

among them Koen Lenaerts and Jean-Claude Piris, were unable to reverse the trend. As the mantra goes, the 'European Union is not a state and not an international organisation *sensu stricto*' – hence it is absolutely unique, *sui generis*. Moreover, since 'Europe is not a state, it is not a federation'.

The EU suffered a great deal from the activities of innumerable commentators blinded by the dogmatism of *Begriffsjurisprudenz* and too clearly afraid of the 'F-word', preferring to adore the object of their study in isolation, safely ignoring the most obvious facts. A maxim like '*was nicht sein darf, das nicht sein kam*' (at 72), tuned to discard European federalism because it 'cannot be', cannot inform the 'study' of EU law any longer.

In an overwhelmingly important book Schütze brilliantly exposes the obscurantist anti-realistic vision of the European federation in such a splendidly clear and overwhelmingly convincing way that those who will not open their eyes now are not just wrong out of principle. They *are* blind. For all the rest there is a discovery to make: there were and there are more federations in the world than just the EU. Moreover, if the language of 'legal science' is not sufficient for the coining of 'F-words' it might be easier to consider updating the dogma, rather than making impossible attempts to change reality through obscure misrepresentations. Unfortunately, this obvious conclusion in the vein of Kuhn's thinking still seems innovative in the context of EU legal studies.

Although not the first of its kind, as it builds on an impressive body of work from a number of scholars in Europe and across the ocean, Schütze's book is bound to become the turning point. Having read it, returning to the *sui generis* mantra is indecent, since its 'explanatory value is based on a conceptual tautology . . . ; it only views the EU in *negative* terms; . . . [it] cannot detect, let alone measure, the European Union's evolution . . . But worst of all: the *sui generis* "theory" is historically unfounded' (at 59). Besides finally infusing the philosophy of EU law with an initial portion of observable facts, the book definitely establishes the federal nature of the Union in Europe and provides an

Robert Schütze. ***From Dual to Cooperative Federalism: The Changing Structure of European Law***. Oxford: Oxford University Press, 2009. Pp. xxxvi + 391. \$110.00. ISBN: 9780199238583.

The study of European law is finally saved from the dark age of narcissistic ideology of *sui generis* thinking. That 'the EU is unique' is probably true, but certainly not from the point of view of legal studies. Notwithstanding the first stages of the study of EU law inspired by federative thinking (especially with the help of American scholars versed in federalism theory), the philosophy of EU law soon entered a state of flux where it long remained. This was because of two important factors: short-sighted dogmatism and unrestricted self-love. Important contributions from brilliant jurists,

overview of the dynamics of development of EU law in order to answer the question what kind of federalism it is.

The fundamental question answered by the book relates to the very essence of the Union in Europe. ