The Structure and Organisation of EU Law in the Field of Direct Taxes

Marcel Schaper

Reviewed by Christiana HJI Panayi

Subject: Tax. Other related subjects: European Union

As the author explains in Part I, which consists of the introductory chapter, this book aims to establish a framework for a legal doctrine on EU law in the field of direct taxes, by using quantitative methods.¹ What is shown in the book is that EU law in this area is essentially a subfield of EU constitutional law.² In researching the simple—perhaps for lawyers—question of what is the structure and organisation of EU law in this field, the author approaches the topic in an empirical albeit highly complex way, using computational social sciences.

This book researches the system that has emerged as a result of the many decisions of the Court of Justice of the European Union (CJEU), in order to establish a framework for a legal doctrine. The book is quite original as it analyses the body of the CJEU's case law using network science as a method of research. This is done in Chapters 2 to 4 of Part II of the book. A number of questions are addressed in these chapters. Is there cohesion in the body of case law? What are the most important precedents and legal norms? How was general EU law adopted in the field of direct taxes over the years? Interesting conclusions arise from the CJEU's analysis in Chapter 4—some of which would appear intuitive for tax lawyers and academics working in this area of law. For example, it is shown that although a large majority of cases are found to be connected to each other through citation links, it is observed that the CJEU cites precedents selectively. Overall, the author argues, the CJEU values cohesion in its case law:

"The connectedness of the network of case law, its community structure and the way in which general EU law is adopted in the field of direct taxation indicate on balance that the Court attempts to embed new judicial decisions in a consistent and legally relevant manner into the existing body of rulings so that a coherent legal doctrine of EU law in the field of direct taxation may emerge over time." ³

In Part III, the author seeks to establish the meaning of the following legal norm: the balanced allocation of the power to impose taxes between Member States. The rest of the book (Chapters 5 to 9) is effectively devoted to the analysis of this legal norm. There is an in-depth examination of the norm's relationships with other justifications for tax restrictions. The author concludes from the empirical evidence that he has provided that there is no evidence or indications that the legal doctrine which the Court governs is at significant variance with the principle of conferral and encroaches upon the reserved competences of the Member States".⁴

It is not entirely clear whether this conclusion is limited to the area of case law examined. The author seems to generalise his conclusions—something that may attract disagreement from other scholars.

Overall, the author has made a very interesting contribution to the debate. Although parts of the book are inherently complex due to the use of methodology with which legal scholars are often not acquainted, nevertheless it is refreshing to see innovative approaches to perennial questions.

Christiana HJI Panayi

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¹. Senior Lecturer in Tax Law, Queen Mary, University of London, Centre for Commercial Law Studies and researcher at the Institute for Fiscal Studies.

2. Schaper, above fn.1, 3.


4. Schaper, above fn.1, 463.