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SPRING – SUMMER 2021

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TO ITS EXCESS.
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SABRINA RAGONE, *PARLAMENTARISMOS Y CRISIS ECONÓMICA: AFECTACIÓN DE LOS ENCAJES CONSTITUCIONALES EN ITALIA Y ESPAÑA*, BARCELONA, 2020, PP. 220

BOOK REVIEW

by *Enrico Albanesi*¹

Sabrina Ragone is an Associate Professor of Comparative Public Law at the University of Bologna. Her latest book examines how the economic crisis between 2008 and 2015 affected constitutional mechanisms in Spain and Italy (actually, what she literally calls *encajes constitucionales* in Spanish).

The analysis pursues a clear aim, is limited within a well-defined period of time and based on an accurate methodology. There is also a well-set background of constitutional values from which the Author can draw critical conclusions from a perspective of constitutional law. Such critical conclusions are especially valuable for anyone who is interested in comparative constitutional law, as the Author depicts deep analogies between Spain and Italy in the field explored.

As Ragone explains in Chapter 1, the aim of the research was to understand how the economic crisis affected constitutional mechanisms in Member states of the Eurozone from a legal and factual perspective, focusing on the Spanish and Italian case studies. This means the Author examined changes of legislation and changes of praxis: in particular, the latter were examined with the precious help of interviews to Spanish and Italian clerks and governmental officers. Actually, only *relevant* changes to constitutional mechanisms have been examined, both from the EU and domestic perspective.

The period of analysis is 2008-2015, that is the period of ‘economic crisis’, broadly referred to the economic, financial and debt crisis that affected, among other countries, the Eurozone.

The methodology of the research was multi- and inter-disciplinary: Ragone examined national constitutional provisions and relevant EU/international laws, but also political science literature, statistic data and social behaviours. Against this background, the Author’s approach is strictly

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comparative and the definition of the comparative methodology is very meticulous. Ragone chose to analyse two jurisdictions she knows well (Spain and Italy), her being an Italian academic who has focused most of her academic research on the Spanish legal order. One should bear in mind that the Spanish and the Italian legal orders and societies are characterised by several structural elements in common, as Ragone underlines: a parliamentary form of government (although with different performances to each other); a deep transformation of their party system in recent years, both currently characterised by fragmentation, incoming parties and a crisis of traditional parties; a tough economic crisis that led to constitutional amendments concerning the balanced-budget rule in 2011 in Spain and 2012 in Italy.

In a nutshell, the well-set background of constitutional values against which the Author draws her conclusions, can be described as follows. The empowerment of the Executives is obviously understandable in light of the needs rising from the economic crisis, to which Executive are able to give answer most rapidly than Parliaments. However, this tendency puts at risk those constitutional values underpinning parliamentary procedures, such as the involvement of the oppositions in democratic process or the quality of legislation.

As said, Ragone's analysis leads to interesting conclusions from a perspective of comparative constitutional law. From a general EU perspective, the Author notes that the economic crisis increased the already ongoing process of strengthening domestic Executives, especially due to the establishment of informal decision process in the EU (Chapter 2). One should bear in mind that, on the other hand, the Treaty of Lisbon provided national Parliaments with new relevant tasks in EU decision process, thus, indirectly, in domestic decision process. However, it is still questionable whether these tasks are enough to provide Parliaments with an effective role (Chapter 3). From a domestic perspective (and from a perspective of comparative constitutional law, that is the most interesting conclusion of the book), Ragone argues that the urgent needs arising from the economic crisis strengthened the role of the Executives in legislation (that is what the Author calls in Spanish the "*ejecutivación*" de las fuentes'), both in Spain and Italy; however, this meant a misuse of emergency decrees and delegated decrees by the Government in both jurisdictions, where those decrees are primary

legislation (Chapter 4). Actually, EU legislation (that set the European Semester) and domestic legislation (that implemented the former), both in Spain and Italy, gave to national Parliament new tasks in the budget field. However, once again, it is still questionable whether these tools are sufficient in Spain and Italy to give an effective role to Parliaments: Ragone refers to these tools as an '*involucraión*' of national Parliaments '*todavía limitada*', viz. an involvement of Parliament, although scarce (Chapter 5). Finally, Ragone argues that the empowerment of the Executives, both in Spain and Italy, was asymmetric within them, because it only led to the empowerment of their Presidents (the *Presidente del Gobierno* in Spain and the *Presidente del Consiglio* in Italy) and the economic and financial Ministers (Chapter 6).

* * *

Ragone's critical conclusions are clear from a perspective of comparative constitutional law, then: both in Spain and Italy, economic crisis between 2008 and 2015 strengthened the role of the Executives in law making; those tasks given to Parliaments by EU and domestic legislation in the budget field are not sufficient to give them an effective role.

That said, the book does not directly focus on a related issue: when it comes to constitutional values (e.g. the quality of legislation) and the role of Parliament (e.g. its capacity to produce stable and effective majorities) in law making, which of the two constitutional legal orders dealt with the economic crisis best? In other words, given the deep analogies between the way the economic crisis affected constitutional systems in Spain and Italy, is there any peculiarity of one of the two systems that led it to best preserve the aforementioned constitutional values and the role of Parliament? Obviously, this issue is of *constitutional* lawyers' interest more than *comparative constitutional* lawyers' interest. However, the book (based on a *comparative constitutional analysis*) puts enough flesh on the bones for a *constitutional* lawyer to reflect upon.

