Book Review

The Foundations of the EU as a Polity – Massimo Fichera

This book is aimed at academics in the field of international law, with a particular focus on the EU, its make-up and politics. It is a very good research tool, which provides a wealth of information on the topic addressed in the title – The EU as a Polity, mostly by means of addressing the term "security" in a broad sense. It also offers scope for further research by suggesting further questions which could be addressed.

It considers the uniqueness of the EU as a regional group; and whether the EU is in fact a polity – that is – a political entity with collective goals, and the capacity to assemble resources, organised by some kind of institutional hierarchy. It does not define this concept until the end of the book, it would be useful to have this definition at the start so that one can reflect on it whilst the discussion develops. The book considers the hurdles that the EU may face both in becoming and being such a polity. The book is thorough in its examination and does answer the questions in which it sets out to tackle.

Importantly the EU is considered both as part of but also distinct from the domestic sphere of law. 'It possesses its own norms, principles, institutions which respond, at least in part, to a logic that is separate from and overlapping with the domestic legal framework.' (page 2). EU law has primacy, but that does not mean national law is invalidated: national law is rather disapplied (page 11). This is one of the arguments used by the author to dismiss federalist claims that discuss the shift in sovereign power from the national to the EU level. He also asserts that the argument in the book is 'neither purely legal, nor purely political – but crosses both fields, because the EU is considered simultaneously as a legal system/order *and* as a polity' (page 29). Therefore, the theoretical approaches within the book move from black letter to socio-legal in places.

There are five chapters to this book: Chapter 1 - EU constitutionalism, crisis and the security of the European project; Chapter 2 – Discursive constituent power and European integration; Chapter 3 – The resilience of the principle of proportionality; Chapter 4 – The foundations of the EU as a polity; and Chapter 5 – Reflexive security. What this book does not include and would have been useful in the beginning is a list of acronyms that are to be used. One can find themselves having to go back to check what they stand for in the first instance.

The first chapter sets the scene for the book – it asks questions which are subsequently addressed. It states the author's argument which is proven throughout and predominant in the conclusion. That is: 'that EU constitutionalism is driven by the meta-rationale of security, which inform simultaneously the process of transformation of the EU polity, the practices and institutional arrangements that characterize it, and the literature of EU integration, regardless of the disciplinary perspective that is taken' (page 1). The author uses security in a much broader concept than simply peace and security, which becomes evident as one reads further. There is a particularly useful table on page 31 which identifies six areas of "security" that will be discussed. These are: spatial; temporal; popular; ontological; epistemic; and semantic or reflexive. These are explained further in the table and throughout the book.

Security is used to set aside the research in this book from previous studies that explore the EU as a transnational polity by different versions of constitutional pluralism (pages 12-13). He identifies that

the key point is not supremacy but 'the moral and political significance (page 17). Thus, reasserting a realist viewpoint.

The author identifies some key "crises" which have affected EU constitutionalism - these are first identified on page 3 but continue as a theme throughout the book. They are: the financial crisis; the refugee and terrorism crisis; the rule of law crises; and the constitutional identity crisis and Brexit crisis. He states that meta-rationale of the process of EU integration (page 23) should underlie the debate on the process of EU constitutionalism – and this leads into the second chapter.

In Chapter two the issue of constituent power and European integration are discussed. Constituent power is identified as being both political and legal. A key argument proposed by Fichera is that: The EU liberal project cannot negate constituent power but must reinstate it as discursive constituent power (page 47). The author refers back to the book title, and therefore the discussion remains relevant and clear. It assists the reader in linking the points being made to the overall argument. A constant theme throughout this chapter is "people-as-a-constituent-power." Fichera distinguishes "mobile people" – those benefitting from EU free movement rights, to that of "peoples" in a plural sense. Further tensions are identified between the internal market rationale of the EU and its citizenship rationale (page 59). A question that this chapter raises is whether the EU is more of a political forum than anything else? The chapter concludes with a powerful statement that states: 'the EU pursues a strategy of self-justification and self-empowerment accomplished *in the name of the peoples of Europe* (page 63). People(s), is a key argument in the chapter and to some extent continues into the next.

Chapter three discusses "The resilience of the principle of proportionality." Which is asserted to be at the heart of EU rationality. Proportionality is a flexible, discursive tool in negotiation between the EU and states; and is achieved through 'avoiding excesses and abuse of authority, ensuring a measured commitment to coexistence between different spheres of governance, and articulating the different ways values may be expressed in a complex polity (page 64). All of this is linked closely to the issues that have been or are to be discussed in terms of the EU as a polity. The author identifies that Article 52 (1) Charter of Fundamental Rights has made an impact in this area, as well as the area of freedom, security and justice, the fundamental rights review at judicial level; and as such the test should be reconsidered. The balancing exercise, however, is highlighted as difficult to judge and achieve.

