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Mark Bell’s Anti-Discrimination Law and the European Union provides a thorough account of the gradual emergence of EU anti-discrimination policy over time, with special attention for underlying social policy considerations. Bell elucidates the changes brought about by the introduction of Article 13 TEC by the Treaty of Amsterdam, which signaled an enormous leap from the more traditional grounds of prohibited discrimination – sex and nationality – to five additional grounds, including race and sexual orientation.

The author traces related developments against the background of two contrasting models of European social policy, namely the market integration model and the social citizenship model. This original approach, which is to be welcomed, is consistently referred to throughout the book and taken up at length in the last chapter again. This approach furthermore ties in with the fundamental choice Bell made to analyze the developing area of EU discrimination within the broader framework of European social policy. In view of the fact that in several national legal systems discrimination law is closely enmeshed with social law and policy issues, Bell’s goal to ‘provide a better understanding of the forces influencing the direction and development of European social policy, through an analysis of the situation within anti-discrimination law’ (p. 1) seems appropriate.

The focus of the book on two specific grounds of discrimination and their development within EU law and policy can also be related to this goal.

Regarding the exact choice of the two grounds of discrimination focused upon, it arguably makes sense to choose them from among the five additional grounds introduced by Article 13 TEC, as that article entailed a vast expansion of the Union’s anti-discrimination law.

In view of the clearly different approach taken by the EU in relation to racial discrimination as manifested, inter alia, in the fact that it is subject to a specific directive, this was an obvious choice. The special attention for racial discrimination at EU level was already reflected in the fact that 1997 was proclaimed to be the European Year against Racism, as well as in numerous soft law instruments. Equally sound and convincing reasons are put forward to justify the choice of sexual orientation as the other focus point. In any event, it would be hard to deny that the focus of this book on discrimination on the basis of race and sexual orientation is original and ground breaking. The differential evolution of EU equal treatment policy in these two policy fields is also both revealing and thought provoking in terms of Bell’s main goal.

The book also investigates the national dimension of non-discrimination policy,
and identifies trends that can be gleaned from the national legal systems of the 15 Member States. At first sight the critical question can be raised why a focus on the various national legal systems should be included when there is already so much ground to cover at EU level itself? However, the second part of the chapter reveals its most relevant purpose, namely exploring the appropriate role in practical terms for the Union as regards anti-discrimination law in view of the lack of clear boundaries to the Community’s potential competence.

While most chapters conclude with a section with future prospects on the basis of the most recent developments and trends identified in the preceding paragraphs, in chapter 7 Bell very aptly ties all the strands developed in the previous chapters together and formulates more general predictions concerning the potential for developments of the EU’s role in the field of non-discrimination law. In other words, even though the book does not have a chapter entitled conclusion, *de facto* chapter 7 fulfills this function quite successfully.

In addition to an Introduction and two Annexes, the book consists of 7 chapters. The Annexes provide a helpful reference to the two directives that are discussed throughout the book, namely the ‘Racial Equality Directive’ and the ‘Framework Directive’. The following paragraphs contain a discussion and evaluation of the 7 chapters, which is followed by some final observations and conclusions.

In chapter 1, Bell sets out the two theoretical models of European social policy which form the theoretical context for the rest of the book as the development of EU anti-discrimination policy is discussed and analyzed in terms of these policy frameworks. Whereas in the market integration model, social policy has a merely supporting, instrumental function towards the smooth functioning of the common market, the social citizenship model considers social policy as an independent objective for the EU as guarantor of fundamental social rights. A succinct examination of both models is followed by a consideration of the potential impact on social policy of the EU Charter of Fundamental Rights. Bell rightly demonstrates that the Charter provides another source which encourages the Union to adopt a social citizenship perspective in the elaboration of social policy.

It should furthermore be noted that if the draft Constitution (Conv. 850/03, 18 July 2003) will actually be adopted by the Council of Ministers, the Charter will be part of that Constitution and hence will no longer be plagued by a non-binding legal status.

Chapter 2 contains a solid analysis and evaluation of the body of law that has developed concerning discrimination on the grounds of nationality and gender. Bell demonstrates for both grounds a gradual, albeit partial, shift from the market integration approach to the social citizenship one. He furthermore underscores the emergence of a legal hierarchy in EU’s anti-discrimination law, which favored prior to Article 13 TEC exactly these two grounds, while non discrimination policy in other areas remained weak and fragmented.

Chapters 3 and 4 go on to chart the evolution of EU law and policy regarding racial and sexual orientation discrimination respectively, providing pioneering coverage of
the recent and remarkable evolutions in these areas. Both chapters outline the various factors which triggered the treaty amendment inserting a broadly defined competence for the EU to combat discrimination.

Chapter 3 captures the evolution in the Union’s response – in terms of policy and legal regulation – to the bulk of evidence of persistent racism in the Member States and identifies in the process the factors which led the Member States to extend the Union’s role in this field. This analysis is divided in four sections covering four periods from 1957 to the adoption of the Race directive: ‘immigrants and the EEC, 1957-84’, ‘the origins of an EC policy on combating racism, 1985-90’, ‘towards the Treaty of Amsterdam, 1991-1999’, and ‘the Racial Equality Directive’. Throughout, Bell uses the explanatory framework of his two models of social policy as he tries to unveil how, given the traditional market integration model of European social policy, anti-racism policy has been able to progress within the Union.

The final section of this chapter is very rich indeed. It not only returns to these models but also maps the EU’s anti-racism policy, while referring to the European Employment Strategy as well as the status of third-country nationals. It should furthermore be noted that the discussion of the Racial Equality Directive provides a welcome change to the dry article-by-article discussions one tends to find since Bell chose to single out the core themes of the directive, which are further elaborated upon in the subsequent chapters.

