

Ulrich Haltern, *Europarecht: Dogmatik im Kontext* (Tübingen: Mohr Siebeck, 2005) 690 pp., ISBN 9783825227210, pb € 24.90

Ulrich Haltern's *Europarecht: Dogmatik im Kontext* (European Law: Legal Doctrine in Context) is both typical for a German textbook and unusual at the same time. It is typical because it belongs to the category of books that are designed to fulfil the dual function of providing a concise overview of the field while preparing German students for the special test (*Wahlfach*) in European law in their first legal state exam. It concentrates on the core of European Union (EU) law and thereby reveals a bias emblematic for the tradition of German legal science that still strictly separates private, public and criminal law. EU law is presented as part of public law, which is in line with the fact that the author is holder of the chair in public and administrative law at the University of Hanover. This orientation also explains the omission of chapters on competition law or social and employment law, to name only the most obvious cases.

However, the textbook is also unusual. It tries to make a virtue of the fact that it is selective. It opts for 'depth' in the discussion of the chosen topics rather than covering a wide range of topics. The depth derives from a deliberate choice to discuss EU law in context. In this respect the author certainly breaks with the formalist German tradition and introduces a welcome dose of common law-style legal realism into German legal science.

The book is divided into six main parts and contains altogether fourteen chapters. Part 1 is devoted to methods and foundations. In Chapter 1 the author explains his understanding of context. The author reveals a penchant for a culturalist approach that views law ultimately as a belief structure similar to religion. This understanding of law is at best idiosyncratic and favours humanities over social sciences as the preferred context for an analysis of legal doctrine. It remains fairly unclear what the author means by culture and the privileging of culture in analysing the societal context is ultimately not convincing. Fortunately, the book does not adhere strictly to this approach and uses extensively political, historical and sociological knowledge in its explanation of the context of EU law. The general remarks on contextual teaching of EU law (pp. 24-26) are superb and compelling. Part 1 finishes with a brief overview of the stages in the European integration process (Chapter 2).

Part 2 is entitled The Political System of the EU. It covers the four main institutions and their legislative roles. It includes an interesting section on the democratic deficit in which the two familiar modes of governance intergovernmentalism and supranationalism are contrasted with a third mode called infranationalism. This mode is linked to debates of government by committees (comitology). However, the author claims that none of these modes of governance provide adequate participation of citizens that is able to overcome the problem of a democratic deficit. Part 2 includes a valuable schematic overview of decision-making procedures that lists for all relevant Treaty articles the powers of making legislative proposals,

the decision made in the Council and the participation rights of the European Parliament (pp. 141-148).

Part 3, entitled *The Rule of Law in Europe*, covers the main judicial procedures. It includes comments on the relationship of the European Court of Justice (ECJ) and national courts in which the author develops a nuanced view of the powers of the national courts. The ECJ is reliant on national courts to refer cases and thus depends on dialogue. However, such dialogue has not been very successful in relation to the highest courts of the member states. The book depicts well the increasing signs of a differentiated approach of the ECJ, nurturing lower and specialized courts while punishing higher courts for their hostile attitudes at the same time. However, the section entitled 'The Paradox of Success', although rightly identifying the increasing workload of the ECJ as a potential threat to the efficiency of the court, overstates the case in fearing self-destruction of the court. The ECJ has been fairly successful in the past in convincing the European legislature of the need of institutional reform when necessary. There are no signs that this will be different in the future if the caseload should become unmanageable.

Part 4 deals with the relationship of Community law and national law. It covers the doctrines of direct effect and supremacy and contains a section on state liability. The latter section includes an interesting discussion of 'judicial injustice' in which the differentiated approach of the ECJ towards the highest and lower national courts is expounded by a detailed, critical discussion of the doctrinal basis of state liability for illegal actions of national courts. The author is rightly sceptical that the efforts of hierarchical control pursued by the ECJ will be successful. His alternative of an open dialogue between national courts of final appeal and the ECJ which is characterized by mutual critique rather than hierarchical imposition is convincing and a better way forward in advancing European integration.

Part 5 is entitled *On the Road to the Political Union* and contains chapters on fundamental and human rights and on citizenship. This part includes some far-reaching analyses of the nature of union citizenship in which the author makes use of his culturalist understanding of law. He argues that European law, like any law, rests on a 'deep' structure (*Doppelbödigkeit*) in which questions of political and personal identity are intermingled. He rightly predicts that issues of identity, legitimation and culture will become of high importance in particular in debates over further expansion and political integration of the European Union.<sup>1</sup>

Part 6 is the only part that deals with substantive EU law. It is devoted to free movement of goods and covers the main areas including customs, taxation, and the case law that shaped Art. 28 EC Treaty. It manages to reconstruct the doctrinal changes by highlighting the political processes that influenced the legal development. It is a shame that this splendid contextual approach is not used for analyses of other doctrinal areas of European law in this book.

<sup>1</sup> These arguments resonate with the issues raised in R. Rogowski and C. Turner (eds.), *The Shape of the New Europe* (Cambridge University Press, Cambridge, 2006).

Halter's textbook is a model of a new-style textbook that does not shy away from engaging in academic discussions. It is ambitious in a positive sense in that it contextualizes the EU law discourse by paying close attention to political processes and power relations. Despite the idiosyncratic culturalist approach it has to be applauded for its innovative and profound realism and critical engagement with legal doctrine and policies pursued in the European Union.

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