Armin von Bogdandy, Peter Michael Huber and Sabino Cassese (eds.), *The Administrative State, Volume I, The Max Planck Handbooks in European Public Law*, Oxford University Press, 2017, ISBN: 9780198726401, xi + 683 pp.

Since the beginning of the European integration process, comparative law has always generated broad academic interest. This can easily be explained by the academic curiosity to examine what solutions other legal orders have found to common quests and problems. Besides its inspirational role, comparative law within the European Union (EU) also serves an important constitutive function. The Union legal order itself has been created on the basis of the common constitutional traditions and fundamental values of Member States (art. 2 TEU). This common constitutional heritage not only establishes one of the main benchmarks for assessing the accession of applicant countries to the EU (art. 49 TEU), but it is also a fundamental set of values which needs to be respected by Member States throughout their EU membership (art. 7 TEU).

Next to the constitutive role it has played for the creation of the EU legal order, Member States' national law serves to implement EU law (art. 291(1) TFEU). Furthermore, since the EU has a limited administrative apparatus at its disposal, which executes EU law in the form of the so-called "direct administration", the majority of EU rules are applied by the administrations of Member States acting as the so-called "indirect administration".[1] Equivalently, the majority of EU rules are enforced before national courts on the basis of national procedural law (art 19(1) TEU).

It thus becomes apparent that, by comparing the national law of EU Member States, we enhance our understanding of what comprises the EU common core and how EU law is practically implemented by the legislative, executive and judiciary functions of Member States. The "Administrative State", edited by the distinguished scholars *A. von Bogdandy, P. M. Huber* and *S. Cassese*, is the first volume of the Max Planck Handbooks in European Public Law and serves as a major contribution to the comparative literature in this field. This series draws from the existing German language series by the same editors ("*Handbuch Ius Publicum Europaeum*"), but aims at addressing a more global audience. The respective German volumes have, since their introduction in 2007, been widely cited thanks to their comparative and horizontal chapters, but also thanks to rich country reports from various Members States. In the existing literature on comparative public law, for practical and linguistic reasons, comparison is often restricted to few legal orders and in particular France, Germany and the UK,

[1] See in detail J. Ziller, 'Les concepts d'administration directe, d'administration indirecte et de co-administration et les fondements du droit administratif européen' in: J.-B. Auby/J. Dutheil de la Rochère (eds.), *Droit administratif européen* (Bruxelles: Bruylant, 2014), 327.

which have widely influenced other European countries.[2] The "*Handbuch Ius Publicum Europaeum*" has been one of the few comparative endeavours whose scope went far beyond these legal orders.[3] The English series maintains this broad approach, while aiming to enrich the existing comparative experience by addressing contemporary challenges, notably the transformations in law triggered by the financial and migration crisis, as well as by the ongoing "rule of law crisis" in several Member States.

The first chapter of the book inspirationally justifies the need for investing in comparative law, sets out the approach of the series and defines the understanding of "European Public Law" as encompassing not only the law of the European Union but also the European Convention of Human Rights and the domestic public laws of European States. In the subsequent chapter, *A. von Bogdandy* and *S. Hinghofer-Szalkay* engage with the literature attempts already advanced in the 17th and 18th centuries under the concept of a "*ius publicum europaeum*", assessing their heritage for today's research. These first two chapters seem to function as an introduction to the whole series and not exclusively to the first volume.

The role of introducing the concept of "the administrative state", the theme of the first volume, is undertaken by *S. Cassese* in the third chapter, who compares the different national concepts, their reciprocal influence and evolution in a globalised legal space. This chapter already provides a synthesis of the different legal models in Europe. Building on this understanding of the "administrative state in Europe", the subsequent chapter by *J. Nowak* examines the idea of state ("*Staatsidee*") from the American common-law perspective.

The following nine chapters are country reports from Austria, France, Germany, Greece, Hungary, Italy, Spain, Switzerland and the United Kingdom. It would have facilitated the reader if one of the introductory chapters of the book explained the structure of the volume and also the main themes or questions which the country reports engage with. Nonetheless, it becomes apparent from

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2 For a systemisation of (most of) the EU national legal orders on the basis of the influence on them by the French, German or British legal traditions see M. Fromont, *Droit administratif des États européens* (Presses Universitaires de France, 2006); see also E. Schmidt-Aßmann & S. Dagron, *Deutsches und französisches Verwaltungsrecht im Vergleich ihrer Ordnungsideen* (ZaöRV, 2007), 395; P. Birkinshaw, *European Public Law* (Kluwer, 2014).

3 J. Schwarze, *Europäisches Verwaltungsrecht*, (Baden-Baden: Nomos, 2005); M. Fromont, *Droit administratif des États européens* (Presses Universitaires de France 2006); J.-P. Schneider (Hrsg.), *Verwaltungsrecht in Europa* Vol. I, (V&R Unipress, 2007) and Vol. II (V&R Unipress, 2009); T. von Danwitz, *Europäisches Verwaltungsrecht*, (Berlin-Heidelberg: Springer, 2008); A. Glaser, *Die Entwicklung des Europäischen Verwaltungsrechts aus der Perspektive der Handlungsformenlehre* (Tübingen: Mohr Siebeck, 2013); J.-B. Auby & J. Dutheil de la Rochère (Hrsg.), *Traité de droit administratif européen* (Bruxelles: Bruylant, 2014); S. Rose-Ackerman & P. Lindseth/B. Emerson (eds.), *Comparative Administrative Law* (Cheltenham: Edward Elgar Publishing, 2017). For a wide comparison but only on the theme of public contracts see R. Noguellou & U. Stelkens (eds.), *Droit comparé des Contrats Publics* (Bruxelles: Bruylant, 2010).

the headlines of each report that the aim is to examine the genesis and evolution of the administrative state in the respective legal order and develop a conceptual definition of it.

These country-specific chapters are very informative and their authors have not only undertaken a mere description of rules and practices, but further engaged in a conceptualisation of fundamental notions in the respective legal order. They do not seem to strictly follow a specific questionnaire or to always focus on the exact same issues, which gives the authors more freedom and creative space; however, it renders the immediate comparison among the different country specific chapters more difficult. As regards the country selection, Sweden, Poland and Portugal are not included in the volume even though they are represented in the respective German series. None of the country reports in the English version represents the Scandinavian legal traditions, despite their significant contribution to the formation of European administrative law, in particular the concept of administrative transparency and the institution of the Ombudsman. A contribution on Poland would have also been useful, since the Member State's current "rule of law crisis" has generated wide interest in its public law structures. A more complete picture would have been enabled through the inclusion of a contribution from the Baltic (Estonia, Latvia or Lithuania) and the Balkan geographical regions (e.g. Bulgaria or Romania).

A very interesting common thread which derives from the country-specific chapters is the varying criteria for determining whether a rule or a legal relationship belongs to public or private law. Certain country reports define administrative law as the law implemented by administrative authorities (e.g. France, Austria), irrespective of the content of the law, whereas others focus on the special nature of public law governing the exercise of public powers and thus, by extension, "subordinate relationships" (e.g. Greece, Spain). Irrespective of which criterion they follow, many country reports conclude a lack of dogmatical clarity on the dividing line between administrative and private law in the respective country (e.g. France, Germany, Italy, Switzerland). The UK report forms an interesting contrast by describing the lack of a formal public-private divide in the common law logic.

The subsequent five chapters are of a horizontal-comparative nature and analyse the divide between constitutional and administrative law (*L. Heuschling*), the concept of statehood (*G. Biaggini*), the different types of administrative law in Europe (*M. Fromont*), the current transformations of the administrative law (*J. B. Auby*) and its Europeanisation (*M. Bobek*). All these comparative chapters are drafted by leading experts in comparative research and succeed in providing the necessary depth and nuances while offering a very concise overall picture. They each form very enriching, self-contained contributions, in the sense that none of them functions as a mere synthesis of the preceding country reports. The only drawback of this approach is that there is no clear dialogue between the country reports and the comparative chapters. The latter make cross references to the country reports only to a limited extent compared to other sources,

including the country reports from the German version. It thus becomes difficult for the reader to cross-check points mentioned in the comparative chapters by going back to the country reports. This is particularly evident with regard to comparative arguments referring to Sweden and Poland, which, as aforementioned, are included in the German version but not in the English one.

Overall, this book is a major step in comparative research in public law, particularly for the English literature, and will certainly become an indispensable reference point for the years to come, inspiring theme-specific comparative work within the framework of public law.

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