Chapter 4 then examines the approach of the EU institutions to sexual orientation through a similar chronological approach as the previous chapter. However, unlike racial discrimination, there were very few soft law instruments on sexual orientation discrimination that set the scene for the expanded competence of the EU in the field. As nicely captured by Bell in his overview, pressure for change in this area has focused mainly on strategic litigation at the level of the Court of Justice, while the EU has been generally wary of intervening in law and policy issues concerning sexual orientation. The great disparities between the legal systems and the underlying moral choices of the Member States are undoubtedly an important factor here.

The author captures the gradual changes in attitude flowing from – inter alia – developments in the Council of Europe and at various national levels, the perceived need to contribute to the fight against AIDS also at Union level, and the problematic relationship between free movement and same-sex partners. The latter invites furthermore the analysis of developments in sexual orientation discrimination policy in terms of the two contrasting models of social policy.

The critical analysis of certain important judgments of the ECJ prior to Article 13 TEC is followed by a section with a detailed discussion of the Framework Directive. This discussion highlights the various exceptions and derogations included in the Framework Directive, which account for the main points of divergence with the Racial Equality Directive. The final section formulates certain forecasts regarding the future of the EU’s sexual orientation discrimination policy, while returning once again to the market integration and social citizenship models of social policy.
While the title of chapter 5 only refers to exploring Article 13, also the directives adopted on the basis of Article 13 are included in the analysis. These directives offer important insights on the actual scope of Article 13 and hence cannot be left out of a thorough study of that article. In particular, the broad material scope of the Racial Equality Directive is of interest here, as it reveals the partial shift to the social citizenship approach, covering several areas of social life that clearly exceed the traditional market integration model of EU social policy.

It might seem at first sight a bit strange that these directives were already analyzed in considerable detail in the preceding two chapters (focusing on racial discrimination and discrimination based on sexual orientation respectively), and hence prior to the discussion of Article 13 TEC, being their legal base. However, this seems to be a typical example of an area where a strict chronological order of discussion is not always the most optimal one.

In any event, this chapter succeeds in demonstrating the ability of Article 13 to provide a foundation for the extension of rights beyond those traditionally associated with the internal market and hence to give way to a more social citizenship model of social policy.

Chapter 6 sets out to identify the appropriate role for the EU as regards non discrimination law and policy rather in terms of practical policy than in terms of competences, because there are no clear boundaries to the Community’s potential competence. To this effect Bell gives an overview of the legislative regimes of relevance for non discrimination in the employment sector in all 15 Member States.

The analysis of each regime is both thorough and succinct and includes comparisons with the two Article 13 Directives as well as comparisons with other national regimes. The latter is facilitated by the author’s categorization of these regimes in ‘equality law regimes’ (with a further distinction between comprehensive and mixed level equality regimes), ‘anti-discrimination law regimes’ (with a similar distinction) and ‘states without any specific anti-discrimination legislation’.

The final section of this chapter then identifies the several strands of convergence and divergence as regards both racial discrimination and sexual orientation discrimination for the various national systems, while elucidating the dialectical influence between the two corresponding directives and the national legislative regimes.

In chapter 7 Bell returns to the theoretical framework and the two contrasting models of social policy, which he set out in chapter 1 and to which he referred throughout the book, in order to consider how and to what extent the two directives may reposition European social policy. After having established that Article 13 TEC and the two directives clearly reveal a greater emphasis on the social citizenship approach, without abandoning altogether the traditional market integration model, the author identifies three underlying themes that arguably account for this shift: 1) the emergence of a new approach to social policy centered on the European Employment Strategy, 2) the convergence of national law on combating discrimination and 3) the growing role played by European civil society.
Despite the enormous progress in the EU’s non-discrimination law and policy in the areas of racial and sexual orientation discrimination, the author correctly points out that the construction of an overall policy framework on combating discrimination has a long way to go and refers in this respect to the challenge of mainstreaming equality norms into all aspects of EU law and policy. The final, rather brief, conclusion is preceded by an assessment of the future implementation of Article 13 TEC, underscoring the need for both an effective implementation of the two directives already adopted and further legislative interventions.

By way of conclusion, and as the preceding paragraphs pointed out repeatedly, the high quality of this book should be emphasized. It provides not only an important and thorough overview of an area of EU law (non-discrimination law and policy), that has known important developments recently, but the analysis of the main tenets of both the traditional and the new grounds of discrimination furthermore proceeds from an original angle, more specifically the two contrasting models of social policy. The value of the book is further enhanced through its focus on sexual orientation and racial discrimination law and policy in the EU context, which is most original and ground-breaking.

It should further be noted that Bell combines a solid grasp of this ever expanding area of EU law with a most agreeable writing style, avoiding complex sentences and dry discussions. The author has in the mean time clearly demonstrated, through various publications of high quality in the domain of EU discrimination policy, that he is an authority in the field.

As Craig and De Burca point out in their preface to the book: Anti-Discrimination Law and the European Union ‘is an important and engaging work on a new and vibrant area of European Union law which will be relevant to all those interested in EC social law and policy, as well as to EU law academics and practitioners more generally’ (p. viii).

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Insolvency law is an area of law that is not easy to explain to ‘outsiders’. It is not so much the procedural aspects, with their multitude of mandatory-law based rules of form, but primarily the issues of substantive law in insolvency proceedings that give rise to the difficult deliberations when it comes to clarifying internal insolvency law. Not least of these issues is the question of the relationships concerning property law, because when considering the legal concepts and terms that fall under property law in the Netherlands, one cannot always point to identical equivalents in other legal systems.

The major differences between the law of property in the six EC countries involved in the creation of the 1968 Brussels Convention (EEC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters) were, thus, an important consideration in the decision to leave insolvency and related proceedings out of the scope of that Convention. Similarly, in the formulation of the European Insolvency Regulation of 2000, the ‘widely differing substantive laws’ (as the preamble puts it) between the Member States of the European Union in the areas of security interests and preferential rights prevented the creation of a Regulation with a universal scope throughout the Community.

