of daily life and narrows their horizons), a mistrust of European institutions, a lack of confidence with foreign languages, and the difficulties inherent in translations. Last but not least are economic considerations, the kind which are starving institutions of higher learning the world over of the means to perform their functions. Sir Basil has earned quite a reputation in the world of fund-raising so he knows as well as anyone the need to make greater use of the private sector in supporting modern education.

However, things are changing, since student and lecturer exchange programmes, integrated research programmes, a more widespread acquaintanceship with rulings from Strasbourg and Luxembourg, and much more besides, are removing fences and laying the foundations for a more open, more 'European' way of thinking. Often, obstacles are merely the result of short-sightedness. This happens when judges endeavour to find an answer for a new situation, unaware that the situation has already arisen somewhere else. The answer does not necessarily have to be the same, but an examination of all the ideas and the experience already accumulated would help to find an acceptable answer.

In *Parkinson v St James and Seacroft University Hospital NHS Trust* ([2001] All ER 97), where damages were not awarded to a woman who had given birth to a child after negligence during a sterilization operation, the outcome could have been different if the English judiciary, when examining the first example of this type of case, had considered rulings already made in Germany (BVerGE 88, 203; BVerGE 96, 375; BVerG in NJW 1998,523; BGH 23.3.1995), Austria (OGH 25.5.1999), the Netherlands (Hoge Raad 21.2.1997), and France (Ass.Plén. 17/11/2000), to which we might also add a series of Italian rulings beginning with those so well described from the mid-1950s onwards by Pietro Rescigno.

This is not merely widening the spectrum of possible solutions, but also the spectrum of legal reasoning. Practising lawyers are thus able to examine overseas cases, and use them to their own benefit. It is an opportunity upon which we must seize and Basil Markesinis also suggests we use it for public law, for example, with the many types of federal government encountered in continental Europe.

Finally, Markesinis takes his leave of the reader who has followed him down this winding (and at times steep and stony) path on a note of optimism. It is a very complex type of optimism, not based on slender hopes or transient desires, but on a whole series of concrete factors which, were they only to come together, would inspire everyone with new hope and trust: a better acquaintanceship with the more important continental European legal systems (in Germany, France, and Italy), even in the English-speaking world; a more widespread discussion of what these legal systems have to offer and how they can incorporate in research, the involvement of Chambers and Bar Councils, the swapping of experience between judges from different countries and, finally, the overcoming of petty parochialism brought about by a misplaced sense of cultural identity.

GUIDO ALPA

Review of S Douglas-Scott, *Constitutional Law of the European Union* [Harlow Longman 2002 xlvii + 553pp ISBN 0-582-31717-7 £30.00 (p/bk)].

Sionaidh Douglas-Scott's *Constitutional Law of the European Union* starts with a double aim: to provide both information and reflection on the 'very messy creature' the author judges the European Union has grown up to be. 'Very messy', but not without a Constitution. Indeed, the author takes the view that, 'regardless of what the IGC 2004 decides' (the book was published in 2002, when the debates in the Convention on the Future of Europe had only just started),[1] the European Union already has a Constitution, just not a 'transparent, intelligible and ultimately

[1] This also implies that the book does not discuss some recent developments in legislation and case-law. Though it is something the reader needs to be aware of, this remark is obviously not meant as a criticism of the author.

doi: 10.1093/iclq/lei097

meaningful one'. In order to clarify this state of affairs and to make the Constitution more apparent, the author explicitly adopts a contextual approach, combining 'black letter' legal analysis with 'comparative law, political theory and philosophy and international relations'. In so doing she appears to agree with—among others—Ian Ward's assessment in his well-known book *A Critical Introduction to European Law*, that 'law can only be understood as an expression of history, politics, philosophy and a multitude of other disciplines and discourses. European law presents a vivid affirmation of this truth'.[2] By explicitly discussing EU law in its broader context, the author often succeeds in showing that it is not just a very complex set of rules, demanding a great amount of effort and attention from students, but also a living three-dimensional legal order, which is at the centre of lively legal, political, and philosophical debates.

The book is divided into four main parts: 1. 'Structures', 2. 'The European Courts, the National Courts and the Constitution', 3. 'Direct Actions: a Lack of Individual Justice?' and 4. 'The Developing Constitution'.

