An emerging body of literature describes the context of constitutional and legal pluralism which characterizes the European Union (EU). In this context a large number of works focus on the role of national courts ad European Court of Justice (hereinafter ECJ) and on the judicial review. Martinico’s book offers an excellent contribution to this theoretical movement of the European legal studies: it adopts an interdisciplinary approach and can be considered an interesting contribution for the scholars dealing with constitutional law but also for theory of law.

“L’Integrazione silente”, literally meaning the “Silent integration”, aims at focusing on the role of the ECJ and at reviewing the impact of its decisions on the constitutional pluralism. The Author first undertake an analysis of the European Union legal order seen as a complex one, an “ordinamento a configurazione complessa”, where a plurality of constitutional sources (both European and national) have fed the EU constitutional law.

After an introductory part devoted to set out the context, the objectives and the structure of the study, the first chapter proceeds to expose the academic debate on the European Constitution. Martinico explains his theory of complexity (“teoria della complessità”) and makes clear how it fits within the wide theoretical movement of the “constitutional integration”, recalling that the acceptance of the supremacy of the EU rules over national constitutional rules has not been unconditional and has even, at times, resisted by national constitutional courts. The Author underlines that such background confers to EU law a sort of contested or negotiated normative authority. In particular, the Author, without ever giving anything for granted and departing from the very meaning of the term “complex”, illustrates the thesis of the European Union being a complex reality nourishing itself of reciprocal diversities. The A. makes theoretical references to Morin, in such context. He also seems to endorse
what Poiares Maduro has defined as “natura experimental e dinamico do constitucionalismo europeo”. The image of constitutional exchange, which involves mutual and reciprocal considerations (sinallagma constituzionale), born out of the dialectic and coordinative nature of the relation among the different constitutional orders. This powerful and evocative image allows the Author to analyze briefly the consequence of such complexity over the legal sources system. By highlighting the growing obsoleteness of hierarchy and the emergence of increasingly flexible dynamics, Martinico acknowledges how the domestic law is becoming, to a large extent, EU implementation law.

After treating the methodological and definition stumble stones, Martinico identifies, in the “dialogue among/between courts” (being a concrete and dynamical expression of the European complexity), a privileged point of view to study the relationship between orders. He thus reconstructs the hermeneutic function of the ECJ.

The third chapter of the book is devoted to the interpretative decisions of the ECJ as a source of law. First, Martinico examines the hermeneutic techniques and the style of the Community judge. Secondly, using the comparative method and the best available doctrine, he brilliantly analyses the problem of efficiency of the decisions based on art. 234 EC Treaty, and those generated in the preliminary ruling case-law. The Author carries out an exegesis of the relevant rules and a deep analysis of Community case-law. He observes the constraints of the national judge in their interpretative activity deriving from ECJ decisions: the domestic judges indeed may only follow the interpretation given by the Community judge or use again the preliminary ruling procedure.

Worth noting and easily agreeable in Chapter 4 is the framing of the interpretative rulings in the cultural sources (understood as sources that do not originate from the implementation of a political programme, not from institutionalized procedures). The Author observes how the ECJ, whilst not being a political institution, has assumed a fundamental political function. Through its case-law, the ECJ has been at the forefront of this process of constitutionalization, transforming the original EEC Treaty into a very constitutional charter. The Court has not been seeking to replicate constitutions of nation states. It has created constitutional doctrines appropriate to the hybridity of the EU. Martinico shows as ECJ decisions may appear as flexible sources, adaptable to a context lacking of a strong supranational political power. Commenting on recent case, the strong position, rectius, the interpretative monopoly that the ECJ has self-conferred is highlightened. The Author underlines the role that the Court is unfolding in the constitutionalization of the third pillar (e.g. with the Pupino, the Dell’Orto, or the Segi cases).

Additionally Martinico highlights that the three pillars structure is
progressively fading in more or less visible ways. The fact that Community judges never refer to an exclusive homogeneous legal order, nor reduce to such order the norms applicable to the EC and EU (see Kadi case) does not contradict such evolution. The Author thus concludes, aligning himself with other notorious scholars, that the Court confers to herself the role of a supreme court in a federal system, without ever falling in a nation state rhetoric.

This first part of the book transmits how the current constitutional pluralism does not have the need to find a new pre-established legal order and is consequently not readable through the lens of new hierarchies. It is rather the dialogue between domestic and Community judges, which oscillates from activism to self-restraint that appears to be the real key of the European integration process.

The fifth chapter is devoted to a review of domestic constitutional case-law. Through the analysis of the main national experience, the Author observes the substantial agreement on the concept of “counter-limits”. Such a concept is not conceived as obstacle to the dialogue, but as a true occasion of confrontation among the supreme judges of the multilevel system. After analyzing how the modifications of the classified Constitutional Treaty could have weighted on the dialog among Courts and after examining the Reform Treaty, Martinico, once more insists on the negotiation dimension, which is the salient feature of the relationship between judiciary organs.

The last two chapter are devoted to clear the picture of the complex investigation carried out. Additionally the Author aims at framing methodologically the theme of the dialogue between the ECJ and the domestic jurisdictions. Martinico notes how the Court has increased its sensitivity to constitutional judgement released by national courts. Discussing the techniques of this dialogue (often indirect and hidden), and retracing the path that has conduced to a progressive convergence among the “involved judiciary actors”, but also to a “comunitarizzazione dei controlimiti”, Martinico describes in a precise way the relations between the ECJ and the national courts, using the notion of “Comity”. The final pages focus on the impact that the integrated context may have on scholarship. This seems to be the most original part of this book: Martinico critically discuss the specificity and adequacy of the comparative method to analyze the European law of integration, trying to identify which categories are most suitable for vertical comparison. He discuss the use of comparative method in the current increasing globalised world. The move towards harmonization of laws, towards codification within the European Union, where several legal traditions coexist, and towards a legal system increasingly deprived of hierarchy. The Author observes the legal constitutional order as a result of the integration of diverse legal order. He
captures the meaning of the crossing of different legal traditions.

The silent integration is a deep text. From the very first lines the richness of the doctrinal background, the magnitude of the citations and the necessary theoretical frame emerge. A thorough knowledge of the most prominent scholars supports Martinico’s arguments. Through a convincing reasoning, the Author suggests new pass-keys to a better understanding of the European constitutional order.

Even if the book appears very complex, it reconstructs, in a very enjoyable attempt to rationalize, the abundant legal literature. In doing so it clearly contributes to the development of comparative law as a body of knowledge.