

Book Reviews

Karen J. Alter, *Establishing the Supremacy of European Law. The Making of an International Rule of Law in Europe*, Oxford University Press, 2001, 258 pages. Hardback £40.00. DOI: 10.1017/S0143814X01211167

The supremacy principle is a key constitutional principle in EU law. In technical terms, it is a choice of law rule. When a national court is faced with two conflicting laws both of which could be applied to the case before it, the European Court of Justice, in a doctrine which it first articulated in 1962, requires that court to apply EU law over national law. In constitutional terms, this doctrine is audacious, seeking to sweep away long cherished principles of international law in some member states, redefining the relationship between state/Union; national court/European court; and, perhaps most significantly, national court/legislature and executive. The supremacy principle has marked out the EU as a new legal order, one that challenges traditional understandings of international law and which demands of scholars the development of theoretical frameworks that will facilitate understanding this phenomenon, unique in legal history.

This book takes as its starting point the articulation of the principle by the European Court in the seminal *Van Gend en Loos* case and explores its reception in French and German higher courts, using an historical institutionalist approach. This project is one that is well known to those familiar with Alter's work on this topic. At last we can benefit from the thorough fieldwork she conducted, the unparalleled access she had to senior officials and judges in the relevant period, and a rich and nuanced exegesis of her case studies. This legal study by a political scientist shows that the rule of law changes the nature of the political process and expands the number of actors involved in the political process. She thus applies a methodology well-established among political scientists to a sphere traditionally the sole purview of lawyers. Her work in this book will further raise the profile of the European Court of Justice among European studies scholars and, for legal scholars provides a thought-provoking and fundamentally different approach to the analysis of the principle of supremacy. A handsome, well indexed volume, succinct and interdisciplinary, it marks a strong beginning to this new series, *Studies in European Law*, edited by Craig and de Búrca.

The book first sets out the genesis of the principle, an analysis of judicial interests and explanation for her particular analytical approach by offering a critique of existing literature and approaches, namely neo-functionalism, legalism and neo-realism. She also draws distinctions between higher and lower courts, though the focus of her case studies mean that the emphasis remains firmly on higher courts. The pearls in the proverbial oyster are the chapters on Germany and France. The rich narrative of the German chapter in particular, had a compelling quality, where the reader is carefully led

through the warren of interests, actors and cases to the ultimate and continuing stand-off between the German constitutional court and the European Court. The French chapter follows a similar format and again, an even more complex context was set out in a lucid manner, though I would welcome a little more discussion of the complex politics of France in the late 1950s and early 1960s where much is consigned to footnotes. What is most striking about these case studies is, as Alter points out, that while they may have culminated in similar end points, the processes are very different. She explains how rules of access to some extent determine the scope for judicial activism at the national level and how radically different court structures shape judicial interest and the scope for initiative. The differences between the experience of the two states to a large extent points to the extreme difficulty in elaborating from the particular experience of these two jurisdictions to the general experience of all Member States. One is left with the sense that the smooth articulation of doctrine by the European Court covers a messy, highly variegated and complex reception process at the national level, of which the higher German and French courts are only two examples.

The title of the book holds good: it is the process of establishing supremacy that is being explored. Alter's claims that the principle is now firmly established needs to be more explicitly nuanced as to the distinction between the substance of the principle (the choice of law rule), the reasoning used by the European Court in support of it, and the competence debate (who decides when EU law is supreme?). A point shown to great effect in this book is that judges, with their innate respect for the rule of law configuring their interest, can accept the substance of the supremacy principle. There has been little debate over the spurious basis for the European Court's reasoning, with the French and German courts turning to their own constitutions to justify their acceptance of the principle, though the rhetorical force of a new legal order has gained resonance over time primarily through treaty revision. Where the battle lines are drawn, remain, and are likely to remain, are over the issue of jurisdiction. Which court has power to decide the scope of EU law? In other words, this book shows how even if EC law is more or less supreme, the European Court is not. One of the most important lessons that political scientists could take away from this wonderful study is that the nature of judge-made law is that it can and does – even among the much more cautious and it seems less powerful French courts – change over time. This allows for principles such as supremacy to become more or less established through doctrinal negotiation. The necessary corollary of this process is that if the acceptance of the supremacy principle can over time dislodge deeply embedded constitutional and legal rules, then supremacy itself also may be dislodged leaving us not with the conclusion that the principle has been accepted but that it is not immutable. Thus the continuing doctrinal negotiation of the supremacy principle between national and European courts, particularly in the light of anticipated enlargement, may be expected to persist in changing the nature of the political process.

