Book review Common Market Law Review


Jacobs has taken on a very challenging and impressive project – to present a satellite view on labour law and social security law in the EU Member States in 213 pages. Jacobs explains that as Europe in recent decades has slowly emerged as a single power alongside other superpowers, an ever-growing number of people are showing an interest in studying the common features of the legal systems of the countries that constitute the EU. One purpose of his project is to see whether there is such a thing as a European Social Model, distinct from the social models of other powers. In order to successfully take up such a challenging project, the author must be both courageous and self-sacrificing. Describing foreign legal systems and drawing general conclusions from those descriptions is a risky business, which many scholars tend to avoid. Jacobs definitely has the necessary qualities.

In the Introduction, he modestly indicates that the book is work in progress and encourages comments in order to improve the next edition. In the following, some remarks about the book’s strengths and some proposals to make it even better will be put forward but, first, a short overview of the book is presented. This book is structured like a national legal textbook on the relevant topics and the title is a wink to Kahn-Freund’s fundamental piece of work “Labour and the Law” on UK labour law. Jacob’s book starts with a contextual section of 22 pages, touching upon a wide range of issues such as the history of labour law and social security law, their function and sources and the role of International and European Labour Law and Social Security Law in the EU Member States.

The main part of the book is dedicated to labour law. Part I deals with individual labour law, including sections on the contract of employment, working conditions, means of enforcement and an extensive part on dismissal law. Part II deals with collective labour law and discusses the system of industrial relations, collective agreements and wage policies, the right to strike as well as worker involvement in the enterprise. The third part is about social security law in general as well as specific issues, such as disability, parenthood, different kinds of pensions, unemployment benefits and social assistance. The book ends with some final reflections by the author.

The book is a treasure for anyone who wants to gain insights into the many European national labour and social security laws. In a very effective way it gives the reader an understanding of at least the main features of a variety of labour law and social security systems in Europe. The author touches upon and categorizes the central labour law issues and identifies and explains a number of crucial policy choices made by different EU Member States. Almost every sentence in the book must be based on hours of research. The author’s long and wide experience in the field of comparative law is revealed. The overall picture seems entirely convincing, though I can understand that this kind of project cannot be perfected at first attempt, and it may take some time before all the conclusive details are right – a suspicion that entered my mind after having some problems understanding, for example, the text on Swedish works councils.

EU law relevant for each topic is also included. Sometimes the effect EU law has had on the development of national law is dealt with, as in the chapter on “Worker involvement in the enterprise” and sometimes not. The rationale behind these choices is not clear. While Jacobs often gives a contextual framing to a particular legal issue such as Dismissal law, this approach is not taken in relation to any EU law – a choice that does seem logical when the focus is on national law.

Not all national legal systems are given the same attention. Jacobs explains that there is a focus on “the most advanced national legal systems, such as those of Germany, France, Great Britain and the Benelux countries” (p. 1). The choice to define these legal systems as the most advanced can, of course, be challenged but there is in general no problem with choosing a limited number of countries and looking at those in more detail. From time to time, reference is made to “most EU Member States” but it is not entirely clear whether the reference “most” relates to the EU 27 or to a more limited number of countries. The six countries that are given most attention are only a minority among the EU Member States. The discrepancies revealed in the study would most likely be even wider if all countries were taken into account.

In his final reflections, Jacobs concludes that the hopes among EU enthusiasts for
harmonization of labour and social security law have not been realized. “National labour law and national social security law in the EU Member States in 2011 are certainly still as differentiated as they were in 1960. Less so in some areas, such as anti-discrimination law, but more so in some other areas.” (p. 208). Jacobs, however, argues for an increased role for the EU in the field of social policy as European economic integration has challenged the regulatory powers of the Member States aimed at protecting or promoting social rights. His hopes are pinned to the “enhanced cooperation” model envisaged in the EU Treaties. Not surprisingly, Jacobs anticipates that the six founding EU Member States and Austria, the Nordic and the Mediterranean countries could follow this track in order to “defend our social gains against Anglo-American subversion”. Eastern Europe seems to be lost. That could of course be one explanation why these countries are given such limited attention in the book. There are probably other reasons, too, such as lack of easily accessible data. Still, if the aim of the book is to give a birds-eye view of a particular legal field in the Member States of the EU it seems a bit surprising that a substantial number of the EU Member States are not included in the survey. It is perfectly understandable that such a study must be carried out step by step. Yet, it is not without importance for the aim of the book to be reflected in the substantive parts. One proposal for the next edition would be to use a clearer method to decide which legal systems are to be analysed or at least make the choices more obvious to the reader.

I would also suggest that an analytical, concluding section could be part of the next edition. The author states that there are differences between the Member States, and a major concern is that the EU project seems to undermine ambitions to retain a strong national social dimension. But it seems to me that there are quite close connections between the legal systems in a range of fields. This appears to be more often the case with regard to individual labour law than to collective labour law. The similarities are perhaps easier to identify when contrasted to other systems. Nonetheless, I think it would be valuable to have a summary highlighting some characteristics and outlining the main discrepancies.

Overall, this is a welcome book for anyone interested in European labour law and social security law. It gives an accessible overview of a number of EU labour and social security law systems. In the era of globalization, knowledge about one another is crucial for smooth cooperation. This book supplies a valuable first introduction to the important field of labour law and social security law.

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