Thus, the service rendered by Peter J.M. Declerq in his book, by clearly explaining the various legal concepts in the insolvency law of the Netherlands, including the property-law consequences of insolvency proceedings, for non-Dutch readers and in the English language, cannot be overstated.

The book consists of five chapters. The introductory chapter 1 describes the most important characteristics of the three Dutch insolvency regimes: suspension of payment, bankruptcy and debt reorganization of natural persons. This last type of proceedings applies exclusively to natural persons and not to legal persons, and is otherwise not addressed in the remainder of the book, because the book focuses on insolvency law as it pertains to corporations with legal personality. Chapter 1 also describes the leading principles of Dutch insolvency law, such as the principle of the paritas creditorum and the territorial and universal character (and the various degrees thereof). Finally, the introductory chapter concludes with the most relevant features of the Insolvency Regulation of the European Union and its consequences on Dutch international insolvency law.

The second chapter provides an overview of the provisions on the suspension of payment, which in theory are intended to allow a reorganisation if a company encounters temporary financial difficulties. Apart from a description of the current procedure, this chapter contains the proposals for new legislation comprising changes to the suspension of payment procedure such that it would entail an outright reorganisation procedure and not merely a gateway to bankruptcy, as it is now often the case.

Bankruptcy as a vehicle to bring about the liquidation of the debtor’s assets is
covered in chapter 3. This chapter addresses the provisions governing the conditions for filing bankruptcy, the rights and duties of a trustee and the stages (preservation, executorial and verification stage) of the bankruptcy proceedings. Chapter 3 also addresses the liability of the trustee for his acts and the position of the various categories of creditors and the verification procedure. For areas in which case law has contributed significantly to the development of the law, such as the liability of the trustee, the relevant judicial decisions are concisely summarised. Just as the chapter on suspension of payment, this chapter is concluded with a description of recent developments concerning legislative amendment proposals.

Chapters 4 and 5 outline in succession some important legal concepts in insolvency law and the security rights pledges and mortgages. These chapters may be the most interesting to a creditor or trustee from outside the Dutch legal sphere, but they also contain the most complex information on those specific legal relationships and security rights in bankruptcies, which vary in each legal system and which usually mean major differences in bankruptcy proceedings and the financial results thereof.

Chapter 4 discusses, and supplements with case law, the statutory provisions on the right to set-off, the actio pauliana and the concept of the wrongful acts. On the subject of liability, a distinction is made between the liability of directors, the liability of the directors of a supervisory board and the liability of shareholders in a group relationship. This last liability of the shareholder/parent company for third-party damages resulting from the insolvency of the subsidiary may come up if this shareholder/parent company had a dominant influence on the policy of the insolvent subsidiary. The claims based on this liability of the parent company are grounded in case law for which the book provides a clear summary of the essential points.

Finally, chapter 5 focuses on the security rights of pledges and mortgages in situations of insolvency. The characteristics and the scope of these legal concepts are addressed, as well as the position of the parties entitled to the security upon bankruptcy. Pledges in particular require some explanation, in part because in the Netherlands there are differences in the method of establishing possessory pledges and non-possessory pledges and the rights of creditors with each type of pledge. Additionally, there is also the chance that a creditor may be confronted with a double pledge, a repledge or a reserved pledge or a conflict between a (non-possessory) pledge and a tax collector’s right of seizure (in Dutch: bodemrecht).

The book under review comprises a succinct and at times even schematic overview of the relevant aspects of current Dutch insolvency law as it pertains to companies. The legislation, as well as the interpretation and explanation thereof in case law, are presented clearly. Lacking theoretical considerations, legislative background material and discussions of potential dilemmas or developments considered desirable, the book is unmistakably intended for international professionals. The concise summaries enhance the book's practicality. Against the backdrop of increasing cross-border legal matters, Declercq’s publication answers the demand for practical information provided to offer workable answers and solutions to specific questions and problems; it is a valuable
addition to the supply of ‘extraterritorial’ information on the Dutch legal system, and will no doubt be frequently consulted in response to concrete problems arising in cross-border insolvency proceedings.

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In November 2002, shortly after the Netherlands Institute of International Relations ‘Clingendael’ had finalised its comparative study on European experiences and policies in confronting terrorism,1 and weeks before the Max Planck Institute for Comparative Public Law and International Law in Heidelberg presented a larger project on terrorism as a challenge for national and international law,2 a conference for lawyers, policymakers and the military was held in The Hague to discuss legal questions of terrorism related to the *ius ad bellum* and the *ius in bello* in context with law enforcement and criminal law. Organised by the Netherlands group of the International Society for Military Law and the Law of War, the meeting was opened by the Netherlands Defence Minister Albert H. Korthals, who invited for in-depths considerations with particular reference to issues pertaining to the non-state actors involved and the need to act pre-emptively for providing effective protection. These issues are both topical and controversial. As stated by the President of the International Society for Military Law and the Law of War, Seerp B. Ybema, there is agreement on the threats, but not necessarily on the priorities and counter-measures to be used. It is to be appreciated that the editor, Wybo P. Heere, has taken the efforts of publishing the conference papers together with summarised reports on the discussions of international participants which comprised legal experts from the academic world, from defence ministries and the armed forces.

The debate on self-defence and law enforcement operations following the heinous attacks on 11 September 2001, focused on the role of non-state actors, the criterion of proportionality and the problem of pre-emptive or anticipatory self-defence. A sound legal basis was provided in written contributions by Yoram Dinstein and Terry D. Gill. Participants expressed concern with law enforcement operations in the absence of Security Council decisions. While they could not reach agreement on the question
whether the principle of proportionality was met in each specific case, there was consensus that it was not necessary to change or supplement the existent law of self-defence. Specific consideration was given by Wolff Heintschel von Heinegg to legal aspects of maritime interception operations based on Security Council Resolution 1373 (2001), in addition to the right of self-defence. This implied that third states were obliged to tolerate control measures taken against their shipping and aviation within the limits imposed by the principles of naval warfare and maritime neutrality. Participants expressed themselves in favour of developing multinational rules of engagement for this purpose.

As far as the rules governing the conduct of anti-terrorist operations are concerned, there was consensus on the starting point that activities referred to as the ‘war against terrorism’ in political rhetoric are not per se to be considered as a ‘war’ in the legal sense. Hence, the law of war is not the only body of law which may be relevant to the consideration of terrorist actions. In many situations peacetime rules and provisions of national law are also relevant. The law of war exclusively applies to operations in international or non-international armed conflicts. Based on instructive studies presented by Sir Adam Roberts, Sadi Çayci and Horst Fischer, wide agreement could be reached on the applicability of the law of war in counter-terrorist operations. In view of the fundamental principle of humanitarian law that at all times a distinction must be made between civilians and combatants, participants referred to ‘unlawful’ combatants as distinct from ‘innocent’ civilians, i.e., those who do not actively or directly participate in hostilities. But the meaning of the term ‘unlawful combatants’ remained unclear. Not only the question was raised, whether these fighters can be treated as prisoners of war according to the Geneva Conventions, but also whether they are legitimate targets and may be attacked wherever and whenever. Moreover, difficulties in applying international rules in specific circumstances of counter-terrorist war were discussed with a view to provide protections as much as possible in view of reciprocity and prudence.

Terrorism as a crime was discussed in terms of national and international jurisdiction, due process and legal cooperation. On the basis of thorough contributions presented by Nico Keijzer, Madeline Morris, Christine Van den Wyngaert, Adel Maged and Jordan J. Paust, participants discussed whether terrorists fall under national and/or international criminal law and they stressed procedural safeguards of the law of war which are reflected in international criminal law. On a more detailed level, there was no full consensus on the extent to which human rights standards do apply in case of armed conflict and how that might affect the application of criminal law. Several experts pointed out that tensions have merged in the application of human rights law to terrorist activities, as illustrated in current problems surrounding the use of military tribunals. A large majority confirmed that in certain cases it is appropriate to subject acts of terrorism to international rather than to national jurisdiction. Regional solutions, however, as they were developed with the European Arrest Warrant, are not easily available at global scale. Furthermore, considering limitations under the Rome Statute of the International
Criminal Court, no other option was seen than leaving prosecution either to national or to ad hoc international jurisdictions.

The editor of this interesting publication and all co-authors may be congratulated for this timely and comprehensive contribution to a debate which is of high importance to ongoing military operations and must be continued. The German group of the International Society for Military Law and the Law of War has discussed legal aspects of military operations against terrorist activities in a recent conference held in Bonn, February 2004. This conference focused on the relevance of human rights in military operations as well as on democratic control and on national legal requirements for police-type operations by the military. The proceedings and policy recommendations will again be published in a book.

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The major work, in English, on German constitutional law and the case law of the Federal Constitutional Court, is Donald P. Kommers’ The Constitutional Jurisprudence of the Federal Republic of Germany, 2nd edition, Duke University Press 1997. The book under review by Michalowski and Woods is set out to fulfill a similar aim: to provide basic materials of German constitutional law in English. There is, however, an important distinction between the two books, in that Kommers’ book is about constitutional law and Michalowski and Woods have chosen to write about the German protection of civil liberties. They evidently also included a part in which they necessarily provided a general introduction to German constitutional law.

For educational purposes, as well as for research, it seems important that legal materials from (major) legal systems are available for lawyers interested in comparative law. Evidently, the internet has made a variety of legal sources accessible: if one knows the
(legal) language. Rapid developments have resulted in many countries courts, legislatures, universities and others placing legal materials on various websites. For those among us who master many languages, it is a blessing. For those among us who do not it must amount to at least some frustration: knowing that it is all there but that one cannot read and comprehend what is there.

For those legal systems which have something to convey about interesting developments, concepts, academic debates, it is therefore mandatory to ensure that legal documents become available in a language which is more commonly used on a global level.

Undisputedly, German constitutional law has many concepts, values and doctrines to contribute to comparative constitutional law and international debates about constitutional courts, fundamental rights, separation of powers, federalism, parliamentarism, or the rule of law. But, at the same time, it is to be noted that it plays a less important role in comparative constitutional debates than, for example, American constitutional law. That is not at all surprising, although it certainly does not do justice to what German constitutional law has to offer. It is not surprising, because of the language. Many more of us read and understand English as a first or second language, rather than German.

The need to have extensive books and articles on various aspects of German constitutional law seems to be, therefore, self evident. (This does not only apply to German constitutional law, but also to other constitutional legal systems.) For European constitutional legal systems, the conclusion is the more relevant in the context of the debate about a ‘European Constitution’. Knowledge of and insight in the (functioning of) the constitutional models of the EU Member States and of the new Member States will be indispensable.

Comparing the book under review with that of Kommers, the latter provides introductory chapters and data, as well as a more in depth analysis and overview of constitutional case law, to make the book suitable for readers with no prior knowledge of German constitutional law, as well as for advanced readers who are looking for sophisticated analyses of a variety of constitutional aspects.

It is a challenge to try to compete with Kommers’ book, and perhaps justice is not being done to German Constitutional Law by just making that comparison. Michalowski and Woods’ book is simply less probing and sophisticated. To be fair, however, that did not seem to be the authors’ intention.

The merits of the book are primarily to be found in a brief description of German constitutional law: in that respect, however, it does not add very much to the chapter on constitutional law in Introduction to German Law (eds. Werner F. Ebke and Matthew W. Finkin, Kluwer Law International 1996); or the introductory parts on constitutional law in Nigel Foster, German Legal System & Laws, 2nd edition, Blackstone 1996.

Where the book has added value is in the chapters on civil liberties: in those chapters the authors very briefly sketch the contents of the constitutional human rights; they also translated important parts of key judgments of the Federal Constitutional Court (Bundesverfassungsgericht – BverfG). In that respect, it is now possible to have access to
reasonings and approaches of this Court in the area of human rights. The book provides an overview of the abundance of case law and human rights conflicts in Germany and the very carefully chosen solutions.

In order for non-German speaking comparative lawyers to fully grasp the intricacies of human rights protection in Germany, it is imperative that German lawyers publish in English about aspects of their constitutional model. Because of the undisputed influence of German constitutional law upon other constitutional systems (for instance Hungary and Spain) and of German human rights protection upon the case law of the European Court of Human Rights and the EU Fundamental Rights Charter, as well as for the contribution of German constitutional law for the development of European constitutional law, a wider dissemination of those contributions seems necessary. Because comparative lawyers tend to write and discuss increasingly in the *lingua franca* English, it seems appropriate to make comparative findings available in that language.

That also implies the necessity for non-English speaking countries to have domestic key judgments translated in English; and to promote that scholars can receive funds for the translation of articles and books in English so that a true international comparative constitutional law forum (or any other legal forum for that matter) can prosper, in which also materials and scholars from non-English speaking countries do play a role due to their originality and value of their contributions.

An interesting book, which makes available legal documents on German law is Raymond Youngs’ *Sourcebook on German law* (Cavendish 1998). In this book we find longer abstracts of case law on many aspects of German law. Despite the volume of this book (683 pages) it is of necessity very brief and concise about the different fields of law. The ambitions of this book are limited: in short, to make German legal sources available in English. Michalowski and Woods’ book sits between a straightforward source book and more advanced treatise of legal doctrines and concepts.

I see the desirability of advanced treatises of constitutional law concepts and doctrines; Michalowski and Woods seem to be somewhat ambivalent in their approach in that respect: some brief abstracts of cases and brief comments and analyses. The brevity in these two approaches does not do justice to the relevance of the Constitutional Court’s judgments and the thoroughness of the concepts and doctrines. I feel that in the area of comparative constitutional law one should now strive for more materials to be published and for more thorough analyses, in English.

From a perspective of educational purposes, Michalowski and Woods do raise many issues and examples in only a relatively few pages; students and researchers do need more explanation and insight in national discussions and the reasoning of the national courts. Because of the brevity of the abstracts of the judgments and of the commentaries, the gist of the variety of human rights problems is difficult to grasp. This conclusion is not so much meant as a criticism of the book, but as a stimulus to pursue the endeavour and to continue in writing about German constitutional law and in thereby making outsiders aware of the relevance of German constitutional developments.

Some books in English about various elements of German (constitutional) law have
been mentioned here. This shows that there is ample room for more and for more elaborate works. Such an overview of materials in English about German constitutional law is missing in *German Constitutional Law*. In that respect the second edition might include (internet) sources containing cases, materials and articles in English about (aspects of) German constitutional law.

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Whether we end up in a hotel as Mr. and Mrs. Smith or we wish to purchase some flowers for our – secret – lover online, people will ask about us. Your name, your address, your banking/credit card details. This implies quite a number of moral and legal questions, all of them addressed by papers of scholars and practitioners from six different countries in the 2003 publication *Digital Anonymity and the Law*. As an – luckily – anonymous colleague from San Jose, California, USA on the Amazon.com webpage noted, he was ‘sorely disappointed’, for, among other reasons, the book lacked a case index, and he could mark some quotation errors. *Si tacuisses …*

Neglecting these marginal points, the papers in this volume represent a number of different approaches and perspectives which naturally leaves the reader with some feelings of heterogeneity, but how could it be otherwise with such a comparative project? Especially if it is subtitled ‘Tensions and Dimensions’ and targets a topic that is currently under speedy development. Even if we lose some dedicated and anonymous Californian attorneys then. Without running through every chapter in detail I would first like to go through some of the papers in order to give the prospective reader some idea about the material presented. Only in a second part I would like to mention some of the questions, which do not refer to any paper in particular, but should be considered when dealing with digital anonymity.

Michael Fromkin, like most of the other authors assembled in this collection, takes as his starting point the question of anonymity in the real world. Somehow the everlasting aspiration of law for consistency seems to motivate this procedure, but one might ask what precisely digital worlds are adding to the anonymity problem. This becomes of particular interest, when researching the interaction between real world and cyber world
or the effects on cultural stereotypes. If, on the other hand, security seems to be the prime concern, the cards are against anonymity, especially after 11 September. This has produced several drastic proposals and measures, which tend to cover the legal basis of anonymity. Anonymity as a constitutional right can be based on free speech provisions. Fromkin exemplifies this in the US environment and continues to present some of the problems caused by this foundation, for example the weaker protection of non-political speech. Having said that, Fromkin is surprisingly lenient on regulations like the FCC’s regulations on usage of computers and other new statues in the aftermath of 9/11. The reason for this judgment is the assumption that US law would impose tougher legal obstacles to a more complete kind of data surveillance than law in the EU and its Member States.

In an extremely insightful essay, Paul De Hert puts anonymity into the larger context of political philosophy. De Hert proves the dangers of understanding anonymity only in the light of free speech. Following two lines of political theory, a republican line, among others represented by Rousseau, Habermas and Ahrendt, and the defence of the private sphere as a worthy area of freedom, as in Benjamin Constant, the author analyses several justifications of surveillance by the state. Whereas the first one demands of an individual to stand openly for her opinions, the latter one is explained as allowing a masked participation under certain circumstances. De Hart claims this position to be more modern and favours it therefore. There is not necessarily a contradiction between both interpretations of anonymity, which simply work in different moral schemes. The point however, that an exclusively First Amendment-based construction of anonymity may lead into difficulties and should at least be assisted by a privacy argument, is well taken.

