Book Review

Catherine Barnard and Okeoghene Odudu, eds (2009) *The Outer Limits of European Union Law*

Oxford: Hart

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While some legal systems rely on the denial of any actual limits to their powers whatsoever, allowing the Parliament to 'prohibit the sun from rising' or to 'revoke the independence of India', others put the limits on their powers among the most important principles of their functioning – enumerated powers of Congress or Article 5(1) EC provide perfect illustrations of this. Both approaches are inherently misleading: to pretend that there are no limits essentially amounts to the same fictitious orthodoxy as making out of the 'limits' a constitutional fetish. Such absolutes never work as claimed, which is easily proven by a simple fact that the sun keeps on rising every morning; by the broad interpretation of the commerce clause; and by the goal-oriented reading of Community competences. Treated lightly, any approach to the essence of the limits remains important while at the same time being unable to obstruct the successful functioning of the legal system. In speaking about the limits, flexibility is the key, unless one views Bosnia and Herzegovina as an ideal legal system.

All this makes the study of the limits of any legal system particularly important, especially when one speaks about federated legal structures like the US or the European Union. In fact, almost any issue of European law is bound to deal with the boundaries imposed on (or by) the supranational legal system in Europe. The whole story of development of this legal system, from *Van Gend*, *Costa* and *Cassis* to *Keck*, *Matínez Sala*, *Pupino* and *Tas Hagen* is a story of reinventing the limits of Europe's reach.

A huge number of possible 'limits' can be outlined, from human rights limits springing from the successful blackmail/lobbying by the *BVerfGE*, *Corte Costituzionale*, and, later, the *ECt.HR* (especially in *Matthews*); to somewhat more blunt limits consisting in pure 'sovereignty concerns' of the Member States, who usually fail to explain how maintaining their sovereign regulation can lead to better lives led by half a billion Europeans throughout the Community. There are also territorial limits, which, like all the other rigid limits' types, seem to be fading away rapidly with the help from the ECJ. It is only enough to keep *Hansen* and *Eman & Sevinger* in mind to see the trend. Somewhat more esoteric limits rooted in the most inflexible orthodox interpretation of a particular kind of democratic theory can equally be named – and illustrated by the '*certain malaise allemand*' – the *dēmos* saga, now expectedly unpopular among scholars, which has consumed a lot of paper only to be largely forgotten (tellingly, the volume under review does not contain a chapter on this, which is a good thing).

All in all it is clear that the limits define the essence of the legal system, meaning that the study of the limits is the study of the law itself and *vice versa*. Viewed in this vein, any EC law textbook is an outline of the limits of European Law.

It is worthwhile, nevertheless, to have a book on the shelf, which is uniquely dedicated to the analysis of the 'limits' of the law, as opposed to the law as such, thus emphasising one of the essential features of the legal system and focusing on this important feature in particular. The book under review is especially attractive because of its truly magnificent collective of authors, as well as the broad range of areas of Community law covered in its quest for the delimitation of the 'outer limits of European Union law'. Indeed, if a collection assembles contributions from Weatherill, Dashwood, Dougan, Nic Shuibhne, Jo Shaw, Spaventa, Barnard and Koutrakos, among others, its success is guaranteed. Dealing with a wide array of issues from the legitimacy of the European legal order to the interpretation of Article 308 EC, the permissible scope of wholly internal situations, EU citizenship, and, even the application of EC law to the defence industries, the book is a fascinating read. In fact, although it claims to focus on the 'limits' only, it ultimately covers virtually all the main spheres of Community law. This is an excellent volume for anyone interested in the field to keep updated on all the main general developments in the law, as well as scholarly analysis of Community law issues. Well written, thoroughly referenced, innovative and broad in scope, this volume is thus a very welcome, if not a necessary, addition to the library of any EU law *aficionado*.

Criticising such books is difficult. Yet, providing a wonderful outline of EU law using the 'limits' of it as a pretext, the book could actually say more about the idea of the limits as such. Rather than a drawback, this is more of a suggestion for a possibly different set-up for another 'limits of European law' collection.

Unfortunately, in the atmosphere where any sound legal theory of European integration is missing, notwithstanding the now constant attempts to create one, it is extremely difficult to expect of legal scholarship embarking on the analysis of the limits of European law anything more than a path-dependent exercise of describing where the development of the secondary law and case-law of the Court of Justice has left us at any particular point in time. In the absence of the general theory, or a broader vision of what is to be expected of Europe, the general study of European integration unfortunately deviates from the ideal outlined by Jo Shaw in one of her works: instead of being a constructive process, it falls into the trap of detailed descriptions and cautious attempts to predict immediate future developments in a given narrow area of law and policy. J.H.H. Weiler was certainly right in describing the EU as a boat embarking for an unknown destination. In contemporary Europe, no-one, including the politicians and bureaucrats, seems to be audacious enough to formulate with clarity where this boat should be going. In this situation, it would be naïve to expect legal scholars to differ.

Yet, ideally, a much broader outline of what the limits are, what they should be, and how we get to the point where the desired limits are constructed, could become the starting point of the analysis of the limits of Community law.

Highly recommended.

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