Instead of the traditional 'History of the EU', the first part of the book starts off with a chapter entitled 'The European Union in Search of an Identity'. This chapter does provide a concise history of European integration, but apart from that it also offers some interesting theoretical reflections on the nature of the EU and on its quest for legitimacy and a clear identity. The first part further offers a chapter on the EU's institutional structures, which begins with what Romano Prodi referred to as 'the paradox of European integration': European integration has achieved half a century of peace and prosperity, but at the same time has left its citizens disenchanted and anxious. This sets the tone for an analysis of the EU's legislative and executive institutions, which provides the reader both with all the basic legal institutional information necessary and some useful insights on the political background within which these institutions operate. There is also a chapter on law-making and democracy in the EU, which provides an overview of the different sources of law and law-making procedures within the EU, but also gives a very interesting and useful sketch of the debate about the often problematic relationship between democracy and transparency on the one hand and European integration on the other. The author's account is mostly balanced and the idea that there are no simple solutions to the vexed question of how to solve the EU's 'democratic deficit' is brought across quite convincingly. Part 1 closes with a chapter on the 'Division of powers between the Community and Member States'. It is a bit surprising that the title of this chapter only refers to the EC and not to the EU as a whole, especially given that the author in the course of the chapter quite frequently refers to competence debates within the second and third pillars. It is of course true that the Community pillar uses a different technique of attribution of competences from the so-called intergovernmental pillars: external relations are for example subject to a detailed attribution for matters falling under the first pillar (eg Common Commercial Policy) while they are covered by a very broad and general attribution for matters falling under the second pillar (Common Foreign and Security Policy). This no doubt results in the competence debates within the respective pillars being of a somewhat different nature. However, especially when taking into account the many overlaps and grey zones between (what used to be) the different pillars, it is surely possible to refer to competence debates within the EU in general and not just within the EC, which is incidentally what the author does a bit further in the chapter, when referring to 'the future of the Union and the debates about competences'. Having said that, the chapter does mostly provide quite a good overview of competence debates within the Union, with extra attention given to the principles of subsidiarity and proportionality, to flexibility and to the possibility of 'a federal Union'. However, it is regrettable that the author

[2] I Ward *A Critical Introduction to European Law* (Lexis Nexis Butterworths London) ix; in a similar sense, cf among others P Allott 'New International Law. The First Lecture of the Academic Year 20 in P Allott et al *Theory and International Law: An Introduction* (British Institute of International and Comparative Law London 1991) 114: 'Law is at the intersection of all most interesting things—philosophy, history, economics, sociology, psychology' and JHH Weiler *The Constitution of Europe* (CUP Cambridge 2000) x: 'there cannot be a meaningful legal discourse which is oblivious to economics, politics, and all the rest.'

did not succeed in clearing away the terminological fog surrounding the use of the terms EC and EU throughout the book. A chapter dealing explicitly with the relationship between the EU and the EC would also have been helpful in this respect.

The second part of the book contains a number of chapters centred round the theme of 'the European courts, the national courts and the Constitution'. These chapters address such questions as 'policy and judicial activism' in the Court of Justice, preliminary references, the tension between the doctrine of supremacy and the sovereignty of the Member States, the doctrine of direct effect and remedies in national courts. The analysis is again an informative mixture of legal and meta-legal analysis. The European Court of Justice's case-law and its impact on European integration and on Member State constitutional orders, is put in context through a quite extensive and purposeful use of comparative law—particularly with the USA and its Supreme Court—and some valuable legal theoretical reflections, such as a paragraph on sovereignty and constitutionalism.

Part three is entirely devoted to the role of the Court of Justice in controlling the actions of the Union's institutions and of the Member States. This part is perhaps the most like what one would find in other textbooks on EU law, setting out and explaining the legislation and case-law, though comparisons are again drawn with the situation in the USA. The author also thoroughly criticizes the current state of affairs. However, she refuses to march along with veteran critics of the Court of Justice such as Professor Rasmussen, who argued that the Court's lack of willingness to give individual applicants *locus standi* can be explained by its desire to transmogrify itself into a 'high court of appeals', a goal which the Court supposedly considers being infinitely more important than citizens' interest in direct access to the Court. The author refutes this assertion, but at the same time does not spare the Court, characterizing the message the Community Courts send out through their approach towards *locus standi* as one 'of lack of justice and of disenfranchisement'.

The final part of the book sets out to describe and assess the EU's developing constitution and does so from the perspective of human rights and Union citizenship, while summing up with a broad evaluative chapter on the EU's present and possible future constitution. The author criticizes both the EU's human rights policy and its approach to citizenship as being incoherent and too exclusively directed towards economic values, and she warns the EU not to succumb to 'the danger of what Terry Eagleton has termed "commercial humanism"'. A great emphasis is also put on the absence of a European 'demos' and the lack of a proper bond between the Union and its citizens.

