

1969

Book Review. The Prohibition of Combination of Enterprises in the Law of the European Economic Community by S. A. Matallinos

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Recommended Citation

Fatouros, A. A., "Book Review. The Prohibition of Combination of Enterprises in the Law of the European Economic Community by S. A. Matallinos" (1969). *Articles by Maurer Faculty*. Paper 1813.
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even if they would prefer not to do so because of their financial situation. The aircraft start operating, but the required ground facilities and services are not satisfactory and civil aviation administrations take a long time to expand or improve them, if and when they find the necessary funds. Airlines are unhappy, governments are unhappy. Finally, after several years, the situation improves. Just at that moment another type of aircraft is offered, one airlines orders it . . . the cycle starts again."

This paper on the governmental organization is followed by an exposé on the airlines' trade association: "The Role of IATA"—written by *Knut Hammar skjöld*, its new Director General. One of his main points refers to the Annexes to the Chicago Convention, by which ICAO meets its function to create technical uniformity. Where governments find it impracticable to comply with such Annexes, they may merely notify ICAO that they are adopting different systems and procedures. This, in the author's view, is unsatisfactory for the airlines, and he considers it questionable whether only such a moral obligation of governments is sufficient to provide for an integrated worldwide air transport system. A second main point is his urging a renewed effort to be made to expand the list of definitions of terms used in the Chicago Convention—so as to have, for example, a firm clarification of the term "scheduled international air services."

This is a particular complex taken up by several contributors: Scheduled and Non-Scheduled Air Services (*Oliver J. Lissitzyn*), Are Inclusive Tour Charters Scheduled or Non-Scheduled Services? (*Julian G. Thomka-Gazdik*), Scheduled International Air Transport—A Canadian Analysis (*A. B. Rosevear*).

The problems involved in bilateral air agreements are analyzed by *Whitney Gilliland*, *Francis Deák* and *Frank E. Loy*. The latter's presentation of the United States procedure to find a fair route exchange in bilateral negotiations is of particular interest, theoretical as well as practical.

The notion of nationality of aircraft is fundamental to international air law, but its application in an ever-integrating industry gives rise to some very complex problems. *Arnold Kean* presented a very instructive paper on "Nationality and Interchange of Aircraft," *Jack E. Richardson* one on "Nationality and Registration of Aircraft operated by International Agencies."

ANTITRUST LAW

HE APAGOREUSIS TES SYMPRAXEOS EPICHEIRESEON KATA TO DIKAION TES EUROPAIKES OIKONOMIKES KOINOTETOS. (THE PROHIBITION OF COMBINATION OF ENTERPRISES IN THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY). By Spiridion A. Metallinos. Athens: 1968. Pp. 304.

*Reviewed by A. A. Fatouros**

Dr. Metallinos undertakes in this book an exhaustive interpretation of article 85, paragraph 1, of the Rome Treaty. His is essentially a doctrinal

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study, focused on the provision in question and deliberately omitting any treatment of remedies and procedures. The book, a doctoral dissertation submitted to the Faculty of Law of the University of Athens, is most systematically structured. After some general introductory considerations, the author discusses the basic principle of prohibition of cartels established by the treaty and its exceptions and limitations (ch. I, pp. 62-101); he then deals with the "subjects" and "objects" of the prohibition (i.e., enterprises, and "combinations" between them, respectively; ch. II and III, pp. 102-173), and with what he calls its "boundaries" (i.e., its substantive content: the meaning of "prevention, restriction or distortion of competition," the specific combination cases listed in article 85, paragraph 1, the meaning of "apt to affect," etc.; ch. IV, pp. 174-274). A 26-page bibliography and a good index complete the volume.

This book is the outcome of much scholarly effort and reflects understanding of, and insight into, the difficult legal problems that arise in this field. The author has mastered the abundant European (especially German) literature of the law of restrictive trade practices in the European Common Market; although aware of the importance of United States influence in shaping European law in this area, he is not equally familiar with United States antitrust law and concepts, his references to which are rather limited and mostly derivative. Apart from this, however, his rigorous analysis of the legal issues in construing article 85, paragraph 1, is of high scholarly quality. Moreover, Dr. Metallinos takes forthright positions on the many controversial questions he raises: one may not always agree with him but there is no doubt as to where he stands.

The author stresses forcefully the need for a "functional" interpretation of the E.E.C. Treaty provisions; by this he seems to mean a broad teleological approach and not one based on traditional strict principles of treaty interpretation. Nevertheless, his conclusions appear generally rather conservative and narrowly legal. This should be attributed chiefly to his reluctance to discuss directly and in any detail the economic problems underlying legal issues. Although he refers occasionally to controversies among economists, he does no more than state conclusions on such matters, without engaging in the kind of argument and effort to persuade which so successfully characterizes his legal discussion. This attitude is apparent, for instance, in his discussion of the meaning of "competition," (pp. 179-92), where he relies almost exclusively on Knöpfle's study on the meaning of the term (*Der Rechtsbegriff "Wettbewerb" und die Realität des Wirtschaftslebens* (1966)), limiting himself to somewhat uncritical repetition of its conclusions. Similarly, more concern for economic problems would have enhanced the value of his discussion of the combinations specifically prohibited by the treaty (pp. 214-50).

The book is well-written and beautifully printed. Although Dr. Metallinos favors a highly purist and complex style, his command of the language never fails him and his formulations are (ultimately) quite clear. He is particularly careful, and eminently successful, in his translation into Greek of the terms used in the treaty, of which no established equivalents exist. In

substance as well as in form, this book is a valuable contribution to the growing Greek literature on the legal aspects of the European Economic Community, as well as to the international literature on its topic.

CIVIL PROCEDURE

PROCESSO E IDEOLOGIE. By Mauro Cappelletti. Bologna: Il Mulino, 1969. Pp. xi, 569.

*Reviewed by John Henry Merryman**

In 1956 a small book by Piero Calamandrei was published in English translation with the title "Procedure and Democracy." Although it is one of the slightest of Calamandrei's works it introduces the reader to the notion that there is a relationship between the generally prevailing ideology and a nation's law of procedure and evidence. In 1969 Mauro Cappelletti, Calamandrei's student and intellectual heir, has published a more substantial work, significantly entitled "Procedure and Ideologies." As a comparison of the two titles suggests, Calamandrei focussed (with comparative asides) on the relations between the Italian law of procedure and the democratic ideology of post-fascist republican Italy. Cappelletti assumes a larger task. He discusses the relations between the ideologies and the procedural legal orders of the major contemporary legal families (Romanic, Socialist, Common Law) and of the historically important European *jus commune*. I know of no comparable work in English.

This book is actually a collection of twenty recent essays, all but one of which were previously published as periodical or *Festschrift* articles. Professor Cappelletti has divided them into three "dimensions." The first seven essays are included under the "Ideological and Social Dimension," the next six under the "International and Community Dimension," and the remaining seven under the "Constitutional Dimension." These dimensions, taken together with the titles of the essays themselves, begin to convey an idea of what the book actually contains.

The first essay, entitled "Ideologies in Procedural Law," sets the keynote of the book. It is a compact, imaginative, thoroughly documented survey of the topic. No one who reads it will ever have quite the same attitude toward the law of procedure. Even American lawyers who realistically insist that all questions of substance are, at bottom, questions of procedure (and vice versa) are introduced to a new perspective. Substance and procedure are different faces of the same reality, conceded, but that the reality they represent is ideologically loaded is, if not news, something we have not thought much about recently. After reading this essay, one wonders why not.

That essay is followed by "Party Interrogatories and Fundamental Principles of Civil Procedure in Communist Europe"; "The Present State of

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