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.

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Meessen's book is commendable for stressing that economic law can be properly understood only by adopting a comprehensive approach. The field of economic law encompasses all legal rules relevant to the establishment and functioning of an economic system. In this sense Meessen refers to rules having an 'economic system oriented function' (p 20). The method of analysis of economic law must be comprehensive in more than one sense. Economic law (a) overlaps with a broad spectrum of other legal fields, (b) is made of economic and non-economic aspects, (c) comprises provisions of both private and public law, and (d) covers every conceivable source of law.

Economic law cuts across traditional fields of law such as company law, tort law, contract law, securities regulatory law, environmental law, dispute settlement law, etc. Rules that are part of these latter categories also form part of economic law if, and to the extent that, they have an economic system function. The difference is one of perspective. Economic law is economic system oriented while, for example, commercial law is business operations oriented. Commercial law provides rules governing trading operations, but at the same time part of it, eg the basic principles of contract law, has a system function, allowing that part of commercial law to be attributed also to economic law.

Meessen states that as governments need to pursue non-economic policies in addition to economic ones (such as economic efficiency), economic law necessarily also comprises non-economic elements. In the same vein, the Author argues that economic law includes invisible-hand-law rules (which help Adam Smith's invisible-hand market mechanism pursue the efficient allocation of limited resources) and social-engineering-law rules (through which decision makers pursue other policies other than economic efficiency). This is a very interesting aspect of Meessen's study: his praiseworthy aim appears to be that of bringing together the above mentioned German understanding of economic law with American-originated Law and Economics. His point, however, is not explained as clearly as it should be. At the very beginning of Part I the author defines economic law as encompassing 'the legal rules designed to bring about and enforce efficiency oriented decision-making with regard to the production, trade and consumption of goods and services' (p 15). But at the same time, as said, he states that economic law includes 'social engineering rules', through which governments generally pursue distributive justice (as opposed to justice-of-exchange, ie economic efficiency) (p 20). The reader may be confused: Is economic law made up only of rules *specifically designed* to bring about and enforce economic efficiency or not? If I understand it correctly, Meessen's answer is in the negative. He argues that economic-law rules need *not* have to be designed to pursue economic efficiency, or more generally economic policies. Rules instrumental to achieving non-economic objectives, such as the protection of the environment or of general public's health or the granting of social benefits, might also be included. Such rules form part of economic law if they relate to the economic system oriented function, ie if they affect the way the economic process as a whole works. In a competition-of-systems perspective such rules will be studied by economic lawyers to assess if and how they encourage or discourage inward investment.

Meessen rightly points out, especially to continental European lawyers' benefit, that economic law should not be associated exclusively with public law or with private law. Economic law crosses the borderline between private law and public law.

Finally, economic-law rules have multiple sources. The most important are national, supranational, international law and business-made rules (*lex mercatoria*). More often than not, several sources of law have to be tapped simultaneously to pull together the rules applicable to a particular case. Meessen explores many cases where it clearly appears that economic law is a field of law structured by problem areas rather than by sources of law.

Meessen's major effort is aimed at bringing the study of economic law into the 21st century, in tune with the new economic phenomena (globalization of markets to start with). He engages in the arduous task of systemizing this field of law—intrinsically difficult to systemize—adopting a transnational perspective. He proposes a new theory to understand today's economic law. He calls it the 'transnational theory' of economic law. It relates to the globalization of markets and the competition of systems.

The worldwide opening of markets for business has forced governments to compete with one another for investment capital. Economic-law rules play a double role in this competition: in Meessen's terms, such rules may be the 'rules' or the 'tools' of that competition. This is an extremely interesting and useful distinction.

Some economic-law rules have significantly increased the possibility of that competition by dismantling government-imposed obstacles to cross-border trade. This part of economic-law provisions are the 'rules' of the game; they make the competition possible and should be ideally the same all over the world. They lend themselves to being harmonized by instruments of international law. The non-discrimination and the most-favoured-nation rules under GATT and WTO law well exemplify this category of rules.

Other economic-law rules serve as 'tools' of the game. They are instruments through which governments compete with one another for inward investments. Governments try attracting investors-enterprises by offering, inter alia, effective and efficient financial and economic systems, appealing social and legal systems and responsive and effective political systems. 'To a considerable extent', in the Author's words, 'the above systems are set up, or at least indirectly shaped, by the adoption of economic laws' (p 9). Unlike the rules of the game the tools must be embodied in laws at national or regional level lest they lose their capability of serving as parameters of competition. Tools of the game are for instance national substantive-law rules on environmental tort: industrial policy may favour outright environmental dumping in order to attract inward investment. Environmental law well exemplifies also the fact that trade-offs between economic and non-economic objectives is where the competition of systems is liveliest.

