

NO: 7, ISSUE: 2, 2019

Journal
of Global Politics
and Current Diplomacy

 [Center for
European Dialog
DEDiC and Cultural Diplomacy]

Journal of Global Politics and Current Diplomacy

GLOBAL POLITICS AND CURRENT DIPLOMACY (JGPCD)

JGPCD is a project of the Center for European Dialogue and Cultural Diplomacy from Cluj-Napoca, Romania.

JGPCD is a biannual (June and December), peer-reviewed academic journal. The issues of the journal will include multi and interdisciplinary papers. Occasionally, individual issues may focus on a particular theme.

ISSN 2344 – 6293 ISSN–L 2344 – 6293

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Book Review

European Union integration shaped by the Court of Justice

Mihai ALEXANDRESCU*

“Fernanda Nicola and Bill Davies (eds). *EU Law Stories. Contextual and Critical Histories of European Justice*. New York, NY: Cambridge University Press, 2017. ISBN 978-1-107-54503-8”.

HARDLY, A RESEARCHER OF THE EUROPEAN INTEGRATION PROCESS is able to comprehend the whole mechanism of the European Union decision-making. There are many actors involved in this construction and they play such a different role that often it is impossible to match their interests. In a dialectical approach of agent-structure logic the last question is Who shapes the European Union? In the last two decades, the Court of Justice enjoys increasing attention from researchers of the EU integration. Two Professors of Law at American University proposed a new approach of the CJEU impact on the EU integration process.

Reasons of a book about the CJEU cases

In 2017, Cambridge University Press published Fernanda Nicola and Bill Davies’s edited book “EU Law Stories. Contextual and Critical Histories of European Jurisprudence” (660 pages). This represented an impressive work of 32 contributors from 13 countries to draw up the first picture of the Court of Justice of the European Union (CJEU) after the release of more than 270 boxes of official documents “with restricted access to the public”. These boxes are hosted at the Historical Archives of the European Union at the European University Institute in Florence. This book provides first interpretative sketches of these documents. They testify the long way of the European integration

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process and provide the image of the deep integration discretely shaped by the CJEU judges.

The two editors of this collective volume are members of American University and they managed to bring together a large number of lawyers, historians and political scientists to narrate the history of EU law “linearly and incrementally” (Davies and Nicola 2014: 3). However, following all 29 chapters of the book, we find the reasons of “persistent gaps between the law in books and the law in action” (ibid). In this respect, I find justifiable the connection described by Ronald Dworkin between justice, law and morality. In his words,

“Even a fidelity to the abstract Constitution that is disciplined by integrity requires judges, lawyers, legislators, and others who interpret the Constitution to make fresh moral judgements about issues that deeply divide citizens” (Dworkin 2006: 132).

In this respect, it worth mentioning here the paramount importance of the opinions and decisions made by CJEU in its cases along seven decades. Their work is to interpret the European Communities/Union legislation in order to clarify the right path of the European integration.

The main topics

As structure, the book follows “the classic Anglo-American tradition” of EU law teaching books, clustering the ‘stories’ of the EU law around the case law easing the understanding of different parts of this field. Impossible mission to include every single case law in these stories, that is why the authors chose a selective manner following “a solid canon” developed in the CJEU jurisprudence and tried to clarify the background of different decision made in relevant moment of the European integration.

These interpretations were divided into six main topics:

- (a) Manufacturing EU law stories
- (b) Constitutionalization and democratization
- (c) Human rights and citizenship
- (d) Market integration: competition, corporate and private law
- (e) Beyond the Market: gender and anti-discrimination
- (f) Beyond the EU borders.

In his seminal 1981 article, Eric Stein noted that “the European judicial process, characterized by a symbiotic relationship between national courts and the Court of Justice, is a complex dialectic process” (Stein 1981: 1) where many actors play different even concurrent roles. Stein emphasised the independent position assumed by the Court of Justice in relation with the European

Commission and the Council. From this posture, the Court has led the European integration.

Starting with “manufacturing EU law stories”, the authors of this book lead the reader to notice the importance of a deep study of “Europe’s founding decisions” setting the pillar principles of this organisation such as: *direct effect* (Van Gend en Loos case), *supremacy* (Costa v Enel case), *non-discrimination* (Defrenne case), *mutual recognition* (Cassis de Dijon case).

Over sixty years of existence, the Court of Justice made more than 9.500 of judgements, called by Pierre Pescatore as “jurisprudential acquis” (Pescatore 1981: 617-651 *apud* Vauchez 2014: 26). Of them, some cases were selected as “landmark cases”. However, building the meaning of the European integration on few cases “tend to obscure the rest of the case law” (Vauchez 2014: 27) which could bear many other nuances crystallising the general image. Or, this book conveys that looking for a progressive feature of the ECJ jurisprudence enhances our understanding of the real sense of European integration. The first step in this refreshment of our knowledge is to admit that “a CJEU judgment is thus a collegiate document” (McAuliffe 2014: 39) ending a complex process involving different actors working in a language that, in many cases, is not their mother language. In this respect, Karen McAuliffe managed to throw a light on the CJEU decision-making mechanism, enlightening the active role of *référéndaires* working with judges and advocates general. In spite of this complexity, bureaucracy “may paradoxically foster elements of non-bureaucratic culture” (Cohen 2014: 59).

The next parts of this volume take the main issue of the European integration. They are written laying on a spread literature and sometimes even on boxes sent by the Court of Justice to Historical Archives of the European Union, at Florence. Readers of this book are provided with new different perspectives on the same cases law. In the end, this volume was built around the classic legal tradition, but the demystification of these pillars is the first step in the process of humanising the image of the CJEU and additionally equipped researchers with different interpretative tools applicable to many other cases law. Mark Pollack warrants us that “any insights or lessons from these stories must be drawn cautiously, because the cases examined here do not constitute a representative sample of all CJEU cases.” (Pollack 2014: 579).

Methodology of the book

The editors of this volume stated that the authors were encouraged to act as “EU law ‘detectives’” to seek the causes of the cases solved by the CJEU judges and how they solved them. Thus, methodologically, we could identify

three groups in this authorship: (a) legal historical, (b) personal files and interviews with parts of the cases, (c) interdisciplinary methods such as “comparative law, intellectual and economic history, political science, feminist theory and the political economy of international trade” (Nicola and Davies 2014: 16). All these methods were due to the authors’ backgrounds and multiplied the lens through which these cases were analysed. I found useful Rasmussen’s historical approach to understand by “Van Gend En Loos” case the main path to decision making in the CJEU as the personal backgrounds of Michel Gaudet and Walter Hallstein influenced an “overall federalist approach to European integration” (Rasmussen 2014: 112). Furthermore, reading about the case of Man Lavette Chen, “a pretty, petite twenty-five-year-old Chinese woman”, I understood why this case law appears in every textbook and how it managed to shape European Law. The method chosen by Kochenov and Lindeboom to explore all the stages of the case’s evolution was a working one to comprehend the whole process in the CJEU. Finally, after pursuing this way and reading the interview with Mrs Chen, we could explain why the “EU citizenship law became more convincing and coherent” (Kochenov and Lindeboom 2014: 222).

Final remark

This storytelling method to present the history of the CJEU jurisprudence emphasises the importance of characters who took part of the judgment making. Told by experienced researchers, lawyers and professors, these cases have been supplemented with a new image.

The comprehensive introduction written by Nicola and Davies offers a supportive guideline in this book, along side with a high expectation about those “270 boxes of official documents” sent to Historical Archives in Florence. In the end, readers could be confused when notice only few references to those archives but many others to the classic literature on those cases law. On the other hand, this book represents another argument of the paramount role played by CJEU over more than six decades in shaping the content of the EU integration.

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