

*The Lisbon Treaty and Social Europe*. Edited By NIKLAS BRUUN, KLAUS LÖRCHER and ISABELLE SCHÖMANN. [Oxford and Portland, Oregon: Hart Publishing, 2012. 338 pp. Hardback £42.00. ISBN 978-1-84946-253-2.]

Hidden behind a rather unassuming, perhaps now all too familiar sounding title, lies a powerful manifesto and call to arms for those who wish to advance a “new” vision for Europe; a vision in which Europe genuinely “combines economic success and social responsibility” (Berlin Declaration, part II).

This collection of nine essays on the future of “Social Europe” offers new perspectives on the possibilities for redrawing the balance between Europe’s social and economic dimensions following the 2009 Treaty of Lisbon. The book’s chapters have been written by many of the “big players” in European labour law, all of whom are members of the Transnational Trade Union Rights Experts Network of the European Trade Union Institute (ETUI). Thus, although the title of this collection might suggest contributions from broader social fields (encompassing, for example, migration and social security), it has an overall bias in favour of labour law issues (the most significant exception

being Jacobs' contribution on services of general economic interest in chapter 9). This is hardly surprising, given that national labour law and policy was at stake in all cases of the now infamous *Laval*-quartet (C-341/05 *Laval*, C-438/05 *Viking*, C-346/06 *Riiffert* and C-319/06 *Commission v. Luxembourg*). Moreover, a labour law bias is certainly not to the detriment of the book's field of potential readers: it should be read by anyone interested in Europe's future, labour lawyers and non-labour lawyers alike.

The book is divided into two parts. The first, evaluates the new general legal framework which has been created by the Treaty of Lisbon from a social rights perspective. It has five chapters, covering values and objectives (Dorssemont), the EU's Charter of Fundamental Rights (Kollanay-Lehoczy, Lörcher and Schömann), the horizontal social clause (Article 9 of the Treaty on the Functioning of the EU) which is evaluated in the context of gender mainstreaming, and the role of social partners (Veneziani). Simon Deakin provides a powerful and innovative first chapter which sets the scene for the contributions that follow it. He presents new foundations for a European "Social Market Economy" by placing current debates about Social Europe in their historical political economy context. He argues that limited European competences in the social field were not a symptom of political impasse, but rather that they were an explicit counterweight to transnational economic integration. The *Laval*-quartet and developments in the constitutional architecture of the EU entail a rejection of this compromise by eroding Member State autonomy in social policy (pp.23–31). Drawing upon economics literature, and contextualising his arguments within the current financial crisis, Deakin then elaborates an alternative vision of Europe: a human-developmental interpretation of the EU's economic constitution.

The second part of this book engages with the Treaty of Lisbon reforms in a more substantive way. The scope and nature of the Lisbon framework on social competences, and their distribution between the EU and Member States, is explored by Lörcher in chapter 6. Lörcher situates his analysis historically, charting changes in social competences from the Rome Treaty onwards. He presents three tables as an annex to his analysis, which provide useful summaries of both the evolution of social competences and the current post-Lisbon arrangements (pp. 196–234). Thomas Blanke moves the collection along in chapter 7 by exploring the meaning and application of subsidiarity from Maastricht to Nice to Lisbon. He argues that Lisbon has created a new, different principle of subsidiarity which amounts to a general principle of decentralised regulation. Blanke puts forward a new communitarian, rather than liberal, version of interpreting the principle of subsidiarity which hinges upon the idea of the "activating state". This might point the way to increased exercise of shared competences, or other measures which further fundamental rights, at Union rather than Member State level. However, overall, to the collection's credit, all authors of this book move beyond the binary debate of whether there ought to be more or less European social law, and seek to plot a more sophisticated hybrid course which combines an increase in some social competences at the European level with retained respect for national diversity and autonomy.

Part 2 of this book concludes with two further chapters. Chapter 8 is by Niklas Brunn on the social policy implications of the EU crisis. He proposes the introduction of a new social policy conditionality clause that would be built into European economic policy. Since Brunn's chapter was completed in the summer of 2011, experiences of the deepening crisis, and a continued determination at Union level to pursue austerity rather than growth, tend to bolster the case he makes in support of his proposal. Antoine Jacobs' chapter on the

services of general interest concludes Part 2. He reflects upon the social impacts which "liberalisation" and privatisation have had upon public services and traces how the EU's approach to services of general interest has evolved over time in the Treaties. He highlights Lisbon inventions which, in his view, should mean that EU regulations will more effectively protect services of general economic interest than has previously been the case (having been viewed predominantly in the past as "dysfunctional" exceptions to the competition-oriented Community", p. 302). Jacobs comes to an optimistic conclusion that "a more promising future for services of general interest is beckoning" (p. 301).

The overall conclusions of this book are that the Treaty of Lisbon does not present a textual obstacle to a more social Europe and that, more encouragingly, the Lisbon Treaty presents new opportunities for creative pro-social legal arguments. This will be received enthusiastically by many social lawyers and interest groups. However, as several of the book's authors acknowledge, notwithstanding the new Treaty arrangements, the Court of Justice's case law poses a significant obstacle to a Europe which more carefully balances economic and social rights. The Court of Justice is thus currently the most crucial arena in which the battle for Social Europe will be won or lost. This leads the book's editors to call for legal activism in their concluding chapter; to force the Court to engage with some of the new pro-social avenues for legal argument that the Lisbon framework has created.

The book's editors acknowledge that the relationship between the Lisbon Treaty and Social Europe is complex, and has only just begun to evolve. While the Court has started to make interesting use of the EU's Charter of Fundamental Rights, the opportunities that the Lisbon Treaty presents to re-balance the EU's economic and social dimensions remain far from exhausted. Negotiations about the EU's accession to the European Convention on Human Rights are on-going. Accession to the Convention has the potential to make a substantial pro-social impact upon EU law, particularly in the field of collective industrial action, where the Court of Justice's case law is on a significantly diverging trajectory to that of the European Court of Human Rights. EU accession to the Convention raises the possibility of a head on collision between the two courts. It would therefore be interesting for the collection's authors to return to their chapters in say 2019, 10 years post-Lisbon, and re-evaluate their assessments of the Treaty's possibilities and potential. The financial crisis has prompted a plethora of socio-political and political economy literature which all, in some way, invites us to rethink the relationship between markets and society. The seeds of Europe's social reawakening may therefore lie buried among the fallout from the financial crisis. This book provides valuable ideas and insight into how we might nurture and cultivate those seeds.