

are more specific. These are usefully included in an Appendix. The concluding chapter offers another perspective by providing a detailed description of programmes and initiatives which affect the operation of the media industry. The various aspects of the Community's MEDIA programme receive most attention in this section but programmes from a variety of sources are mentioned.

There is a great deal of information collected in this work. However, there are several respects in which it disappoints: it is not always as accessible as it could be; there are sections that are hard to follow; and in places it lacks the detail that the preface leads one to expect. These three reservations are taken in turn below. 1) The organization of the material according to legal categories gives the work obvious strengths. However, to fulfil its objective of being manageable for those who are new to the area, or who have only superficial knowledge of the legal categories, the book requires something more in the way of a general framework or guide. There is no elucidation of the scope of the work beyond its title and so one is never entirely sure of its reach. Literary works, for example, are only selectively discussed. An indication of how the sections are arranged and how they apply to sectors of the industry would also have been useful. 2) The text sometimes lacks clarity, primarily in those sections explaining the general background law. For example, the explanation of the free movement of goods leaves one turning to other works to find assistance and, occasionally, to verify the propositions made. On several occasions important distinctions are made only after they are required. One must wait until Chapter three to learn the distinction between media goods and services, a distinction presupposed in the earlier chapters. Moreover, Chapter eight explains, for one context alone, concepts referred to throughout the book. 3) The practitioner familiar with the basic framework might also be disappointed with the level of detail. The chapter on Community directives provides one example of this. It amounts to little more than a paraphrase of the directives themselves, which appear in an Appendix.

The text relies almost exclusively upon reported cases, without the extrapolation that might be provided, for instance, by hypothetical examples. There are many points at which the reader would benefit from the author's interpretation or opinion. Instead, the Court's ambiguous rulings are on occasion simply repeated without comment. On the other hand, there are also points in the work where opinion and analysis are merged and where a greater degree of circumspection might have been warranted. It is stated, for example, that the Court will condemn any undertaking which discriminates in favour of domestic goods. Whatever the merits of this position, it would not be regarded by many as settled Community law.

Another feature of the depth of analysis presented in the book is its lack of predictability. For example, the common origin doctrine of trade mark jurisprudence is explored at length whilst proposals for a directive concerning satellite broadcasts receive little attention. Despite these reservations, which together deprive the work of some polish, it remains an informative and interesting addition to any library.

G. R. Milner-Moore

Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Vols. 1/1 and 1/11: International Law and Law of the European Communities 1952-1989. Published by Members of the Court. Baden-Baden: Nomos Verlagsgesellschaft 1992, 766 pages, index.

Some people undertake the admirable task of learning French in order to read the works of Rousseau, Montesquieu, or, later, Foucault or Derrida in their original version. It is even said that a few have decided to put up with the immense compound words, the opaque grammatical rules, and the confusing order of words that are so peculiarly German, to be able to enjoy Kant, Hegel, Weber, or Habermas untranslated. In each case, the pleasure seems to outweigh the considerable pains. In contrast, the motivational pull of German court decisions to induce non-German

speakers to purchase a six week language course appears to equal zero. This is, while not surprising, unfortunate.

The German Federal Constitutional Court, located at the centre of the German system of centralized judicial review, has since its inception in 1951 enjoyed an excellent reputation. Its decisions have always constituted a balanced, deliberate voice in constitutional and political discourse. Their tone, albeit at times pretentious, is characterized by a thoughtfulness that is often a relief to a reader wearied by the sometimes raucous performances on the German political stage.

There is little hope that I will convince the reader to learn German solely to enjoy the aesthetics of the Constitutional Court's decisions. Therefore it should also be noted that the Court, like constitutional courts all over the world, has assumed immense power and must be counted among the key players in the German political system. Students of comparative politics will hardly be able to do without knowledge of the Court and the influence it wields over political decision-making in Germany. The Court's decisions also have a significant effect on the German societal and cultural sphere, necessitating that students of social science and cultural theory keep an eye on the Court as well. Indeed, if we subscribe to a view which affirms the preeminence of intentional human control over history, and if we believe in the self and the community as being both the basis of politics as well as one of its products, then the Court must figure prominently in any account.

As if this weren't enough, the Federal Constitutional Court has also assumed an important role on the international plane. The absence of doctrines of justiciability (above all the political questions doctrine of American constitutional law) with regard to scrutiny of governmental and legislative acts in the area of foreign affairs has no doubt contributed to the Court's impact. Its role coincides with the vigorous claim that any thorough study of international processes of decision-making needs to accurately analyse domestic players and their contributions. Anyone in the field of international law and international relations who takes this claim seriously will not get

around decisions from Karlsruhe (the seat of the *Bundesverfassungsgericht*).

