

used in the conclusions can, at times, appear convoluted and weak. One example is the interpretation of the Franco-Monégasque Treaty of 1918 in determining the extent of Monaco's formal independence (at 311–313). The reasoning is based on the right of the Monégasque people to self-determination having the force of *jus cogens* from the earlier theory discussion. It is further based upon an interpretation of the consequences of the negotiating positions of both France and Monaco regarding the Vienna Convention of the Law of Treaties (1969), and the subsequent status of its provisions as customary law. Whilst I do not necessarily disagree with the conclusions reached, I am not fully convinced by the reasoning offered. That said, there are relatively few such examples, and my criticism must be weighed against the likely volume and complexity of a full exposition on such a topic.

The book concludes by taking the consideration of the theory of self-determination and the criteria for statehood, alongside the assessment of the five European micro-states, and applying them to three aspects of legal inquiry: namely, autonomy, secession and fragmentation. And it is here that one is left with a feeling of the incompleteness of this volume. Dr Duursma has taken the reader on a fascinating survey of the intricacies of these five European micro-states and of certain aspects of international legal theory. In so doing, the theory and the reality have been neatly and, in the main, convincingly tied together, but there is just the slightest sense that the opportunity for more firm conclusions was not taken. This is a great pity given that the preceding work is both interesting and generally rigorous. Or perhaps these conclusions await us in a future volume? If so, I would certainly wish to read them.

Faculty of Law

University of Southampton

Dave Carter

Schmidtchen, Dieter, and Robert Cooter (eds). *Constitutional Law and Economics of the European Union*. Cheltenham, UK; Lyme, US: Edward Elgar. 1997. Pp. 303.

Does economic analysis of constitutional norms add new insights to our understanding of Community constitutional and institutional phenomena? The authors of *Constitutional Law and Economics of the European Union* answer in the affirmative. To illustrate this, they apply economic analysis to a range of issues (such as Community decision-making, comitology, the balance of power, federalism, judicial discretion, the principle of subsidiarity, competition among rules, enlargement, unanimity), analysis of which is organized round three themes: decision-making, federal structures, and institutional change.

But does it? Taking a closer look at the different contributions in the book, it gives a rather sceptical impression of the in-built virtues of the economic approach to constitutional law, at least as developed by the authors of this volume. Why conclude with a sceptical tone? I shall give a number of examples, which are by no means the exception but serve to illustrate the rule. The second essay in the first part examines the issue of comitology from the perspective of game theory. The terse elegance of the model is definitively not matched by the relevance of the conclusions, which reflect but a truism. According to the authors, 'our main findings are that — aside from the advisory committee procedure that does not restrict the Commission in the slightest way — the management procedure restricts the Commission the least' (at 55). This would be a big discovery — only if it did not stem from the simple reading of the so-called 1987 'comitology' decision. More examples are found in the first essay of the second part. The main argument of the paper is, if not new, still interesting, since it seeks to place the emphasis on the connection between 'majoritarianism' and the Community's social legitimacy deficit. But the

conclusions are profoundly spurious. It is one thing to argue that 'majoritarianism' could be the cause of many present and future malaises of the Community (the idea has been developed, with special sharpness, by authors such as Dehousse), and a very different thing to conclude that the present decline of popular adherence to the European project in the founding Member States is due to a rise in the Community's majoritarian features, without providing the flesh of empirical support for this conclusion, but simply the bones of an — again, elegant — economic model. The second essay in the second part of the book develops the thesis that judicial discretion is a function of what the authors call 'legislative resistance'. The argument is well encapsulated in the following formula: 'Courts will be more adventurous in interpreting statutes when the probability decreases of legislative repeal of their decisions' (at 109). After a series of comparative analyses of different judicial systems and legal areas, the authors conclude that their assumption holds true in a high number of cases. Turning to the Community context, the authors then predict that due to the increase of 'legislative resistance' after the Maastricht Treaty, in terms of more powers for the European Parliament, judicial discretion (understood as legal innovation and judicial activism) 'should expand' (at 125). Of course, it is still too soon to have the whole picture of the Communities' Court reaction to the new institutional environment established with Maastricht. But it is probably not too adventurous to say that the emergent pattern after Maastricht has more to do with caution and self-restraint on the part of the ECJ than with judicial activism, as some leading post-Maastricht cases seem to demonstrate (think, for example, of the case-law that N. Reich called the 'November revolution', not reflective of a particularly 'activist' posture). In other words, the conclusions of the authors seem to be contradicted by reality.

And we could go on. In my view, the main shortcomings of *Constitutional Law and Economics of the European Union* are twofold: firstly, it is not an economic analysis of law, as the title of the book seems to imply, but an

economic analysis about law. The legal dimension is almost absent in all the contributions, except in the final paper by Everling, which expounds a lawyer's view of some of the issues dealt with in the book. And secondly, the analysis is extremely formal in character. Economic models are an elegant way to conceptualize reality but, if not rooted in solid empirical research, the outcome risks being but the modelization of conventional wisdom. *Universidad Carlos III de Madrid* Antonio Estella de Noriega

van den Bempt, Paul, and Greet Theelen. *From Europe Agreements to Accession: The Integration of the Central and Eastern European Countries into the European Union*. Brussels: European Interuniversity Press, Brussels 1996.

This book by van den Bempt and Theelen is the result of a series of conferences organized by the Trans European Policy Studies Association (TEPSA) between 1991 and 1995. Relying on the conference papers, the authors have created a synthesis of the expertise of the participants. The contributors and the subject of their papers are reported in a separate bibliography at the end of the book. This synergetic approach helps to avoid the risk of redundancies and the authors manage to present a singularly concise overall view of the developing relations between the EU and the countries of Central and Eastern Europe (CEEC) as of 1996. Starting with an overview of the Europe Agreements and their subsequent implementation, in particular via the Structured Relationship, the authors analyse to what extent the CEECs already enjoy access to the Community's Internal Market. Van den Bempt and Theelen analyse the conditions for accession formulated by the EU and its Member States regarding democracy, rule of law, institutional and economic stability. They set out the efforts made by the CEECs to gradually adapt to the *acquis communautaire* by approximating their legislation as well as their attempts to create a framework for a func-