This is a major book by a master of legal history. He tells the story in detail and lets it speak for itself. His own commentary is relatively sparse. I would have preferred a little more of Professor Simpson's own voice.

DOMINIC MCGOLDRICK

The Modernisation of EC Antitrust Law. By REIN WESSELING [Oxford: Hart Publishing. 2000. xix + 252 pp, ISBN 1–84113–121–0, (H/bk). £35.00]

The PhD thesis on which this book is based was defended only two months before the publication in April 1999 of the Commission's White Paper on the modernisation of the enforcement of the EC competition rules. Wesseling's analysis of the development of the law is, however, more rather than less valuable as the modernisation project progresses. His basic argument is that competition law should be modernised in a way which takes on board the general developments in Community law following the establishment of the internal market and the Treaty on European Union. For Wesseling, reform should not focus primarily on procedural issues such as modes of decentralisation but should entail a more comprehensive review, embracing matters of substantive law and reviewing the objectives of competition policy.

In Part I of the book the author emphasises the uniqueness of EC competition law, in contradistinction to other areas of Community activity, in evolving 'almost exclusively in the supranational sphere'. The most striking feature of competition law is that Council Regulation 17 of 1962 in effect conferred upon the Commission powers both to enforce the rules and to make policy. The only check upon the Commission has been the Court, which has also pursued an integrationist agenda. Wesseling argues that in the post-Maastricht world competition law should not be immune from developments in the relationship between Community and national law, but should be part of the debate on the future of European integration, looking at objectives beyond integration.

In Part II he considers how EC competition law could and should be modernised with these considerations in mind. At the heart of his review is the question of the division of jurisdiction between the Member States and the EC. He discusses this in the context of a wider consideration of the role of the doctrine of supremacy. He takes issue with what he sees as the overbroad interpretation of the 'affect on inter-Member State trade' criterion and advocates limiting Community jurisdiction to those matters in which there is a real Community interest, as is done with the 'Community dimension' threshold under the Merger Regulation. That, he argues, would be a more effective decentralisation measure than what the Commission is proposing. Since Wesseling completed the book the need for a clear delineation of the jurisdictional scope of Articles 81 and 82 has increased, as the Draft Regulation published in September 2000 contains a provision, unheralded in the White Paper, whereby in cases with an effect on inter-Member State trade (in its current Wesseling-disapproved meaning) Member States could apply only Articles 81 and 82 and would lose their ability to apply domestic competition laws On this point therefore, as on much else, Wesseling's book provides timely food for thought.

Wesseling has equally trenchant views on some other major controversies in EC competition law. He believes that the Commission's interpretation of Article 81(1) is too broad and that it is feasible to interpret the provision in such a way that only agreements which on balance restrict competition are caught by it (he was writing, it should be noted, before the CFI's September 2001 judgment in *Métropole v Commission*). Following from this he considers that Article 81(3), despite the Commission's apparent disapproval in the White Paper, should be employed to cover non- competition concerns. He argues that there is nothing in Community law which provides that the principle of free competition should override all other policy considerations. It follows from this that he cannot accept arguments in favour of an independent European Cartel Office concerned solely with competition issues as such issues must be weighed with other Community objectives. He does, however, consider that there are serious deficiencies in the procedural and

institutional framework in which the competition rules are currently enforced and is an advocate of removing decisions as to whether the competition provisions are infringed away from the Commission and entrusting them to courts instead. He finds it disappointing that the Commission's proposals simply do not encompass any significant reform at the central institutional level.

Wesseling's general argument is not that the enforcement of the competition rules does not need modernising, but that the Commission's proposals are not radical enough. He is disappointed that the Commission did not undertake a much more fundamental examination of the purpose of the competition rules. His own book remedies that deficiency in that it does take on board a wider set of concerns and elaborates its proposals from a wide-ranging analysis of the Community's history, current stage of development and foreseeable future. In doing this Wesseling makes pertinent observations on a number of issues—his comments on *Keck* and the Court's recognition that the free movement of goods provisions should not be used as a general deregulatory tool, for example.

The Commission's proposals are being steamrollered ahead but it is still important to consider what alternatives exist. Wesseling has a more radical vision of modernisation than the Commission and he has produced an excellent, thought-provoking and stimulating book.

BRENDA SUFRIN

The Birth of a European Constitutional Order. Edited by JÜRGEN SCHWARZE [Baden-Baden: Nomos Verlag, 2001, 568 pp. ISBN 3–7890–7178–1. Np]

Schwarze has edited yet another major work on public law in Europe which should command the attention of scholars. This collection offers high-quality chapters by national experts relating to the impact of European Union law and the European Convention on national constitutions in France, Germany, Austria, Spain, Sweden, and the United Kingdom. The work is packed with sustained thoughtful analysis and comparison. Its major drawback is that one has to be tri-lingual to enjoy its quality, since one chapter is in French, two in German, and four in English. The 100-page concluding part does, however, offer the English-language reader a detailed overview of the issues raised in the other chapters.

The work is of interest not only for what it reveals about national constitutions within the perspective of a potential European constitution but also for the value of the comparative method which Schwarze's group of scholars have followed. The method involves both a common framework of issues to ensure similarity in the issues addressed, but also considerable latitude for each country to present its work in an appropriate style. Thus the Swedes spend more time explaining the general context in which Swedish law operates, and the UK report is concerned to give a substantial amount of space to the political process. Thus, some reports are more legalistic in their approach to the issues than others, and this reveals differences in the idea of the constitution which underlie national approaches.

It is inevitable that three issues dominate the presentations: the position accorded to EU law within the national hierarchy of constitutional norms, the status of the European Convention in relation to national statements of fundamental rights, and the potential support for the idea of a European Constitution.

In many ways, the solutions of each constitutional system studied are similar. None of the countries treats EU law as superior to national constitutional law. Despite occasional lapses in terminology in the conclusion, the general view emerges that nation states have not *transferred* sovereignty to the EU, they are merely exercising sovereign powers through it and, to that end, have delegated powers to it. In this, the German Maastricht judgment effectively represents constitutional orthodoxy for all the countries studied, even if the editor argues strongly against this view (pp. 550–1). National constitutional courts certainly require constitutional amendment where new treaties permit further delegation of important sovereign rights to the EU. Only Austria has given the European Convention constitutional status. For the rest, in different ways, it occupies a