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BOOK REVIEWS

New Economic Constitutionalism in Europe, by George Gerapetritis. Oxford: Hart Publishing, 2019, pp. 351.

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A decade after the banking and financial crisis hit Europe, George Gerapetritis's *New Economic Constitutionalism in Europe* provides a detailed and interdisciplinary interpretation of the consequences of those events from the constitutional standpoint in Europe. Main argument of the book is that the economic crisis has brought about a new era in European constitutionalism: "new economic constitutionalism". In this historical phase, still shaping European's reality today, economic provisions have gained priority both in the drafting and reading of constitutions – thus bringing a "significant change of paradigm in the economic governance of the respective States" (p.80). This upgrade of the economic provisions mirrors the establishment of "financialism as an economic constitutional identity" (pp.3, 201).

The first chapter of the book clarifies the notion of new economic constitutionalism. Gerapetritis argues that if we consider society as composed of "functionally differentiated subsystems" (p.11), economy – intended here as one of its subsystems – gained prevalence since the end of World War II. This "upgrade" of economy reaches its peak with the financial crisis, as evidenced by the transferral of economic

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competences to the supranational level of governance and the priority given by constitutions to economic provisions, as in the bail-out clauses of the Treaty of the functioning of the European Union (Articles 125 and 123). On one side, therefore, the economy has begun to enjoy a normative capacity as the subsystems of law and politics. On other, constitutions shifted from tolerating or abstaining from intrusion in the economy to the prioritization of these aspects. This dynamic lies at the heart of financialism.

Gerapetritis carries out a great tracing exercise in elucidating how financialism could come to be embraced by States and supranational entities in Europe – whose legal orders are also part of the analysis. Constitutional identity could in fact be assumed to be a notion pertaining to the realm of the State. However, the European Communities were exactly established on that ordoliberal economic identity. Thus, “national States exported constitutionalism and imported economic identity”, searching for *functionality* while “the supranational entities exported their economic identity and imported constitutionalism”, searching for *legitimacy* (p.29).

Having established the concept of new economic constitutionalism, the author proceeds to assess the impact of this new paradigm on constitution-making (ch.2), on constitutional interpretation (ch.3), on governance (ch.4) and on politics (ch.5).

In terms of constitution-making, few Member States’ constitutions included economic governance provisions in their text prior to the crisis. This has not undergone profound changes, as the post-crisis adaptation was attained “without wide constitutions revisions or EU Treaties’ amendments” (p.318). Clear examples are the cases of France and Austria. The obligations deriving from the Fiscal Compact in the first case and from the Balanced Budget Rule in the second were transposed as ordinary statutes since the requirements for constitutional laws were not satisfied. This

absence of major constitutional revisions is mitigated by the recognition of the paradox between the extremely fast pace at which economy develops as a subsystem (“agile economy”) and its integration in the Constitution, which by reason of its rigid nature cannot embrace this fast adapting and futuristic character (p.22).

The lack of amendments in primary law texts has granted though a noteworthy role to the judiciary, called to verify the compatibility of the new legislation with the constitutional provisions (p.224). This is extensively examined in the third chapter. The sample of laws considered – divided by topic, country and origin (domestic/European court level) – is outstanding in its size and comparative prospect. While the reader could have benefit from some more guidance on the rationale behind the structuring of chapter 3, this contribution greatly enriches the existing literature, which has been focusing either on specific cases, singular countries or single levels of governance. The last section of the chapter examines the case of property. Particularly interesting is the discussion on how the national and EU courts have reduced their judicial review because of the presence of “complex technical judgments or political choices” (p.185), leading to judicial self-restraint and highlighting the risks for authoritarian drift and for human rights’ protection.

With respect to governance, Gerapetritis raises two interesting points in chapter 4. The first one deals with judicial responsiveness, as the Court of Justice is called out to be “from the very beginning, [...] part of the problem” since it did not actively intervene when it had the chance to make Member States adhere to rules of financial discipline, as illustrated by the 2004 cases of Germany and France’s excessive deficit (p.227). The second point pertains to the doctrine of implied powers. While in the pre-crisis legislation this doctrine was very cautiously acknowledged by the Court, the author underlines how the Court of Justice has incurred in “serious technical contradictions” by employing conflicting interpretations of the principle of conferred

powers in *Pringle* and *Gauweiler*, substantiating the competence of Member States in the former post-crisis case and the competence of the European Central Bank in the latter (p.250).

The fifth chapter presents the effects of new economic constitutionalism on politics. These include the increase in euro-scepticism and dichotomies such as *lenders vs debtors* and *financial stability vs social cohesion*. Another illustration is the recourse to technocratic governments, leading to a depart from representative democracy. In the successive chapter Gerapetritis addresses these neglected consequences on legitimacy and rule of law. He criticizes indeed the mere use of tools of economic governance to solve the crisis, advancing an “EU Recalibration proposal” which focuses on deliberativeness, global solidarity and intergenerational sustainability, better understanding of market’s functioning and – most crucially – strengthening of institutions’ resilience.

To conclude, Gerapetritis’ book provides not only a detailed analysis of the effects of the economic crisis on constitutionalism, but also informed and forward-looking solutions for a better crisis-management capacity at the European level. The multidisciplinary nature of the book – touching upon law, economics and political science theories and practices – is among the main merits of Gerapetritis. He himself underlines the very limited number of constitutional revisions – weakening the claim of a paradigm shift – and the doubts on the willingness of Member States to accomplish the needed institutional restructuring. Nevertheless, this in-depth study remains an excellent starting point to understand how constitutionalism endured the economic crisis, the development of constitutional interpretation and the accountability and risk management challenges we are still facing.

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