

The EU Must Face the New Politics of Globalization

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The world of EU law woke-up on June 24th with a hangover. Every member of our academic community is or knows well friends and colleagues studying and teaching EU law in the UK whose futures are in question. Yet, the referendum raises a larger scientific question for EU law. As well as the technicalities of divorce and variable geometry that will deservedly receive renewed attention, there is the broader question about the kind of political re-shaping of EU constitutionalism that Brexit will bring about.

Many, including Floris de Witte and I,¹ have argued that the EU must do a better job of internalizing democratic and political conflict. The most obvious conflict is along the traditional left-right axis. But this campaign has shown us that this axis is increasingly meaningless in our world. The real cleavage in modern 21st century politics is not about the state *per se* but about globalization. It pits the forces of internationalism and the liberal exchange of values and peoples against the reified, protectionist nationalism of the Leave campaign (culminating in posters of desperate Syrian refugees forcing Britain to a supposed “breaking point”).

The Leave campaign tapped into this cleavage with terrifying but effective vigor. It did not try to win the Brexit debate on concrete issues. It won, instead, on a promise to shield Britons from the (both real and imaginary) winds of change that economic transformation has produced. The message we saw in the Leave campaign was the message we see in populist movements throughout Europe and in the rust-belt populism of Donald Trump. It was a message as appealing to the post-industrial working class of Sunderland as it was to shopkeepers in the East Midlands or retired army officers in the prosperous South. It is re-shaping the political landscape across Europe.

How should EU constitutionalism respond? It seems impossible to imagine an EU response that does not take into account this seismic political force. This requires a form of EU constitutionalism that is able to reassure and provide hope and opportunity for those who

¹ See Mark Dawson & Floris de Witte, *From Balance to Conflict: A New Constitution for the EU*, 22 EUROPEAN LAW JOURNAL 2 (2016), available at <http://onlinelibrary.wiley.com/doi/10.1111/eulj.12158/abstract>.

see globalization as a threat (including the non-mobile). While the defence community is often identified as the EU's "road not taken," another plausible candidate would be the Coal and Steel community itself—it contained a notable social dimension that was designed to compensate those who would be left behind by its shift to a more integrated European industrial base. At some point along the road of integration the idea of linking the fate of integration's "winners" with the fate of its "losers" was decisively lost.²

It also surely requires an EU that allows the debate between these two forces to take place within, rather than in opposition to, its institutional structure. The EU's Treaty rules in this sense—rules which settle a host of questions over economic policy, market access, discrimination, and many other issues that speak directly to the political concerns of populist parties and voters—do not help. Just as the UK's historic permissive consensus over Europe (to criticize it without subjecting it to real democratic choice) boiled in a wave of populist anger, EU constitutionalism is also in danger of suppressing rather than channeling democratic discourse over Europe's political future.

Accommodating the cosmopolitan/nationalist cleavage in EU constitutionalism is a dangerous exercise: it will provide the Le Pens, Farages, and Trumps of this world with a new platform. But what is the alternative? Brexit should signal the end of EU politics by stealth.

² See N. FLIGSTEIN, *EUROCLASH* (2008).