SYbIL | Spanish Yearbook of International Law

José Manuel MARTÍNEZ SIERRA, *La (des)constitucionalización en la Unión Europea*, Tirant lo Blanch, Valencia, 2022, 364 pp.

The work under review, *The (De)Constitutionalization in the European Union*, published in Spanish as *La (des)constitucionalización en la Unión Europea* analyzes existing tensions within the European Union's constitutional democracy. The author shows the results of his work devoted to the study of constitutional democracy in the UE as part of his work at the Harvard European Law Association or the European Law and Government Study Group, among others in the Ivy League university where he worked for over a decade. The work explores the rise and downfall of the constitutionalization process that started with the failed Treaty establishing a Constitution for Europe. After that moment, the legal phenomenon of constitutionalization starts to withdraw to the extreme, as the title of the book suggests.

But even if the Constitutional Treaty would have entered into force, we would have been witness to a *sui generis* constitutional process in which International Law would not only be present, but in which its foundational principle -sovereignty- would be determined and conditioned by it. Not in vain, the impact of the intergovernmental drift, reflected in the positions of the member States, aimed at avoiding the application of European Union Law in some areas of political action, is ultimately justified in the principle of State sovereignty. Even the European Commission tends to defend its policies by arguing that they correspond to the will of the States. This leads to a negative effect not only in the democratization process of the system, but also in the message that the member States send in relation to their contempt for European Union Law.

The work is structured in seven chapters that can be subdivided in three sections. In the first one, the author takes, as a starting point, the Treaty of Nice to inquire on its nature and wondering if it was "the end of the beginning or the beginning of the end. After that, the book delves into the genesis and prelude of the European constitutional debate. The second section contains three chapters that, from a critical perspective, study, first, the "intended" Constitution for Europe, then, the Charter of Fundamental Rights of the European Union described by the author as a "Constitution without a Charter" and, finally, the economic constitution (no capital letters) of the European Union. Throughout the work, the author stresses this last point, that is, on the determining role of the Economy in the Law. The last two chapters of the work take different levels as points of reference: on the one hand, the "surrendering" of the Spanish Constitution to the European Union; and on the other, the role of the European Council in what the author calls "the great crises" -referring to the economic crisis, the migratory crisis and Brexit-. Of course, COVID and the war on Ukraine would paint a complete picture of the structural -non-circumstantial- leadership role undertaken by the European Council.

The author calls attention to the limitations of the Charter of Fundamental Rights of the EU from 2000 and he is critical of its characteristics in comparison with the European Convention on Human Rights of 1950. He not only points out their different origins and legal nature, but also highlights the historical deficit of fundamental rights inside the

Union, which is, today, inexcusable from the point of view of the constitutional exercise of public power. Martinez Sierra also points out the limitations of the constitutional nature of the Charter, which, he says, should have stemmed from the interests of its subjects and not exclusively from the will of the member States.

The analysis of the configuration of the principle of primacy of European Union Law occupies a prominent place in the book. The principle, first appeared on July 15th, 1964, as a result of the *Costa/ENEL* decision states that "the law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, *however framed*, without being deprived of its character as Community Law and without the legal basis of the Community itself being called into question." The phrase "*however framed*" as it appears in *Costa/ENEL* seems to indicate that not even the Constitutions of the Member states, with the protection for fundamental rights role ascribed to them, could challenge the supremacy of European Union law. This decision was followed by *Solange I* in which the German Constitutional Court argued that because there was a duty to protect fundamental rights, and the German constitutional identity as a whole, the Court should not analyze the compatibility of EU law with its Constitution "as long as" (Solange), the democratic deficit of the institutional system of the Union is not corrected.

The work also studies the limits of the Treaty of Lisbon as evidenced by the crisis in which it has played a role. One of them was unexpected -Brexit- and two others are always latent the economic and refugee crises-. However, the author points out that the foundation for starting the traditional method of activating an intergovernmental conference are not there yet. Much less through the renewed constitutional process. Then, it is only natural to inquiry on the reach of the "institutional innovation" method that can put a stop to the *fait accompli* route.

Of the many merits that can be attributed to the author, we should highlight the fact that his analysis manages to burst Constitutional law at the seams in order to make room for concepts from other areas of law -namely, European Union Law and International Law- which are essential to be able to discern the role of the Union in the current international order. This manifests itself through a sort of dialogue, that is mostly tense but abundant in nuances, between the different areas of the law.

Because of all of the above, this is a work of unquestionable relevance and that is very pertinent to our times. The book is required reading for those interested in how leadership is exercised within the European Union and by the democracies of the member States of the Union in the face of a world in a state of turmoil.

