

**Luis I Gordillo, *Interlocking Constitutions: Towards an Interordinal Theory of National, European and UN Law***, Oxford: Hart Publishing, 2012, 410 pp, hb £66.00. by Dr Vito Breda University of Southern Queensland.

*Interlocking Constitutions* delivers a highly articulate analysis of the dynamic interaction between European final appellate jurisdictions at the international and national level. Through a series of case studies, Gordillo examines how various international and national jurisdictions have interacted with one another over the past fifty years. The historical inheritance of these dialogues is a European-wide interlocked legal system that includes national and international jurisdictions as well as international institutions such as the UN Security Council.

The interactions between these institutions take a functional approach that seeks to prevent conflicts *ex ante* or to minimise their consequences *ex post*. An important corollary of this is that the book provides an argument against the cognitive persuasiveness of epistemic models such as constitutional cosmopolitanism and constitutional pluralism. Constitutional cosmopolitanism, Gordillo argues, is unsuitable for explaining horizontal interactions between final appellate jurisdictions because it assumes, implicitly or explicitly, the existence of a global order based on shared values. However, from the analysis of the very large sample of cases considered in *Interlocking Constitutions*, it appears that constitutional and international courts either resist the idea of global values or, in the few instances in which they might qualify as shared, judgments are nonetheless grounded in courts' pre-existing lines of authority.

By contrast, the wide spectrum of theoretical stances that endorse constitutional pluralism instead generally assume a looser connection between legal systems. One of the key dilemmas that supporters of legal pluralism face is in defining the criteria that establish a relation between legal systems. In other words, how loose should the connection be between systems for them to be considered pluralistic? This point has been well explored by Murkens ('Neither Parochial nor Cosmopolitan: Appraising the Migration of Constitutional Ideas' (2008) 71 MLR 303). Echoing Murkens's analysis, Gordillo argues that a close comparative analysis of the interaction between the European Court of Justice and the European Court of Human Rights indicates that the interaction between these two autonomous courts is defined by their respective jurisprudence and by the *internal* interpretation of alien authorities. Put simply, the two courts tend to base their decisions on their internal practices (such as balancing) and principles (such as proportionality). Gordillo concludes that the predominance of the courts' internal lines of authority and methods of legal analysis make legal pluralism a relatively poor epistemic device with which to understand the interplay between the two courts. A clearer understanding, Gordillo suggests, would be obtained by focusing on the political implications that the European Court of Justice's and European Court of Human Rights' decisions might have on Member

States and Signatory States. It is noteworthy that Antje Wiener's empirical analysis supports a similar conclusion in *The Invisible Constitution of Politics* (CUP, 2008).

The book is divided into four sections. The first section defines the research area and provides an overview of how final appellate courts seek to accommodate judicial conflicts over competences and the interpretation of statutory rights. By focusing on the historical preconditions and the implications of leading cases such as *Costa v ENEL* [1964] ECR-1141, Gordillo shows that courts mediate (or at the very least, they try to mediate) between judicial 'native' and 'alien' lines of authority. Through this process, leading cases are often better understood as 'stages' in long-distance mediation. The mediation process generates a series of qualifying cases, which, depending on the outcome of the decision, might increase or decrease the tension surrounding a particular issue. In this section, *Interlocking Constitutions* also explains a series of practices that constitutional courts adopt to absorb the effects of decisions made by international courts. For instance, the Italian Constitutional Court might consider some of the ECtHR's decisions that qualify a right as a 'procedural' variation of its internal interpretative practices. In doing so, the court greatly reduces the possibility of direct conflicts between the rights granted by the constitution and the rights granted by the ECHR. The House of Lords, now the UK Supreme Court, instead, might prefer to rely on the practice of qualifying its precedent.

For those familiar with this area of study, the chapters included in the first part of the book might appear to be overly descriptive, yet this section has the methodological function of preparing the reader for the analysis of more complex narratives proposed in section two. For instance, in chapters four and five, titled, with a pinch of irony, 'The European Convention on Human Rights According to the European Court of Justice' and 'EC/EU Law According to the European Court of Human Rights', Gordillo describes the indirect interaction between the ECJ and the ECtHR. It is in these two central chapters that the book starts to bring home the narratives developed in the introduction. By providing a rich and articulate analysis of case law such as *Matthews v UK* (1999) 28 EHRR 361 and the *Bosphorus v Ireland* (2006) 42 EHRR 1, *Interlocking Constitution* shows how the ECtHR and ECJ have, over the years, developed an interordinal interaction that has helped them with the process of setting their respective competences and has, de facto, clarified some of their functions.

Section three continues the analysis of the interplay between legal systems by considering that between the UN Security Council, the ECJ and ECtHR. In this part of the book, Gordillo provides a thoughtful examination of cases such as *Kadi* and *Al Barakaat* [2008] ECR I-6351. The most interesting argument in this section involves a critical engagement of the UN Security Council and its judicial immunity.

The last section of the book focuses on possible developments in this area by considering the limitations of both the hierarchical and pluralist models. In this part, Gordillo makes good use of the research developed in the previous sections and discusses a series of

possible future scenarios for the interaction between European and state judicial institutions. One of the most interesting considerations in this section is the asymmetry between the development of judicial practices and, by comparison, the immaturity of a European-wide political debate over the role of the state and European judicial institutions. Again, studies aimed specifically at forecasting the future development of the UK constitutional system – such as Hazell (ed), *Constitutional Futures Revisited: Britain's Constitution to 2020* (Palgrave, 2010) – reach similar conclusions.

In conclusion, *Interlocking Constitutions* is an enlightening read. It provides one of the most comprehensive analyses of the interordinal interplay between national and international legal systems in Europe. The breadth of the analysis, which is *per se* a manifestation of outstanding scholarship, supports a clear and cogent description of the practices adopted to prevent and to solve legal conflicts. Consequently, *Interlocking Constitutions* should be considered an essential addition to the personal library of researchers in international law and constitutional theory, while the first section in particular should be a useful addition to postgraduate reading lists on EU Law and European Governance.