Moreover, the book specifically focuses on the economic crisis that Member states of the Eurozone had to deal with between 2008 and 2015. However, what about the pandemic crisis that constitutional democracies have had to deal with since the beginning of 2020? When it comes to constitutional values and the role of Parliament, which of the two

constitutional legal orders dealt with the pandemic crisis best? The book does not focus on the pandemic crisis (naturally: it was published in February 2020) but, once again, it puts enough flesh on the bones to reflect upon.

As a constitutional lawyer, I will try to answer these questions, relying on Ragone's analysis alone. And I will try to do this by focusing on two perspectives underlined by herself in the book: the quality of legislation and the crisis of the party system (the latter seen as one of the reasons of political instability, thus an element of weakness for the role of Parliament in law making, if compared to the role of the Executive).

* * *

I would start with the quality of legislation.

Ragone notes that the quality of legislation was deeply affected by the empowerment of the Executives due to the economic crisis in Spain and Italy (see pp. 81-83). It should be noted that Parliaments in Europe, especially just those in Spain (P. GARCÍA-ESCUADERO MÁRQUEZ, *Parliamentary Scrutiny of the Quality of Legislation in Spain. The Role of Parliamentary Clerks*, in *The Theory and Practice of Legislation*, Vol. 9, No. 2, 2021, pp. 159-179) and Italy (E. ALBANESI, *Parliamentary Scrutiny of the Quality of Legislation within Europe*, in *Statute Law Review*, Vol. 42, No. 3, 2021), are better equipped in taking care of the quality of legislation than Parliaments in the Commonwealth systems, where the quality of legislation is mainly a matter of Parliamentary Counsel within the Executives (see E. ALBANESI, *Models of Parliamentary Scrutiny of the Quality of Legislation. How Different Drafting Models and Forms of Government Shape Them*, in *The Theory and Practice of Legislation*, Vol. 9, No. 2, 2021, pp. 141-158). However, once again, which of the two constitutional legal orders has dealt with the quality of legislation best in the economic and pandemic crisis?

As Ragone notes, policy priorities due to the economic crisis made better-regulation policies disappear from the policy agenda in Italy (see also E. ALBANESI, *Teoria e tecnica legislativa nel sistema costituzionale*, Napoli, 2019, p. 78 and pp. 271-273). In Spain, at least, there is a specific and permanent body (the *Comisión General de Codificación*) which is tasked with reviewing relevant areas of law, present recommendations, keep the law up to date and shape and reshape codes. From this perspective, thus, Spain is apparently better equipped than Italy.

The same can be said when it comes to the party system.

In her book, Ragone describes in depth the similarities between the Spanish and the Italian party systems during the economic crisis: political fragmentation, ongoing parties and the crisis of traditional parties (pp. 18-24).

However, I would remark at least one relevant difference between the party systems in Spain and Italy. Spain had two subsequent political elections in December 2015 and June 2016 in search of a majority; a PPE minority Government between October 2016 and June 2018 (Rajoy's second Government); the first successful vote of no-confidence in Spanish history in June 2018; a PSOE minority Government between June 2018 and January 2020 (Sanchez's first Government); once again, two subsequent political elections in April and November 2019 in search of a majority, which came after the agreement between PSOE and Podemos to support Sanchez's second Government in January 2020. However, traditional parties (PPE and PSOE), although deeply in crisis, never lost their pivotal role in the system.

In Italy, they did. After 2018 elections, the majority that supported the Government (Conte's first Government) between 2018 and 2019 was composed of M5S and Lega, two anti-establishment and anti-EU parties. During that period, Italy faced a deep political, financial and economic turmoil that ended with the resignation of the President of the Council Conte in August 2019. Under the new Government (led by Conte himself but with a new majority, supported by M5S and two traditional center-left wing parties, PD and LeU), Italy dealt with the pandemic crisis but political turmoil led to the resignation of the President of the Council Conte in January 2021. A new Government, led by Draghi, the former President of the European Central Bank, was formed in February 2021: after almost three years of political instability, the only way to tackle the political crisis and form a stable Government (that was formed with the main aim to deal with the pandemic and ongoing economic crisis) was a plea of the President of the Republic to all parties to join the majority. Almost all parties responded positively and Draghi's Government was formed with the largest parliamentary majority ever in history of the Italian Republic.

It is not possible here to focus in depth on the reasons why this profound instability has affected Italy especially since 2018. However, apart from the loss of traditional parties' pivotal role, in my view the ineffective electoral

system and the equal bicameralism that characterizes Italy, have had an impact on this (see E. ALBANESI, *Teoria e tecnica legislativa nel sistema costituzionale*, cit., p. 275-283).

* * *

At the end of the day, given such similarities between Spain and Italy in their constitutional transformation under the economic crisis described in Ragone's book and those ongoing difficulties the Italian system had to deal with, especially in the most recent years (as I tried to underline here), it can be argued that studying the Spanish legal system in depth could be of great help for an Italian constitutional lawyer, at least in order to reflect upon possible solutions to our common problems. And the same should be said for Spanish constitutional lawyers, if one only thinks that, for example when it comes to the quality of legislation, the Italian *Comitato per la legislazione* has been seen by some Spanish academics as a model on which parliamentary scrutiny of the quality of legislation should be shaped in Spain (see P. GARCÍA-ESCUADERO MÁRQUEZ, *El procedimiento legislativo ordinario en las Cortes Generales*, Madrid, 2006, p. 677, ft. 1152).

From this perspective, Ragone's book is an essential read, for any (Spanish or Italian) comparative constitutional and constitutional lawyer.