After these two more theoretical chapters, Digital Anonymity and the Law continues with ten studies of various legal and technical points of revealing or concealing one’s identity on the internet. Chris Nicoll begins with a description of the architecture of the internet and the relevant legal structures. In addition to the overall topic of origin anonymity, this paper also covers content anonymity as achieved by encryption techniques. In combination with legal structures such as agency, trusts or private associates there are a number of options to achieve the goal of making identity and content untraceable. These possibilities become even bigger, because the internet can operate under a number of jurisdictions, which makes an even bigger number of legal constructions to remain anonymous available. This proves that the question how much anonymity we grant and under which circumstances is indeed an ethical one.

In a case study, Bernd Holznagel and Matthias Sonntag present the legal framework of anonymity services with the example of the JANUS project of the University of Hagen. Of more interest than the technical details are the various legal questions deriving from the operation of such services. The authors span their study from telecommunication law to criminal law. As far as I understand, this paper is meant to be a general overview of which legal questions might have to be solved by these kinds of services. Neither is it a description of German law, nor one of the JANUS project only. Liability problems, for example, might occur in most jurisdictions. The authors, very
helpfully, end with some remarks concerning data protection law. Even though data protection law is of importance in various levels of legislation (EU, national, regions) this is quite often neglected in relation to internet law. This is negligent, because it provides specific arguments, in this case, namely that anonymity services should be encouraged by the state.

With a number of other mostly American authors, John Deighton suggests that privacy should not, at least not exclusively, be regulated by the state, but also by the market. Unfortunately part of the analysis is based on the highly disputable distinctions between rights and assets as well as between privacy and identity. It is true that there is a market in privacy and Deighton describes this market and the possibilities with several illustrative examples. Does this, however, mean that privacy should, from a normative perspective, be left open to a ‘more civil commercial discourse’?

Chapter seven, written by Ian Walden, is dedicated to ‘Anonymising Personal Data under European Law’. This is exemplified by the question of the application of the European Data Protection Directive in a recent UK case. Technically this circles around the question whether anonymising data is a way of ‘processing personal data’ according to directive 95/46/EC. To answer this question, and in order to understand the process of anonymising data, Walden not only reviews the history of this technology in EU law, where it has been mostly seen as beneficial, but also takes a closer look at German, Austrian, Danish, US, Canadian and Australian law. This comparative approach should have been used more widely in this collection.

As regards the EU law, Walden is right to point out that the interpretations of the ECJ have to be applied. The result of these interpretations, however, is left slightly open by Walden. Instead he focuses on other purposes which have to be balanced with an individual right of privacy. Based on the current EU law there seems to be a dilemma that anonymising data, which, per se, could increase privacy runs through processes which make it necessary that the data controller complies with data protection regulations. In Walden’s view this might lead into legal uncertainty under the current regulations and asks for a reassessment of the governing framework.

Caroline Goemans and Jos Dumortier make clear why the topic of digital anonymity is of eminent political dimension, especially after 9/11. Originally all traffic data had to be deleted after the completion of the electronic communication. But there is a severe change of paradigms after terrorism has been presented as an eminent threat to all of us. The authors attempt to work out an appropriate working concept of traffic data. In a second step they explore this concept using an interest-analysis, before, third, they describe the legal framework of EU law, especially Article 8 ECHR.

Two papers that go more to the heart of the user’s immediate interests are Lilian Edwards/Geraint Howells chapter about consumer law and Jan Griepink/Corten Prins contribution on electronic transactions. The first lists some of the advantages the internet has brought to consumers, but is very much aware of the double edged sword that anonymity on the net can be. At the centre of this is the collection of information about
the consumer for various purposes. The paper discusses different forms of regulating this collection and describes them in EU and US law.

Grijpink/Corien Prins consider one particular type of consumers’ action on the internet, namely commercial transactions. Anonymity varies according to the type of transactions exercised (of which the authors count five different types). Different grades of anonymity may apply in payment processes and in delivery of goods. As a helpful starting point the authors again analyse anonymity in (Dutch) contract law, before turning to the legal structures for digital anonymity.

In the final chapter, the editors, Nicoll and Prins summarise the challenges of digital anonymity. The major results seem to be: a) there is a difference between anonymity and privacy in that the first one is more a state of being, whereas privacy is and should be made a matter of degree in different social interactions; b) The degree chosen is therefore determined not only by the individual, but also by society; c) The possible tension between the two sides is highly influenced by the changing technology. This concludes that there is no absolute right to anonymity on the net for a number of legal and technical reasons. There are several new vulnerabilities in the online world, but there will also be several different ways of approaching them.

Lawrence Lessig, cited in several of the papers, drew a dark sketch in his 1999 book *Code and Other Laws of Cyberspace: Corporate and regulatory pressures would overcome the open nature of the internet*. Recent developments, like the Homeland Security Laws or restrictive copyright give the rationales for total control of the ‘Net in his understanding’. A quite similar view has been expressed by John Walker, founder of the software-company Autodesk in a Web document posted in September 2003.

And indeed, Microsoft’s 2006 Next Generation Secure Computing Base promises no more spam, no more viruses. But the price is that nothing can be posted on the internet anymore without permission. ‘It’s not going to be all right not to know who’s on the other end of the wire’, says Stratton Sclavos of VeriSign, a provider of digital certificates. The number of warning signals is increasing, because obviously governments, copyright holders and so on have an interest in this regime change.

This is to describe the political context of this book. Keeping the yet limited advocacy for digital rights management schemes in mind, sometimes a more passionate promotion of anonymity, as for example found in de Hert’s brilliant paper, could have been expected. What is obvious, however, is that Lessig favours an approach in which the law is enforced outside the actual architecture of the system itself. Almost all of the authors of this collection, in contrast, seem to favour an alternative in which law works within frame of technology. The incommensurable value of the reviewed publications lies in the fact that they cover a wide number of facets of the headlined topic.

