

**Catherine Barnard (Ed.), *The Fundamentals of EU Law Revisited: Assessing the Impact of the Constitutional Debate*. Oxford, New York: Oxford University Press, 2007. xxii + 299 pages. ISBN 978-0-19-922622-1. £ 22.50**

As the title suggests, this collection of lectures delivered at the 2005 Academy of European Law (organised every summer at the European University Institute in Florence) focuses on some core elements of European Union law. The wide range of topics selected for the volume is combined with various methodologies employed in their examination - political theory, ethics or a rigorous legal analysis. What is common to all the authors, however, is their ability to look beyond the confines of one's discipline and to provide an accurate depiction of a particular field with a well-reasoned prognosis of its future developments. Although the Academy took place shortly after the negative outcomes of the French and Dutch referenda concerning the Treaty establishing a constitution for Europe (the TCE), the authors were able to address relevant points reaching beyond the reforms presupposed by that Treaty. Their contributions have therefore remained topical, which is even more so given the fact that the Lisbon Treaty takes over almost completely what had originally been proposed by the TCE.

Paul Magnette presents a noble vision of the EU democracy based on Kantian cosmopolitan visions. Democracy in the EU is based on three pillars: firstly, repudiation of the 'Hegemonic Principle'. In the EU, there is no major group dominating its political regime. Instead, the EU is based on the idea of inter-state equality. Secondly, the Union is a community of democracies. Only the States respecting rules of democratic governance are able to become the Union's members. The third democratic pillar of the EU relates to the progressive emergence of the Union citizenship and its significance for creating a sense of common identity amongst Union citizens. These three pillars together form a regime which can serve as a 'countervailing power that balances any potential excesses from [national] democracies - very similar in a way to the institution of the rule of law. [...] In that respect the EU may be seen as a unique and original regime that combines the best of both national democracies and supranational liberalism while controlling their respective excesses' (p. 22-23). Magnette acknowledges, however, that such an interpretation does not provide an accurate picture of the political nature of the present EU. He firstly examines the possibilities of more 'vertical democracy' (through the European Parliament) and stresses the need for the Parliament's ability to shape collective will and make it public. This is related to Magnette's second point: the formation of a European civic area. According to him 'we have to acknowledge the fact that the national civic sphere is today the only locus for any effective mass deliberation. But this does not mean that we may not conjointly think about the potential creation of a structured and common locus, and on the Europeanization of national arenas' (p. 31). Magnette does not satisfy himself with this abstract statement, but suggests some steps to be taken, which makes his contribution even more valuable.

Sacha Prechal goes to the basics (or "basis" - Prechal aptly suggests both by using the term "basi(c)s") of European Union law: the founding doctrines of what is often called "constitutional law" of the EU - supremacy, direct and indirect effect. Prechal's contribution shows very well that the Court of Justice was the central institution that transformed the Union from an international organization to an entity of its own and that the Court has kept this role until nowadays. The debates over the exact meaning of the notion of direct effect illustrates that even

the “basics” of EU law are not settled yet. Prechal engages with the recent case law of the Court, as well as with other academic writers, which makes her contribution a very enjoyable and at the same time valuable read. The merging of pillars, presupposed by the Lisbon Treaty does not make Prechal’s thoughts on the nature of supremacy and the scope of its application less relevant, as they tackle on the very nature of the Union and the question what effects its law should have.

‘In the beginning was silence’, Andrew Williams reminds us (at p. 71), when he explores the protection of fundamental rights in the EU. ‘The subsequent construction of a discourse [...] that human rights were fundamental in the creation of the European Project is a myth. Not an unhealthy one perhaps, but still a myth’ (ibid). After a thorough historical overview, the central part of Williams’ contribution offers a methodology for evaluating fundamental rights protection (not only) in the EU. It is based on an identification of certain virtues, found in three basic clusters: the virtues of governance, executive virtues and justice virtues (p. 85). As Williams observes, it is the EU that identifies these virtues, although it does so only externally, ‘when it looks to third countries and how *they* manage and apply human rights norms’ (p. 84). Although Williams contends that his evaluation can only be preliminary and incomplete (p. 86), he offers a starting point for any further examination despite the fact that at times it can seem too abstract to give some practical insights.

Catherine Barnard provides an overview of the development of the EU social policy, from the very beginning to the current disputes concerning the services directive or some cases, pending (at the time of writing) before the Court of Justice and showing the clash between the “old” and “new” Europe. Similarly, Dora Kostakopoulou describes how the Area of Freedom, Security and Justice (the AFSJ) has developed from a relatively modest field comprising a limited number of instruments into the today’s most dynamic area of EU law, whose nature will be changed fundamentally by the Lisbon Treaty, which should abolish the pillar structure of the EU, which has split the AFSJ into several fragments having various regimes. Enzo Canizzaro presents the EU’s foreign relations power, putting it into a comparative perspective with other non-unitary systems of governance. He presents various models and shows to what extent the existing provisions of the treaties reflect them.

Angus Johnston’s closing contribution of the volume was not delivered as a lecture at the Academy; it nevertheless also concerns a topic of persistent constitutional importance: mechanisms of constitutional change in the EU. The mechanisms under Johnston’s scrutiny comprise processes beyond mere Treaty amendments. Johnston adds to this also judicial decisions and inter-institutional amendments, despite their limited nature. He analyses their respective legitimacy of various kinds: input legitimacy, referring to ‘the source and quality of the inputs into the process in question’, output legitimacy, encompassing ‘the question of whether or not the product of the process is acceptable and convincing to those subject to that product’, and social legitimacy, embodying ‘the idea of direct linkage between the citizens in a society and the institutions and processes that apply to them’ (p. 255). Putting these into a matrix (provided in a table on p. 256-257) offers an interesting picture of relevant merits of various ways of changing Union’s fundamental rules. Another part of Johnston’s contribution deals with the negative outcomes of the French and Dutch referenda. Johnston analyses possible reasons behind the “no” votes. He then describes various strategies adopted by various actors to overcome them. The most interesting part of Johnston’s contribution provides ‘the key substantive topics for consideration’. They concern two key elements: transparency and subsidiarity together with a greater

involvement of national parliaments. While the latter seems to be taken seriously by those negotiating the Lisbon Treaty, the way in which this treaty has been sold to European citizens suggests that after an era of more transparency in the EU constitution-making, the Member States decided to turn back to old methods of diplomatic bargaining behind closed doors. The consequences are to be seen in the following months when the Lisbon Treaty will be submitted to ratification in the Member States. If only at least some politicians read law books, including this one!

Jan Komárek, Somerville College,  
University of Oxford