The language barrier, however, may have caused scholars here and there to back off and let the Court be. With Germany's increasing role in Europe and the world on the whole this is a stance increasingly untenable. If any proof of this was necessary, it came in 1993 and 1994. First the Maastricht decision, holding the Maastricht Treaty constitutional and thus clearing the way for ratification and further European integration, and later the decision on the deployment of German armed forces 'out of area' rocked the legal and political world far beyond German boundaries (and were mainly greeted with almost audible sighs of relief from the political system – at least as to their substantial outcome, if not to their reasoning).

It will be noted with satisfaction, then, that the times of skimming past volumes of *International Legal Materials* or the *Common Market Law Review* for important Court decisions from 1974 or 1981 are over. The Constitutional Court, together with Nomos publishers, has finally decided to edit a selection of English language versions of its decisions. The first volume in this series, in two parts, is dedicated to decisions related to international law and the law of the European Communities, correctly identifying scholars of international and European law as the primary and most interested target group. It contains such important decisions as the two "Solange" decisions (ruling on the competency to review European Communities legislation), the 1973 decision holding constitutional the Act ratifying the 1972 Treaty between the Federal Republic of Germany and the German Democratic Republic, and the decisions on the installation of nuclear-equipped American intermediate-range missiles on German territory.

A working committee of several judges of the Court decided which decisions should be selected for publication, and their choice is prudent and thoughtful. It is a special virtue of the collection to render the forty decisions, handed down between 1952 and 1989, basically unabridged (only the description of the facts have been abbreviated, without any loss). Former

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Justices Hans Joachim Faller and Theodor Ritterspach prepared the decisions for translation. The overwhelmingly difficult and demanding task of actually translating them was carried out – in an excellent and indeed awe-inspiring manner – by I. Fraser, P. Aliferis, and D.C. Umbach.

The selection deserves wide dissemination and, no doubt, will become an indispensable research tool of a wide range of scholars. Court and publishers have begun a long overdue and unreservedly laudable project. Roman Herzog, then President of the Federal Constitutional Court and now President of the Federal Republic of Germany, writes in his Preface to the collection that “[i]n the future such decisions will be published on a continuing basis.” As four years have gone by since the publication of this initial compilation, I hope that his words have not been forgotten in the Court or with the publishers.

Ulrich R. Haltern
Harvard Law School

Book Notes*

Parisi, Francesco. *Liability for Negligence and Judicial Discretion* (2nd ed.). International and Area Studies. Research Series, No. 82. Berkeley: University of California, 1992. Pp. xxiv, 443. Index.

Francesco Parisi wrote a book not for those who do law, but for those who love law. His treatise upon negligence and judicial discretion reaches back to Roman foundations (even back to Adam and Eve, p. 27) and ends with modern theories on fault and negligence. Parisi's work is historical, comparative and critical. It was and is a challenging book.

In the main the book is structured chronologically. After a short introduction the author describes the early roots of liability, starting with the biblical *lex talionis*. He then turns to Roman law, to its adoption in medieval civil law and to canon law. Part I ends with the sixteenth century,

stressing the achievements of Donellus (for whose ideas the author shows much sympathy (pp. 130-31)). Part II explains how natural lawyers dealt with the problem of fault and the difficulties in setting their ideas into the civil law codifications, that is the French Civil Code and the German BGB. In part III the author leaves the civil law systems and focuses on the development of modern common law, concentrating on its American form. When in part IV the reader is confronted with contemporary theories on negligence, he or she will look at them with much deeper, much “older” knowledge.

The strength of Parisi's work lies in his description of Roman law and in his ability to show its influence on the development of the common law of torts as well as of civil tort law systems. Even where no direct influence of Roman law is shown, the work gives us a clear view of the striking parallels legal systems develop when confronted with the problem of negligence. But Parisi's intention goes further than giving mere descriptions of other people's ideas. His deep insight into the subject enables him to evaluate and criticize the different concepts. In the end, the reader understands why the unsolved riddles of negligence are still unsolved and thus (particularly if he or she has a civil law background) will have a greater tolerance towards the judge's discretion in negligence cases.

Kerstin Strick
Bonn University

Deubner, Christian. *Deutsche Europapolitik: Von Maastricht nach Kerneuropa?* Baden-Baden: Nomos Verlagsgesellschaft, 1995. Pp. 217.

Whoever is interested in the EU “multiple speed”, “variable geometry”, “concentric circles” or “diversity” formulas will find in this book an analysis of all the flexibility answers written into the Maastricht Treaty. The issue is definitely seen through a German lense. The book should be considered as scholarly support of the famous position paper of CDU/CSU *Bundestagfraktion* of September 1 1994 which formally initiated

* Publication of a book note does not preclude subsequent fuller review