Most of the papers share the insight that, as Michael Fromkin already wrote in 1996, in the light of costs and technological development, anonymity will be constructed as a ‘flood control’ against intrusions from all sides. One of the main problems for example mentioned in Fromkin’s contribution, as well as by Lilian Edwards and Geraint Howells seems to be, that the owner of privacy rights often tends to use them rather incautiously,
not being aware of the serious consequences the collection of data by whomever might have. Even if Digital Anonymity and the Law will most likely not reach the man on the street, it should at least be a warning signal within the legal community.

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6. This would primarily focus on ISP.


This thoughtful doctoral dissertation by Ian D. Seiderman, at the time of publication a lawyer on the legal staff of the Secretariat of the International Commission of Jurists in Geneva, is the ninth book in the Series of the School of Human Rights Research, a cooperative enterprise in the Netherlands. Seiderman’s study well deserves publication. It is both a useful compendium and a thought-provoking enterprise.

The book’s central thesis is that ‘[i]nternational law appears to be on the cusp of a transition from a horizontally structured cluster of interstate relationships to a more complex and qualitatively variegated system’ (p. 283). There are two preliminary chapters that set out the contexts of human rights law and of theories of legal obligation: I. Introduction (pp. 1-11) and II. The Relativity of Obligation (pp. 13-34). Then comes the heart of the book: III. Jus Cogens (pp. 35-121), which along with later discussion of jus cogens (pp. 274-276, 284-289), constitutes about one-third of the 295 pages of text. Briefer treatments of other possible forms of higher obligation follow: IV. Obligations Erga Omnes (pp. 123-145), V. International Crimes and State Responsibility (pp. 147-186), VI. Individual Criminal Responsibility (pp. 187-244), and VII. International Tort and Individual Civil Responsibility: The United States Alien Tort Claims Act (pp. 245-272). Finally, there is VIII. Summary and Concluding Observations (pp. 273-295) that concludes that ‘[f]rom a conceptual viewpoint, jus cogens would seem the most promising construct upon which to anchor a quasi-constitutional ordering of international
Hiearchy on International Law is perhaps a misleading title. A nearer approach to the book’s core might be a re-rendering of the title of the second chapter: ‘The Relativity of Obligation’ (p. 13), perhaps something like ‘The Relativity of Human Rights Obligations in International Law’. The author (rightly) does not assert that his six kinds of possible ‘higher’ obligation form a strict or even plausible hierarchy inter se, albeit they are listed in a rough order of descending force.

Seiderman does a very good job of showing how theories about obligation in international law in general and respecting human rights in particular are in a muddle. At one point he diplomatically puts it: ‘authoritative resolution … remains elusive’ (p. 35). But he is, so far, reluctant to take a stand himself. This is the book’s chief weakness for though Seiderman is generally objective in reviewing the positive and doctrinal sources, he fails to elaborate his own theory of obligation. While this caution is appropriate for a young scholar mustering a doctoral thesis, it will, I hope, be thrown aside in Seiderman’s later academic enterprises.

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As the title indicates, this book discusses the nature of the obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR or Covenant). This treaty that was adopted in 1966 together with the International Covenant on Civil and Political Rights (ICCPR) has always been widely discussed. In a nutshell, the debate focuses on the question why the status of the rights granted under this treaty should be weaker than that of the rights under the ICCPR. A related question is whether economic, social and cultural rights are or perhaps should be just as influential and as justiciable as civil and political rights. The author of this dissertation, who would probably answer the latter question in the affirmative, examines the ICESCR from the perspective of obligations, as indeed have a number of writers before her. To a certain extent, therefore, this is an update of existing studies of the Covenant that take a similar ‘obligations-based approach’. As such, the book provides an excellent, complete and up-to-date overview of the practice of the Committee on Economic, Social and Cultural Rights (the treaty-
The book consists of three parts, consecutively dealing with 1) the role of the Committee on Economic, Social and Cultural Rights in clarifying the normative content of the Covenant; 2) the obligations imposed by the Covenant; and 3) the obligations imposed by Part II of the Covenant at the present stage in international human rights law. I will now highlight the parts of the book that I consider the most innovative and interesting.

In section 3 of chapter III (Part One), the author discusses the legitimacy of the Committee’s interpretation of the Covenant. This is important because, as the author explains, ‘according to the traditional rules of general international law, the observations, views or comments of all UN treaty-monitoring bodies do not have the same legal status as court decisions because they are not legally binding upon States’ (pp. 87-88). The author analyses the legitimacy of the Committee by applying a number of indicators and concludes that it incorporates many of the factors that provide such legitimacy (p. 110).

Part Two of the book focuses on the substantive rights laid down in the Covenant, i.e., the rights to food, education, health, etc. The author builds upon the modern conception that all human rights impose a variety of obligations upon states. In this respect the author refers to the so-called ‘tri-partite typology’ of state obligations, which, roughly speaking, divides state obligations into obligations to respect, to protect and to fulfil human rights. This typology was first applied by Shue, and further developed and refined by several other experts, including Eide, Van Hoof, Steiner and Alston, and the Committee itself (pp. 157-248). The author concludes that ‘as a result of this evolution, the differences between civil and political rights and economic, social and cultural rights have blurred considerably’ (p. 137). To substantiate this theory the author analyses the obligations resulting from the civil and political right to life (chapter IV). This makes a pleasant and useful change, since in spite of the assumption that the tri-partite typology applies to all human rights it is most often used to explain the meaning of economic, social and cultural rights.

