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Book Review: VOLKMAR GESSNER AND DAVID NELKEN (eds), *European Ways of Law: Towards a European Sociology of Law*, Oñati Series in Law and Society. Oxford: Hart Publishing, 2007, 393 pp., ISBN 9781841137773, \$96 (hbk)

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In 'We the Peoples of the United Nations', Bardo Fassbender proposes, in a rather optimistic mood, to take the UN Charter as the constitutional document of the United Nations. While admitting that the process of formation of the UN may not have been democratic, he believes that the Charter has been strengthened during the last 50 years, a claim which can barely withstand careful scrutiny. A less confident understanding of Western constitutionalism would point to the aggrandizing rhetoric that often surrounds constituent power and risks neglecting a possible imperialistic outlook of the practice of constitutional democracy. In 'The Imperialism of Modern Constitutional Democracy', James Tully enucleates three forms of constituent power – political, economic and military – through which Western democracies have imposed a particular model of constitution on their own ex-colonies. He proposes to develop an alternative model of 'democratic constitutionalism' – where democracy is prioritized before constitutionalism – which basically aims 'to exploit and expand the existing yet severely limited field of possibilities of direct participatory freedom (the exercise of constituent powers) within and against the constitutional forms to which the governed are now subject' (p. 335).

To sum up, the essays collected in this volume are of very high quality. The book edited by Loughlin and Walker clearly shows that we do not only need the notion of constituent power to make sense of our past, but it may very well be the cutting edge of future constitutional theory.

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VOLKMAR GESSNER AND DAVID NELKEN (eds), *European Ways of Law: Towards a European Sociology of Law*, Oñati Series in Law and Society. Oxford: Hart Publishing, 2007, 393 pp., ISBN 9781841137773, \$96 (hbk).

One of the important institutions to be established in 1989 was the Oñati International Institute for the Sociology of Law, which has become an important centre for meetings, workshops, conferences and the publication of books on the basis of these events. This book is one of the many which are a result of the lucky combination of dedicated individuals in and around Oñati, of a very supportive working environment for conferences and a very hospitable atmosphere. Oñati has become not only a European centre, but also a world centre due to this combination. A small one, but still.

The intention of the volume is, according to the text on the back cover, to serve 'as a needed stimulus to a research agenda aimed at uncovering commonalities and divergences in European ways of approaching the law'. The title 'Ways of Law' has been selected as the general title for a cycle of conferences to be held in Oñati every other year. In the Foreword, Joxerramon Bengotxea, former director of the Institute, writes that the title is close to the idea of legal culture, and also to the word for law in the Basque language, which also means the straight way or path – pointing to movement.

The anthology consists of three sections: A. 'Theorizing "European" Legal Culture'; B. 'Reconstructing Europe'; and C. 'European Styles of Legal Regulation'; and includes

altogether 13 articles, written by 17 authors – four of the articles have two joint authors. Five of the authors are women, which under-reflects the gender representation among European law students at the moment, but probably adequately reflects the ‘masculine dominance’ both in the culture of the legal profession and particularly in European legal academia. Gender issues are unfortunately not considered in relation to any of the three parts of the book, although it might fit especially well into the first part.

So what are the movements in this book? The comparisons are predominantly comparisons with the USA. Comparisons are also about aspirations to become bigger, richer, more important, influential, and sometimes even more knowledgeable. Given that the conference from which the anthology emerged took place in the summer of 2005, it is perhaps no surprise that the comparison with the USA is still very important. Almost no studies comparing different European jurisdictions came out of the conference and later writings. And there are no reflections on European legal ways in relation to close Arab and African neighbours with different conditions, economies and cultures. Boaventura de Sousa Santos is quoted for having reminded us that the differences between the USA and Europe pale into insignificance seen from the South. In his modern classic, *Legal Traditions of the World* (in the 2000 edition) H. Patrick Glenn wrote that Asian representatives are now declaring that “‘Asia can say no” to various forms of “western predatory imperialism” and western “hyperindividualism”. Many Western countries, moreover, would constitute NDCs – the Newly Decaying Countries . . .’ (p. 313).

Reviewing the book after the financial crisis, this description seems not an unconvincing perspective: ‘A possible common denominator of European legal thinking may be its rejection of the idea that law should be governed by the market, rather than the other way round’ the editors write in the Introduction (p. 5). They also write that the chapters in the book give the impression that European sociology of law to a certain degree has lost its critical elements. Whether the financial crisis could bring back some of this criticism of the market remains to be seen. Some of this criticism has over the years to a large degree come from religious circles – another development, which is hardly touched upon in the anthology.

Perhaps the lack of European unity lies behind the lack of criticism. There may be critical views of national legal ways, but generally a positive and constructive approach to the goal of ‘becoming European’ seems to lie behind the collection. In my view the two articles in the volume of most *general* character and interest are the articles by Cotterrell and Přibáň. Roger Cotterrell writes on ‘Images of Europe in Sociolegal Traditions’ dealing mostly with the history of the traditions but also discussing Habermas and European cosmopolitanism. Cotterrell asks how much plurality European law must recognize or deny if it is to be both authoritative and responsive. And he writes that complex, diverse, modern societies are most likely to achieve solidarity under a value system that recognizes and welcomes difference. The European project in its regulatory aspects demands attention to tradition, to ultimate values or beliefs, to the everyday demands of utility and to elusive emotional components of association and allegiance. Jiří Přibáň asks in the title of his article, whether there is a spirit of European laws. He writes that the cultural concept of European identity is alive and passionately discussed among intellectual elites. Speaking a year after the enlargement of the EU, he writes that the morality of a constitution means that it seeks to preserve the integrity, identity and solidarity of a polity and presents this preservation as itself a value: ‘The evolution of a spirit of the European Union signifies a return of ethics and ethical politics which, according to adherents of European integration, can revitalise a sense of Europe and the search for a common European identity’ (p. 237). Přibáň claims that every political and social crisis is considered a cultural crisis which can only be successfully resolved by the further ‘*Europeanization of Europe*’ (p. 238).

The readers will have to choose for themselves among the other articles in the volume according to their specific fields of interests, be it globalization, the Cold War, European Constitutionalism, European integration processes, or EU ways of governing the marketing of pharmaceuticals – an interesting topic in times of hypes and ‘flus perhaps – or on Dutch legal culture and technological transition or a single intra-EU comparison between cultures of youth justice in Italy and Wales – besides four articles dealing with different forms of comparisons between American and European ways of law, culture, procedural informalism and forms of social theory reflecting social practice. The article by Richard Münch on this last topic especially appealed to this reader.

Apart from novels I rarely read any books – and especially anthologies – from A to Z anymore, but with this book I decided to make an exception. Not only because I had been asked to review it, but also because it looked generally very interesting. On reading all the articles (apart from the one in French, as I am unfortunately very bad in French), I felt both entertained and informed during and after reading.

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