

Constitutional pluralism: An oxymoron by M. Loughlin

In his article Loughlin elaborates on the concept of constitutional pluralism (CP) in relation to the European Union and points out the critical aspects to it making this concept oxymoronic. He, therefore, focuses on the works of CP's advocates and highly criticizes the foundations and chosen approach of this specific concept.

Loughlin's statement in terms of 'state sovereignty', that countries without a codified constitution lack the right of being obeyed, is not a true observation. Therefore, countries like the UK, Saudi Arabia, Israel or New Zealand, who official don't have a constitution, wouldn't have a legitimate authority, which in his opinion can only derive from a constitution. This leaves the concepts of sovereignty of the people and parliamentary sovereignty completely out of the picture.

Nonetheless I have to agree with Loughlin, when it comes to his critic of MacCormick, who uses the word constitution synonymous with the word legal order. In my opinion a legitimized legal order needn't be based on a constitution – it can be, though. Either way a legitimized legal order is indispensable for a functioning state authority, with or without a constitution. Furthermore, I support Loughlin's opinion in terms of pointing out the existing differentiation between legal and constitutional pluralism being ignored by MacCormick. In addition, the notion of a non-existent constitutional pluralism is reasonable in my opinion, given that, as stated by Loughlin, the true power lays within the member states scope of authority at the moment. Maybe the term of legal pluralism should and could be a fitting subsequent object of discourse in this regard - taking into consideration, that we still don't have a completely federal Europe, including a constitution. If, at some point, the failed ratification of a European constitution is overcome, the recommissioning of a constitution for the European Union might then initiate a real discussion about constitutional pluralism.

In conclusion, I'm neither a defender nor an adversary of constitutional pluralism in contrast to Loughlin. I think, that there are aspects of this concept, which are definitely practicable and implementable. In terms of a possible reissue of a European Constitution, which is not at all unlikely, I personally think, that this theory could offer good services to further explain the origins of authority and its legitimacy. But as Loughlin pointed

out correctly, there are major loopholes in the line of argumentation, which need to be addressed as well as need to be adjusted to the future state of affairs.

How is the theory of constitutional pluralism perceived now in the discourse of European politics? Where there any major shifts or researchers reacting to the critics of Loughlin, which completely deconstructed the theory and all its agents?