Based on the Committee’s understanding of the tripartite typology as applied in, *inter alia*, its General Comments and Concluding Observations the author continues by providing a detailed and refined list of state duties. With regard to the obligation to protect, the author rightly explains that this obligation ‘does not refer to State responsibility for non-State actions, but, rather, to State responsibility for its own failure to prevent and protect against human rights violations committed by private entities’ (p. 222). Here it might have been interesting to explain the possible relationship with the so-called third-party applicability or horizontal effect of economic, social and cultural rights. The obligation to protect is indeed an obligation of states to protect individuals against the acts of other individuals and entities. But the question is to what extent
these individuals and entities themselves are capable of violating economic, social and cultural rights? Can individuals violate labour rights when they exploit children? Can (transnational) companies violate the rights to food and health when they pollute the environment and can they violate labour rights when they do not guarantee proper working conditions? Given the growing influence and power of transnational companies this is an issue that deserves consideration, the more so where in fact several of the Committee’s own General Comments refer to the third-party applicability of the rights of the Covenant.¹

In Part Three of the book the author analyses the obligations under Part II of the Covenant, i.e., Articles 2 to 5, which as general provisions apply to all the substantive rights laid down in the Covenant. The fact that these obligations are generally the subject of misinterpretation and confusion justifies the author’s aim to ‘provide practical guidance as to the scope and content of these obligations’ (p. 255). Among other things, the author discusses the territorial scope of the ICESCR and concludes that the Covenant applies to everyone falling within the jurisdiction of a State Party. According to the author, this includes all territories in which a State Party exercises control, even if only de facto control. In this respect the author suggests following the relevant case law of the Human Rights Committee and the European Court of Human Rights (p. 276).

In this part of the book the author further discusses the meaning of Article 4 ICESCR, which is the general limitation clause of the Covenant. Concerning this provision the author argues that restrictions on the enjoyment of a right should not affect the very ‘nature’ (essence) of that right. In this respect the author refers to the concept of minimum core content, which recognises that each substantive human right has a certain minimum from which derogations are not allowed (p. 281). I am unsure whether referring to the concept of minimum core content within the context of Article 4 ICESCR is, in fact, appropriate. According to the travaux préparatoires and the Limburg Principles, Article 4 did not intend to allow limitations on the grounds of limited resource availability. Therefore, I would suggest that the concept of minimum core content, which aims to define minimum levels of health, education and other economic and social services, is better linked with Article 2-1 ICESCR instead. This provision refers to ‘the maximum of a State’s available resources’ and to ‘achieving progressively the rights set forth by the Covenant’.

Also in this framework, the author discusses the applicability of the Covenant during emergency situations and more in particular during armed conflict. Here the tricky difference between limitations and derogations comes to the fore, although the author omits to explain it. In this context the author refers to the practice of the Committee as evidence of its conviction that the Covenant applies in full in emergency situations. Based on this approach, the author therefore concludes that States Parties are not permitted any derogations from the rights under the Covenant in emergency situations resulting from war or armed conflict. She refers to the practice of the Committee, which seems to view the flexibility of Article 2(1) and Article 4 as sufficient tools to counter situations (pp. 296-297). However, the author continues, under the rules of general
international law, in extreme crisis situations States Parties are allowed to suspend the rights under the Covenant in case of *force majeure* (pp. 297-298). In addition to this, the author could have referred to the protection offered by International Humanitarian Law (IHL), which constitutes the *lex specialis* during armed conflicts. In fact, IHL contains numerous references to economic, social and cultural rights, in particular to the rights to health and food. In spite of the differences in application between IHL and human rights law, in many instances the level of protection offered by IHL is comparable to the minimum core content of economic, social and cultural rights. For example, IHL requires that emergency medical care be provided to the wounded and sick, whereas the core content of the right to health contains a number of minimum health services which are to be guaranteed under all circumstances. I would say that this overlap between these two bodies of law is a matter that deserves further study.

All things taken together, this book can be used as a valuable and up-to-date source on the practice of the Committee. It could, however, prove somewhat misleading for NGOs and other human rights activists in the sense that they may be given the impression that the Covenant is an influential treaty, which can be used to seek redress for violations of economic, social and cultural rights. A huge gap looms between Sepúlveda’s intelligent analysis of the obligations resulting from the Covenant and the everyday reality at the national level, where states are supposed to apply the rights in question. The sad truth is that within most of the Covenant’s States Parties the rights it grants have no significance. The States Parties generally do not take their reporting obligations at all seriously and on top of this the rights concerned are often not even justiciable before the national courts.

If it turns out that the Covenant has no relevance at the national level, and that the reporting mechanism brings no influence to bear, and that the rights may not be invoked before the national courts, one may well ask how this happened and, more importantly, how the gap between theory and practice can be bridged. A study of national policies and legal practices would, therefore, not have gone amiss. At the same time I have to admit that the book is already voluminous and that a discussion of these matters would go well beyond its scope. My remarks are therefore merely intended as speculation concerning the contents of upcoming volumes in the series of the school of human rights research, which has by now become quite extensive and holds a promise for the future.

A possible next volume could include an exhaustive analysis of the case law on economic and social rights, including basic social rights, at the national level as well as the international level. This analysis could result in some conclusions being drawn about the justiciability of these rights at the national and international level. The related question whether there are other, more successful instruments currently in force could also be addressed. In this respect, attention could be paid to the functioning of the ILO mechanisms and the justiciability of ILO rights, which in several instances have proven to be more influential than the Covenant. One of the possible findings of the study could be that the Covenant is a diamond in the rough which needs cutting in order to be able to offer protection against the sophisticated social legislation in industrialised countries. It
could then also emerge that in countries where this type of legislation is less far develope
d the Covenant’s rights as they stand are able to provide adequate protection against
(serious) violations of economic, social and cultural rights.

It is safe to say that we have not yet reached the stage where there is need of an
ICESCR Handbook along the lines of, for example, Van Dijk and Van Hoof’s European
Convention in Theory and Practice. But once that time comes, Sepúlveda’s assumption
that ‘the differences between civil and political rights and economic, social and cultural
rights have blurred considerably’ will be truly justified.

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1. For a more elaborate analysis see N. Jägers, Corporate Human Rights Obligations: In
2. Author of The Right to Health as a Human Right in International Law (Antwerp, Intersentia
   1999).