

Cosmopolitan law and time: Toward a theory of constitutionalism and solidarity in transition

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Abstract: This article seeks to confront the contemporary condition in which cosmopolitan law—meant to resonate as something citizens across borders author and live together—instead is increasingly a source of detachment, confusion, and alienation. Taking the European Union’s twin crises of democratic legitimacy and social solidarity as its starting point, the article offers a critique of existing approaches to supranational constitutionalism that are insufficiently responsive to this disenchantment. The article’s purpose, in turn, is to present perspectives from philosophy and legal theory that might promisingly recast, in this new cosmopolitan frame, our thinking about law as a mode of social integration. Specifically, the article’s central claim is that time—as a seldom-examined, yet essential dimension of law—is closely linked to law’s cosmopolitan potential and, concurrently, to the motivational resources for cosmopolitan solidarity. It is through a sensitivity to time—our awareness of the past passing into the present in anticipation of a future—that citizens can meaningfully hold together cosmopolitan law’s dual, ostensibly divergent hopes: shared commitment and self-decentering plurality. Drawing on Seyla Benhabib’s ‘democratic iterations’ and its roots in the work of Jacques Derrida and Robert Cover, the article elaborates the following two concepts: ‘cosmopolitan promise-making’, a diachronic form of cosmopolitan political agency; and ‘cosmopolitan legal narrative’, a set of plural, evolving constitutional interpretations open to mutual engagement over time. These concepts, in temporalizing our understanding of political identity and constitutional law, together serve to underwrite a cosmopolitan legal order without also thinning solidarity’s social and democratic foundations. The article concludes with a critique of the contemporary role of European courts and a concrete vision for the cosmopolitan development of EU jurisprudence. Reinterpreting Article 4(2) TEU as the right to constitutional narrative, the article advances new modalities and normative aspirations for constitutional interpretation beyond the nation-state.

Keywords: constitutional law, cosmopolitanism, democratic iterations, European Union, time