

Book Reviews

that tells us little: 'If the past is prologue, the United Nations will continue to play a vital role in developing the international legal order to restrain the use of force among its member states' (p. 317). While Stephen Zamora does an excellent job on 'Economic Relations and Development', his brief is equally impossible, given that it encompasses GATT/WTO, UNCTAD, IMF, the World Bank, UNDP, UNIDO, WIPO, ECOSOC, the General Assembly and much of the UN system's operational activities over the past fifty years. The chapters on self-determination and the international civil service would have been interesting if written and read in the 1980s, but tell us little for the late 1990s.

In short, the collection has great strengths and significant weaknesses. It is nonetheless essential reading for those interested in the UN system in general or in international law-making processes more specifically.

P.A.

Suski, Birgit. *Das Europäische Parlament: Volksvertretung ohne Volk und Macht?* Berlin: Duncker & Humblot, 1996. Pp. 211. DM 84; ÖS 656; sFr 84.

Kluth, Winfried. *Die demokratische Legitimation der Europäischen Union*. Berlin: Duncker & Humblot, 1995. Pp. 157. Index. DM 68; ÖS 531; sFr 68.

'Democratic legitimation' and 'public participation' are two of the key terms in the current debate on the shape and future of the European Union. The frequency of their use is, however, often no proof of the depth of the discussion for which they stand. Going beyond the level of fashionable term-dropping requires a clear and comprehensive analysis. Birgit Suski's *Das Europäische Parlament: Volksvertretung ohne Volk und Macht?* and Winfried Kluth's *Die demokratische Legitimation der Europäischen Union* both try to reach this goal – approaching it from two different directions – and both fail to some extent.

Suski comes from a rather formalistic school of thought. She sets certain premises – often without giving due reflection to their usefulness and adequacy – and uses them as a comparative standard for an evaluation of the European Parliament's role as defined in the EC Treaty. Her line of reasoning goes as follows. In a first, lengthy part she defines the term 'people' in a legal sense and concludes that there is no single European people. This is certainly not new; more surprising is the reason given for this. Since each Member State still has the competence to restrict temporarily some of the freedoms guaranteed by the Union in order to ensure public order, security or health, the basic equality of all the citizens living within the borders of the Union cannot be assumed. This is certainly one of the oddest and most legalistic arguments that has ever been raised against the notion of a European people. But even more puzzling is the next step, where she somehow comes to the conclusion that the democratic principle is nevertheless fully binding for the Union. If there is no European people, not even in a functional-democratic sense, how then can one, without great effort and without giving any thought to the serious concerns that have been raised against the legitimacy of supranational democratic structures at the current stage of integration (not least by the *Bundesverfassungsgericht*, even if they might not be convincing in the end) simply postulate that the European Parliament has to replicate the functions of the national parliaments, which it obviously does not? This is not much more than an intellectual ghost-voyage.

Kluth, in contrast, starts by developing a general concept of democratic legitimation. He then evaluates the current arrangements in the EU, concluding that there is no democratic deficit. Although Kluth's line of reasoning seems more straightforward than Suski's, some of the same queries remain. The most fundamental is one of methodology. Democracy is by origin not a judicial invention. It was developed as a philosophical, a political, concept. The legal notion of democracy is only its transformation into a workable in-

Book Reviews

stitutional framework, which had to be adjusted over time according to the development of the idea itself. A major strand of research in political science currently analyses the socio-economic conditions of public participation and the various forms of informal participation. Without taking, just to give one example which is particularly relevant for the EU context, the role and influence of interest groups in the decision-making process into account, any study of democratic legitimacy seems shaky. In the same conceptual vein lies Kluth's neglect of the deliberative element of the democratic process. But public deliberation is impossible if important information is not, or only with great difficulty, accessible for the broader public. Transparency is therefore an important precondition for democracy. How then can one write about democratic legitimacy without mentioning transparency? Another aspect that would have been important to consider, even on the basis of Kluth's own criteria, is the question of democratic legitimacy in the context of the implementation of Community legislation, an issue which has been discussed in the legal literature under the heading 'Comitology' for decades now. Taking all this into account, one may wonder whether there is really no democratic deficit.

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Book Notices

Aughterson, E.P. *Extradition: Australian Law and Procedure*. Sydney: The Law Book Company Limited, 1995. Pp. 1, 288. Index. \$155 hardback; \$75 paper.

In an era when international and municipal law are increasingly being seen as convergent, this book deftly negotiates the interrelationship between the practice and instruments of international law and those of Australian law. The book's structure is conventional yet functional, moving from history and sources; through treaties and

legislation, related procedures of asylum and deportation; on to extradition offences, grounds for denial and procedure. It concludes with chapters focused exclusively on Australian issues. The political offences exception is treated in some depth, with an alternative approach proposed, based on the ever-popular principle of proportionality. The international market for the book may be a little obscure, although as a comparative study it would be extremely useful to the international lawyer. From the latter perspective, a minor weakness is the over-inclusion of judgment quotations, rather than case citations, to support propositions of Australian law. There is a careful and confident examination of extradition law, which shows the author's extensive knowledge of the subject. Mention is even made of recent archaeological surveys indicating the existence of extradition arrangements dating back as far as the Assyrians.

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Ukrow, Jörg. *Richterliche Rechtsfortbildung durch den EuGH*. Baden-Baden: Nomos Verlagsgesellschaft, 1995. Pp. 392. DM 118.

Bashing the European Court of Justice (ECJ) has become fashionable within the community of Euro-Phobes. It is perceived as one of the main centres of evil in the Community, like an unleashed beast which behaves in its decisions like a quasi-legislator, exceeding its competencies and violating the Member States' sovereignty. In his thorough study, Jörg Ukrow analyses and comments on the development of European Community Law by the ECJ from a perspective which both acknowledges its importance for the formation of the Community's legal order, and in particular the judicial protection of the individual, and at the same time emphasizes the necessity to keep judicial activity within the boundaries implicitly drawn by the EC Treaty and its underlying principles. Only sticking to the latter can ensure the legitimacy of the Court in the