This chapter gives further indication, mid-way, as to what is located in the remainder of the of the chapter – this is useful for identifying what the book has covered, and where it is to go. It highlights how the topics are interwoven and linked. Proportionality seems to be one of the largest topics covered in this book – the author goes into considerable depth around the context, history and application of this. The author identifies proportionality as a method of judicial review. The two most important domains of application being fundamental rights and the internal market (page 70). He highlights the great amount of importance attributed to such a principle – and how it straddles more than one concept in the sense of prevention of abuse of discretionary power by authorities but also as a market integration tool (at page 69). The author identifies the strategies used by the court to assess the principle of proportionality as 'suitability, necessity and proportionality' (page 71). These ideas form a large section of discussion in this chapter. In terms of the internal market – several approaches/formulas are used. They are: The Dassonville/Cassis Dijon Formula; The Schmidberger/Omega Approach; and The Viking/Laval Approach. These can be difficult concepts to get the grips with if the reader does not have any prior knowledge of the approaches. Nevertheless, the author provides a thorough examination and conclusion of these. He then looks at free movement and citizenship, stressing the lack of a uniform standard and how to balance the laws.

Interestingly, the author asserts that absolutely objective criteria is not possible and therefore proportionality and balancing face the hurdle of bias, particularly in the case of criminal law cooperation (page 103).

This chapter asserts the importance of the state in international law, that mutual trust is essential, and states do engage with and want to be bound by law that is not always from the domestic sphere.

The foundations of the EU as a polity is the title of chapter four, the penultimate chapter. This is arguably the key chapter – identifying with the title of the book. It starts by reasserting that security, in both a strict and a broad sense – is essential to EU constitutionalism. Thus 'the EU pursues a strategy of self-justification and self-empowerment' (page 122). The chapter goes back to the different types of security identified in chapter one; spatial, temporal, ontological, popular and epistemic. Reflexive is left to the final chapter. This chapter begins to discuss theories of international law such as proceduralist and classic liberalism – these are dismissed because of their assumption of undistorted communication (page 124). The author then examines the issue of "polity" which is the focal point of the book – identifying that it is going through a period of unusually intense contestation and challenge (page 125). Essentially one must balance between what the EU project has achieved and where it is crisis. Neither can be ignored. The multiple dimensions of security are then assessed in light of EU crises. The chapter discusses where diverging claims of authority can lie, this is certainly an area of development both within the EU and other regional groups. Essentially the author concludes that a non-state centric vision is essential. One needs to move beyond the confines of the state and welcome integration.

This is the most satisfying chapter of the book – which brings together the ideas and theories. It makes sense of the discussion and allows the reader to develop their own thoughts on the topic particularly in terms of regionalism and multi-layered governance.

Chapter five concludes the book by considering "Reflexive security." The author reiterates that "security" as interpreted in the book is 'a broad and ambiguous notion' (page 169). One has come to understand this by this point in the point – but it would have been helpful for this to stand out in one of the earlier chapters.

The chapter explains how the structure of a polity would look and argues between both national and transnational polities. This gives credence to the arguments posed throughout the book. There is consideration of the varying roles of the rule of law and security is highlighted as a 'pervasive, all-embracing notion' (page 171). Page 172 brings to light one fundamental argument – which is – can one size fit all?

All of the crises discussed in the text relating to EU integration are interlinked, as therefore, are the chapters of the book. The arguments posed do not exist in a vacuum – neither do the solutions. There is differing opinions based on liberalism as the one end and realism at the other.

Overall, this book addresses the title set. The audience would most certainly be academics with a keen interest in the development of the EU. The chapters reflect on ideas surrounding the EU as a polity; and sound conclusions are made both within the individual chapters and at the end of the book. The final conclusion summarises succinctly the key concepts and reminds the reader what has been discussed beforehand. The key message arising from this text is that there is growing fragmentation and diversification – this cannot be ignored. And 'security is the ideal prism through which European integration may be observed' (page 178). The EU is one of the most advanced regional groups, and therefore has considerable influence, hence the book certainly leaves food for

thought in terms of further research within regional groups. It would be interesting to see how the arguments presented would work with other regional organisations such as Mercosur to name but one.