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Pablo QUINZÁ REDONDO, *Uniones registradas en la Unión Europea. el Reglamento (UE) Nº 2016/1104 en perspectiva española*, Tirant lo Blanch, Valencia, 2022, 191 pp.

The creation of a system of private international law rules in the European Union, and more particularly in the area of international family law, reached an important milestone with the adoption of two regulations related to the economy of the family: Council Regulation (EU) 2016/1103 of 24 June 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes; and Council Regulation (EU) 2016/1104 of 24 June 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

Since the drafting process of these regulations began, and even more after their entry into force and subsequent application, a large number of publications have been devoted to their analysis. Important books have been published, with an article-by-article examination of both regulations, as well as monographs or scholarly articles about particular issues, but perhaps with greater attention — at least in Spain — to the regulation on matrimonial property regimes. In this context, the book of Prof. Quinzá Redondo should be welcomed, as it is a notable contribution for a better understanding of Regulation 2016/1104 on the property consequences of registered partnerships. Furthermore, it should be noted that the book is focused on the application of the regulation in Spain, something which raises many questions.

The book is structured in four main sections. The first, of an introductory nature, is concerned with highlighting the complexity of registered partnerships, whose most defining characteristic is heterogeneity. Not only may these unions receive different denominations, but also the formal or material requirements for their constitution may differ, or even the aspects relating to their property consequences or dissolution. This heterogeneity is presented with a comparative law analysis regarding EU Member States and, later on, Spain, where registered partnerships are not regulated at a national level but rather by each Autonomous Community. The presentation of the great regulatory differences existing within our country — where there are Autonomous Communities with and without competences in civil law, among other differences detailed by the author — constitute the necessary prelude to become aware of the practical difficulties that the application of Regulation 2016/1104 faces in Spain.

The following section is focused on the analysis of the scope of application of Regulation 2016/1104. The author follows the usual pattern in the study of EU regulations, delimiting its scope of application from a territorial, personal, material, and temporal perspective but without forgetting the main purpose of this monograph; that is, the application of this regulation in Spain. In this sense, Prof. Quinzá Redondo reflects and gives his opinion about the existing doctrinal debate of whether the registration of the couple should have constitutive or merely declarative effects for the application of the

regulation, considering the impact that this could have on the actual application of this regulation in Spain. He also refers to the legal issues which could be included in the "property consequences" of registered partnerships when analysing the lack of a proper response that we find in most of the autonomous communities' regulations.

The book continues with a section dedicated to the study of international jurisdiction, in which the author carries out a very detailed analysis of the different fora offered by Regulation 2016/1104 and of the diversity of situations which may arise with its application. In relation to Spanish particularities, it is worth stressing the reflections on Article 5, which link the property consequences connected with the dissolution or annulment of the registered partnership to the jurisdictions seized to hear this issue, given that in Spain there is no judicial procedure in this regard. Beyond these particularities, the reflections on the alternative forum of jurisdiction in Article 9, which allows the court of a Member State to decline jurisdiction when the registered partnership is not recognized in its legal system, are also of special interest. This article offers a compromise solution to adapt the application of Regulation 2016/1104 to the diversity of family law existing within the European Union, which has also been incorporated in Regulation 2016/1103 on the matrimonial property regimes but not in Regulation 2019/1111.

The last section of the book is centred on questions of applicable law, where the author carries out a detailed analysis of the provisions relating to the "choice of the applicable law," the "applicable law in the absence of choice by the parties," and the territorial conflict of laws within Spain as a state with more than one legal system. In this case, the reference to the internal conflict of law rules made in Article 33 of Regulation 2016/1104 to determine the relevant territorial unit and its applicable rules of law finds no legal response in Spanish law, unlike successions and matrimonial property regimes. The author refers to the subsidiary connections offered by the regulation itself and how they should be applied, providing also interesting insights into the issues that may arise in relation to unilateral conflict rules contained in some autonomous communities' regulations.

In sum, the application of Regulation 2016/1104 faces numerous challenges in our country, characterized by a diversity of Autonomous Communities' regulations, to which the judges and all legal practitioners will have to provide proper solutions. *Uniones registradas en la Unión Europea. el Reglamento (UE) Nº 2016/1104 en perspectiva española* is a valuable resource, for which the Prof. Quinzá Redondo deserves high praise, and by extension, the Private International Law group of the University of Valencia, led by Prof. Esplugues Mota, which makes so many important contributions to Spanish legal literature.

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