The book's final chapter is entitled 'A Constitution for Europe?' and is constructed as a three-stage answer to that question: (1) The EU already has a constitution, (2) The transformation has not been entirely satisfactory, and (3) How can the EU do better? Each of these statements or questions is then further elaborated by the author in the subsequent paragraphs and the book ends with an interesting legal theoretical reflection on the possibilities of constitutionalism in a liberal pluralistic democracy such as the EU and the author's own proposal for a more transparent and harmonious legal order. These proposed amendments are, as the author readily admits, of a pragmatic (and rather modest) nature and might come as a bit of an anticlimax after the rather sweeping analysis in the preceding paragraphs. However, the author seems to foresee this criticism and points out that the founding fathers of the US achieved so much by having the wisdom to say enough but not too much: 'That is what is required at this stage of the transformation of Europe: to say enough, but not too much.'

The extensive use of theoretical and comparative legal material in a textbook such as this is quite unusual and refreshing, even if one does not always agree with the theoretical positions the author adopts. Also quite new is that, throughout the book, paragraphs are devoted to subjects otherwise rarely dealt with in textbooks, such as the function of human rights in the EU's external relations or the role of *référendaires* at the Court of Justice, to give just two random examples.

The author does, however, occasionally get carried away in the analysis and sometimes refers to legal or meta-legal materials which would probably be well known to scholars of comparative law or jurisprudence, but probably not to students who are dealing for the first time with EU law.[3]

[3] eg on p 438, the author refers to the US Supreme Court's 'infamous *Dred Scott* case', without providing any further explanation, only giving a reference to the case itself.

I would like to think, though, that this would be an ideal book to take as a basis for teaching students. Much no doubt depends on the approach taken towards teaching: is it more important to teach the students all the 'law' and hope that they will do the further reflection themselves, or is it better to provide them with some context to provoke and stimulate reflection, even if that means not being able to cover parts of the substantive law? It is indeed possible to criticize the book for not covering the substantive law of the EU enough or even for omitting central aspects of the EU's constitution, such as the relationship between the different pillars mentioned above. Inspiring though the book is, it would have been better still if the author had succeeded in combining her strong contextual approach with a full coverage of the EU's substantive and constitutional law. I hasten to point out, though, that the book does nonetheless provide interesting insights and stimuli for further reflection not only to first time students, but equally to researchers and scholars of EU law and constitutional law.

GEERT DE BAERE

Economic Law in Globalizing Markets By KARL M MEESSEN [Kluwer Law International The Hague 2004 382pp ISBN 90-411-2112-9 £80.00 (H/bk)]

This recent work by Professor Karl M Meessen can be placed in the best tradition of that part of German legal literature (it will be sufficient to mention Fritz Rittner and Wolfgang Fikentscher) that, in contrast to 19th-century consolidated legal thinking, has recognized *Wirtschaftsrecht* (economic law) as an autonomous legal field (ie provided with its own method of legal-rules analysis). As such, economic law is an indispensable tool for understanding the economy in its legal dimension.

> While economic law is a state-made product, many of its ingredients—the invisible hand ones—are business-made. The two aspects have to be distinguished and tracked down to their separate roots in economic and legal theory. Yet they also have to be taken in view simultaneously. Or their joint purpose would go unnoticed. In other words, one should always be prepared to cross the borderline between private and public law, between invisible hand and social engineering law, between justice of exchange and distributive justice both in the analysis of each particular case and when trying to discern the structures of economic-lawmaking. Furthermore, to understand the functions of economic law in the real world, no layer of the sources of law, neither international law, supranational or national law, nor transnational law may be left aside. Law has to be divided up by problem areas rather than by its sources (p 90).

I believe there is currently no better description summing up the meaning and implications of economic law vis-à-vis the other legal fields.

In order to verify that such an approach to economic law is scientifically sound, Meessen tackles the complex issue of globalizing markets. It is certainly a bold choice, but also a particularly fit one to highlight the importance of such an approach and thus to properly understand and assess legal rules relating to globalizing markets.

The structure of the book is as follows. There are three parts. Part I deals with sources of economic law. It discusses the role of states, business, international and supranational and non-governmental organizations in making economic-law rules. Part II examines the impact of the competition of systems on three groups of economic law rules, ie on three problem areas: market law, transactions law and property rights law. The problem area of market law deals with certain aspects of trade law (eg antidumping law rules) and competition law (eg affirmative action). The chapter on transactions law deals mainly with freedom of contract, arbitration and international and national mandatory rules. The chapter on property rights law covers problem areas such as the protection of private investment from foreign government action, the cross-border circulation of corporations and environmental tort law. Part III elaborates on how to organize and legitimize enforcement procedures that reach beyond national borders. Its three chapters address in turn administrative, judicial and arbitral contributions to the enforcement process. In the Conclusions the Author elaborates on the definition of his transnational theory of economic law.

doi: 10.1093/iclq/lei098