Imelda Maher

Research School of Social Sciences, Australian National University

Mark A. Pollack and Gregory C. Shaffer, eds. *Transatlantic Governance in the Global Economy*. Rowman and Littlefield, Lanham, MD. \$75.00 cloth; \$29.95 paper. DOI: 10.1017/S0143814X01221163

This book sets itself two objectives: first, to report on the state of the transatlantic relationship at the turn of the century and secondly, to assess new forms of international governance. The discussion is organised within a theoretical framework which distinguishes between intergovernmental relationships (interactions between states), transgovernmental relations (interactions between networks of lower level officials) and transnational relations (the direct participation of non-governmental actors). The nine essays in this volume by different authors are divided equally between these categories together with introductory and concluding essays by the editors. The empirical discussion focuses on economic concerns – trade, regulatory and competition – rather than on foreign policy and defence.

The theoretical framework works extremely well both to organise the discussion and to greatly enliven what to non-trade and regulatory specialists might otherwise be rather technical and dry material. In addition, it is this broader framework which makes the book of great value to a wide audience of political scientists and not just those with an interest in trade or regulatory subjects. As a report on transatlantic relations in the 1990s this book succeeds admirably. There are outstanding essays by Ernst-Ulrich Petersmann on dispute prevention and settlement, by Youri Devuyt on competition relations and by Maria Green Cowles on the transatlantic business dialogue. These together with other essays are informative and reflective.

The volume also provides a very interesting assessment of the distinctions employed in the theoretical framework. In the authors' view, claims of a new world order which makes intergovernmental relations increasingly irrelevant are far from the reality observed in the new transatlantic relationship. Governments still set the terms for participation by other actors. In addition, the authors find only limited support for claims that transgovernmental networks are emerging to provide the real new world order because the practical obstacles in the way of cooperative technocratic networks are much more formidable than has been appreciated. Moreover they also find the direct participation of non-governmental organisations extremely uneven and far from supporting the notion of an influential new transatlantic civil society. Instead what the authors emphasise is the blurring of boundaries that has developed between public and private actors because neither central governments nor any other single actor possesses the information and other resources needed to act independently. In their view it is mixed networks that dominate and not any one type of network.

My reservations about the analysis concern not what is in the volume but what is missing from it. First, regulation is too readily assumed to be essentially technocratic with differences arising between the US and the EU a little too quickly placed in a black box labelled 'culture'. It would have been valuable to have an essay on the regulatory process on both sides of the Atlantic that distinguished between the technocratic, and the more judgemental public interest assessments as well as the purely political differences of appreciation and different ways in which they are handled institutionally. This might have provided different insights into the disputes

that have arisen and into dispute resolution mechanisms. Secondly, the limitations in the theoretical framework might have usefully prompted a fuller discussion of alternative frameworks. The lens adopted is essentially that of the international relations fraternity while other disciplinary approaches, notably that of institutional economists, might offer different explanations. The book is interdisciplinary but might have benefited by more of an input from economists.

These reservations are essentially a plea for more analysis rather than a criticism of what is in the book. Since the subject will be a long running one, I hope the editors and publishers are already considering a follow-up volume. This book should be required reading not only for specialists in trade and regulatory interrelationships and those interested in the transatlantic relationship, but also for all interested generally in international relations theory and practice.

Frank Vibert

European Policy Forum, London