Governments can jointly transform a tool into a rule of the game by means of legislative harmonization. In Meessen's opinion this shift should be decided upon with caution. The competition of systems plays on the differences between national (and/or regional) economic laws. From the business point of view, such differences certainly represent a burden on cross-border trade and investment. But those transaction costs are very often outweighed by the virtuous circle resulting from the competition of systems. Under the pressure of competition national (or regional) systems are continuously forced to improve themselves, providing enterprises with a world-wide array of business environments from which to choose the best ones. For example, in Meessen's opinion, there should not be a world competition law: the current world-wide competition of national (or regional) substantive competition laws should remain. Competition law should be kept as a tool of the game.

Meessen's principal objective is to illustrate the impact of the competition of systems on economic-law rules, in order to argue that to understand today's economic law one needs to look beyond the border from inside a nation State or a supranational organization (Meessen's transnational theory of economic law). Both in making and in applying economic law each state and supranational organization must necessarily be aware of economic laws, developments originating outside its territory (even if only to reject them).

With respect to economic-law making, law makers of a state (or a regional group of states) are often confronted with two possibilities. The first is competing with the legislations of other States (or of third States), trying to optimize their economic environment (ie the above-mentioned financial, economic, legal, social and political systems) so as to attract investors-enterprises. The second possibility is joining the other political units to stop the competition of systems in a particular sector, by internationally harmonizing ('cartelizing' as Meessen also puts it) legislative action with regard to that sector.

Also with respect to the application of economic law, States (and supranational organizations) are faced with two choices. In the context of each particular case, a State (or organization) may make its domestic legal environment move ahead of competitors or, instead, may adopt a position of deference to foreign laws and interests. In either case considerations of comparative law commend themselves and are sometimes indispensable (eg in case of arbitrators applying *lex mercatoria*). States' reciprocal deference (comity) is ever more present in inter-State relations (eg in the making and applying international private law rules, in the recognition of foreign courts' judgements or arbitral awards). Comity does not contradict the existence of the competition of

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systems. On the contrary, it is just another manifestation of each government's efforts to maximize its self interests, for sometimes clashing head on with competitors produces more costs than gains.

This is a ground-breaking book. Meessen shows the way in which economic law studies need to progress to achieve an even higher level of theorization. Meessen himself, since the publication of the book under review, has developed his approach a little further in a German-language booklet: 'Wirtschaftsrecht im Wettbewerb der Systeme' (Tübingen: Mohr Siebeck 2005 48 pp).

MATTEO ORTINO

The European Union: A Polity of States and Peoples By WALTER VAN GERVEN [Hart Publishing Oxford 2005 xvii + 397pp ISBN 1-84113-529-1]

Professor van Gerven's book starts with an anecdote that explains his deep involvement with and sympathy for the project of European integration and that is at the same time a reminder of the original raison d'être of integration. He recounts how, in May 1940, he saw the first German soldier walking into his home town of Sint-Niklaas, about 25 kilometres to the east of Antwerp, in Belgium, and how he saw the last one leave in September 1944. 'These events', he writes, 'deeply affected the men and women of my generation, and motivated them to change history.'[1] The tone is set for a deeply sympathetic, but highly sophisticated, account of European integration, in which the author uses EU law as a basis of his analysis, but manages to incorporate an impressive amount of comparative law, political science, and political theory.

The book is divided into seven chapters, respectively on 'The European Union's Institutions, Identity and Values', 'Accountable Government', 'The Rule of Law', 'Good Governance', 'Open Government', 'Making a Constitution for Europe', and a concluding chapter entitled 'Which Form of Government for Europe?' As can be gathered from glancing at the chapter-headings, the focus of the book is clearly on the broader constitutional debate, rather than on a detailed explanation of the substantive law of the European Union. It is also immediately clear from the chapter-headings that van Gerven sees analysis of constitutional law and theory as intimately linked with concerns about democracy and accountability. The author's persistent elaboration of this view throughout the book enhances both the book's readability and its relevance for present debates on the future of the Union.

It is impossible in this brief review to engage fully with the many lines of argument put forward by van Gerven, and the wide variety of subjects covered by the book. What follows will therefore only touch upon some of the issues discussed in it.

The author describes the aim of the book as twofold. On the one hand, van Gerven wishes to explain the Union as it currently stands and as it would stand were the Treaty establishing a Constitution for Europe ever to come into force. On the other hand, however, the book aims to show 'how the distinctive features of a democratic polity that characterize the Member States can be gradually transplanted to the European Union''[2] Does this imply that the author believes that the way to democratize the Union would be to remake it in the image of the Member States?

> The proposition underlying the book is that the most appropriate way to turn the Union into a full-fledged 'body politic'— a polity of states and peoples—is to replicate, at Union level, the parliamentary form of government, which is familiar to all of the Member States in one way or another, rather than to invent a new doctrine of democratic legitimacy.[3]

Van Gerven is, however, at pains to stress that his position does not imply that the Union should become a large nation-state.[4] The author therefore positions the book as firmly rooted in a recent strand of scholarship seeking to supersede the often purely statal framework of analysis which is used to critique the Union's constitutional structure. At the same time, van Gerven does not fall

[1] xiii. [2] 1. [3] 2. [4] ibid.

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