BOOK REVIEW

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THE OXFORD ENCYCLOPAEDIA OF EUROPEAN COMMUNITY LAW VOLUME I - INSTITUTIONAL LAW

by AG Toth (Clarendon Press, Oxford 1990)
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EUROPEAN Community Law is a young yet rapidly evolving area of the law. The treaty establishing the European Economic Community was signed in Rome less than four decades ago.[1] It set in motion a process of "deepening" of Community Law as well as "widening" of the membership of the Community which continues to this very day. In the result the move towards European integration is no longer limited to the economic domain. A recent intergovernmental conference in the Dutch town of Maastricht on 9-10 December 1991 confirmed that the evolution towards

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1 The Treaty of Rome was signed on 25 March 1957. The Treaty was concluded for an unlimited period (Art 240). It entered into force on 1 January 1958.

an "ever closer union" has political, social and cultural dimensions in addition to purely economic-monetary aspects. Furthermore, the original membership of six founding nations has since been doubled while the list of aspiring members continues to grow.

The increased importance of European Community Law has been reflected in the number of publications that have come on the market, especially since the 1970's and 1980's. In fact, it has now reached the stage where there is a risk of drowning in the abundance of printed materials made available both by the Community institutions themselves and private initiative. Be this as it may, quality always succeeds. A comprehensive treatise of European Community Law can be found in Kapteyn and Van Themaat, *Introduction to the Law of the European Communities*.[2]

Leading periodicals are the *Common Market Law Review*[3], the *European Law Review*[4] and *Legal Issues of European Integration*.[5]

The book under review justifiably makes a claim for special attention. It has been written in the conviction that an encyclopaedic form of presentation is eminently suited to the nature of Community Law. Community Law deals with a wide range of diverse and only loosely connected topics, so the argument runs, and it does not easily lend itself to systematic treatment within the framework of a traditional treatise or textbook.[6] With respect, this probably is an exaggeration. But the plea *pro domo* notwithstanding, the author has produced a commendable piece of work.

Institutional Law is the first volume of a three-volume publication. While volumes II and III are to be published at some later date, it has

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2 (Deventer, Klumer Law and Taxation Publishers, 2nd ed 1990).

3 This journal is the oldest of the three mentioned here. It is published in cooperation with the British Institute of International and Comparative Law, and the Europa Instituut of the University of Leyden. There are four issues per year.

4 The journal covers the law of the European Community and the Council of Europe. Six issues each year are published.

5 It is the Law Review of the Europa Instituut of the University of Amsterdam. The Journal is published half-yearly.

6 *Preface* V.

already been announced that they will cover *Substantive Law* and *Community Policies*, respectively. The distinction may seem somewhat arbitrary. AG Toth, Professor of Law in the University of Strathclyde, by his own admission uses the label "Institutional Law" in the broadest possible sense.[7] The publication under review thus includes a discussion of constitutional, administrative, and external relations law, the law of remedies and of produce, as well as the sources and general principles of Community Law. The advantage is that Volume I can be viewed as a self-contained if not always complete unit.

The organisation of the book is most practical. Entries are arranged in alphabetical order, ranging from "Abandonment of Claims" to "Written Procedure". They have been drafted in such a way that a short and concise definition is normally followed by a longer and more detailed explanation or discussion. There is extensive reference to the Case Law of the European Court of Justice. In Community Law traditional references to the opinions of the Advocates - General are also included where appropriate. At the end of each entry is a list of cross-references and useful suggestions for further reading. In the result the actual length of any particular entry can vary from a few lines to several pages (as for instance in the case of the Directive and Regulation definitions, and the Direct Applicability and Direct Effect distinction). Overall the book meets its double purpose of giving instant information in a clear and precise manner, and of providing a basic research tool.

It is unquestionably correct to hold that each new discipline produces its own technical jargon. In the case of the European Community Toth correctly points out that a host of legal terms and concepts have been created which either have no equivalent in national law or, more frequently, have acquired an entirely new meaning in the context of a supranational Community Law.[8] An additional merit of Professor Toth's work is then that it traces the national origin of the Community terminology and compares national meaning and uniform Community interpretation. An illustration in point is the doctrine of "Acte Clair". Toth starts off by defining the doctrine as one according to which a legal

7 As above.
8 As above.

provision whose meaning is clear and unequivocal does not need interpretation. He continues as follows:

> As a general principle of interpretation, the doctrine is recognised in most legal systems under the maxim: *in claris non fit interpretatio*. In a special sense, however, the doctrine of the *acte clair* has been developed in French law to restrict the situations in which a court has to refer preliminary questions (questions prejudicielles) to another court or to the executive for decision, to cases raising genuine difficulties of interpretation. Accordingly, the referring court is deemed to have a broad margin of discretion to determine whether or not an "act" is "clear" and whether or not a reference is necessary. This doctrine has subsequently been applied by the French *Conseil d'Etat*, and to a lesser extent by the *Cour de Cassation*, in the context of references to the ECJ [European Court of Justice] for preliminary rulings under Act 177 EEC ...
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> The ECJ itself seems to have accepted the doctrine of the *acte clair*, albeit subject to certain strict conditions. In determining the circumstances in which courts and tribunals of Member States, against whose decisions there is no judicial remedy under national law, may be exempted from the obligation to refer preliminary questions to the ECJ under Act 177(3) EEC, the Court has stated: ..."[9]

The book under review has been written with a wide audience in mind. It is meant to serve the needs of those called upon in their day-to-day activities to interpret or apply Community Law. It most certainly also meets the needs of academic lawyers, researchers and students alike, whether or not they are specialists in this branch of the law. It may be hoped that the next two volumes of the Encyclopaedia will become available soon.

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9 At pp10-11.