described as a burden, a threat to national sovereignty or a technocratic subject provided with an indirect legitimacy (Lord 2017), but this representation does not give justice to its important role in everyday life. Indeed, the EU is also an added value, thanks to EU law we have enjoyed new rights which we can now claim before national judges. In this sense, although it does not benefit from the kind of legitimacy that national democracies normally have, the EU participates in the function historically played by constitutionalism. In this sense, EU constitutional law is not an exhaustive phenomenon, it



does not aim to replace (completely at least) national constitutionalism: on the contrary, EU constitutionalism needs the constitutional materials of the Member States in order to perform its rationalizing function (Mirkin-Guetzévitch 1931) the constitution, in this sense, remains the “shape of the power”). This point has been developed by, among others, the former Advocate General Miguel Poiares Maduro (Poiares Maduro 2012), who radically challenges the argument of those who deny the existence or the possibility of a supranational constitutionalism, by making a distinction between the idea of constitutionalism as such and state constitutionalism, which is understood as a particular historical experience and not as the paradigm of constitutionalism as such. Against this background “European constitutionalism brings us closer to the ideals of constitutionalism. It is not, in itself, a closer representation of constitutionalism than national constitutionalism, but their interplay is. This is what constitutional pluralism argues and therein lays its thicker normative claim, one that relates constitutional pluralism and constitutionalism in general” (Poiares Maduro 2012: 77) In other words, we do not need a European super State to recognize the importance that the EU has in our life. Member States will continue to have a central role but - and this is what populists usually do not mention - the European peoples (plural) will reinforce their position of being capable of dealing with many global phenomena only by cooperating together without being obliged to renounce their diversity. “United in diversity” is not by coincidence the motto of the EU. We have decided to devote a special symposium to the next European elections with three short articles authored by Nicola Lupo, Diane Fromage and Roberto Castaldi, who kindly accepted to analyse this crucial moment from their (different) perspectives.

However, this issue does not limit its attention to the EU only since we have also gathered three long articles dealing with other relevant legal and political experiences. In his piece Matteo Monti explores the tricky relationship between asymmetry in fundamental rights and the principle of non-discrimination in Belgium – focusing on the debate concerning the Charter for Flanders – and Switzerland. In their article Domenico Giannino and Antonio Manzoni deal with some interesting decisions of the Supreme Court of Justice of Colombia and the Inter-American Court of Human Rights and try to identify the core points of a new environmental justice approach. In his essay Rajesh Kumar offers a fascinating analysis of the development of federal financial relations during British rule in India by identifying six phases in its evolution. As always, happy reading.



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¹Court of Justice of the European Union, C-621/18, *Wightman e a.*, ECLI:EU:C:2018:999, www.curia.europa.eu

¹¹“Salvini lancia la "Lega delle Leghe": ‘Sarà un referendum tra noi e le élite europee’”, 01 July 2018, <http://www.ilgiornale.it/news/politica/salvini-guarda-europee-referendum-noi-e-lite-ue-1547278.html>

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