The Cambridge Companion to European Union Private Law

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Especially interesting is the analysis of the cross-application of free movement and competition rules. On the one hand, the authors identify cases where the competition rules have been applied to private parties either through the official recognition of horizontal direct effect (e.g. C-415/93 Bosman, C-281/98 Angonesse) or through the extended understanding of vertical situations so as to cover cases where states have allowed obstacles to free movement raised by individuals (e.g. C-265/95 C. v. France – Spanish Strawberries, C-112/00 Schimidberger). On the other hand, the authors put forward cases where competition rules have been applied to the state (e.g. 1577 INNO v. ATAB). Against the background of these cases, the authors discuss where the line is between the “state” and an “undertaking” and how one knows which rules to apply. The authors see the development of the case law as a combination of the Court’s functional approach to free movement and the interpretation of the effett utile on which competition rules are based (p. 128).

The contribution of this book to the abundant academic literature on the internal market lies in that it focuses on the interaction of two main sets of provisions – on free movement and on competition – which, being a “moving target”, as the authors say (p. 211), has remained undereXlored to the present day. Particularly useful is the analysis of this public/private interface in four crucial areas: commercial state monopolies, public undertakings and special and exclusive rights, services of general economic interest; and state aids. What in my view is not sufficiently covered in the analysis, although the authors have consciously left this out, is the third dimension of the internal market, which is the Court’s approach to positive integration, particularly to the competence of EU institutions to regulate the market in order to remove obstacles to free movement or appreciable distortions of competition. Still, the book’s clear and detailed reasoning with its logical structure make it a good read.

Tamara Perisin, University of Zagreb


This useful volume has three stated aims: to describe policies related to climate change in the European Union, as they are and as they have developed over time; to examine the underlying dimensions of choice that gave rise to these policies; and to explore alternative scenarios for further development of policies over the next 10 to 30 years.

It is on the first of these aims that the volume provides its most significant contribution, through detailed examinations of their historical development, and their institutional setting. Early chapters provide concise introductions to EU institutions, major landmarks of their development, and the majorcontending theoretical accounts of them – sufficient to bring up to speed on the EU context. There then follow separate histories of several strands of climate-related policy – policies for burden-sharing among member states, renewable energy, the green-house-gas emissions-trading system, and adaptation to climate change. The accounts are admirably cogent, providing a great deal of political, institutional, and historical detail that has not previously been offered in any single, widely available source. They cover the period from the first emergence of climate change as a policy issue in the 1970s, through preparation of the EU negotiating position for the Copenhagen climate meetings in December, 2009.

The volume’s second aim, examining underlying choices, relies on a simple conceptual scheme that identifies three dimensions of policy choice – what problem to address; at what level to act; to what specific action (policy) to adopt; how to distribute costs and benefits; and how to implement and enforce policy choices – plus five “paradoxes” of EU policy-making that complicate choices on these six dimensions. The six dimensions of policy choice are used to organize the interpretive sections of the chapters on specific policy areas. This approach gives the collection an unusual degree of organizational consistency and conceptual coherence.

Andrew Jordan, Ed, What is EU climate policy? – and how to implement it? What is the nature of the “moving target” that we are trying to adjust? The third dimension of structure is that the choices we are required to make are essentially a matter of how to implement a series of non-policy policy measures. The authors’ attempt to build on the previous work by Sauter and Schepel (2008) to make it a good read.


In the European Union, there is a lively debate on the interaction between free movement rules and competition rules. One could argue that these rules have the same aim which is the optimal functioning of the internal market (e.g. C-412/93 Leclerc), so that interpretations of their scope and permissible justifications should converge. But arguments can equally be made against this reasoning, as the Treaty itself is drafted in such a way as to entail two different sets of provisions – (arguably) those relating to the state and those relating to undertakings (e.g. 177/178/82 Van de Haar).

Sauter and Schepel’s book deals with these very contentious issues by looking at the concepts of the “market” and the “state” and their application to private and public spheres, and it discusses not only where the line between the concepts is and what the areas where they interact are, but also how these issues are dealt with by the European Courts. The authors place their analysis in the context of European economic constitutionalism, German Ordoliberalism and the French doctrine of service public (p. 2), although they actually concede that these concepts are not particularly helpful for understanding what the Court is doing in the field of the internal market (p. 219).

The main part of the book convincingly presents the Court’s case law on free movement and competition rules. The changes in case law which have occurred over the decades are explained as reflections of the principles of functionalism, subsidiarity and pre-emption intended to preserve a balance in the division of power between the EU, its Member States and the market. For example, an argument is put forward that these principles can be seen in the fact that the broadening of the scope of what is now Art. 34 TFEU in 8/74 Cassis de Dax was accompanied by the extension of permissible justification (rule of reason and mandatory requirements); or in the fact that the later narrowing of the scope of Art. 34 TFEU in C-267-8/91 Keck was accompanied by the articulation at “horizontal advancement”, e.g. in C-292/92 Hunermund, where self-regulatory associations are treated equally as public authorities (e.g. pp. 45, 73).
marked EU funding and of the socio-cultural pay-offs of the enterprise: the rejuvenation of the disciplines of comparative law and legal history, the opportunity to rationalize and modernize obsolete branches of economic law and, for some at least, the chance to engage in a long overdue discussion on the distributive effects of private law rules and standards.

This Companion, while concise and austere by design, partakes of the richness of the scholarly debate built around European private law over the last two decades. The word ‘politics’ appears sparingly in the book, but strong opinions run through text and subtext of the contributions. At least four different loci of disagreement are apt to polarize the discussion.

First, the politics of federalism: in the legal tradition of continental Europe, a centralized private law regime is as essential to sovereign unity as a common flag or currency; on the other hand, it is not clear that the production of EU-based private law finds adequate legal basis in the EU Treaty; and in so far as national culture is tied to private law making, full harmonization might be neither possible nor desirable.

Second, the question of democratic input and institutional competence: what role for national legislators in a process of harmonization dominated by the Commission, by neo-corporatist bodies and by a closely knit academic network? And what role for courts, domestic and European, in the development of EU-made private law?

Third, the issue of distributive justice: all agree that European Union private law performs a regulatory function, but opinions range widely when it comes to deciding whether and how far to protect weaker parties in a process or by centralized command. Substantively, multiple directions are on the table as well. Given these vagaries, the private law of the European Union may soon need new companions.

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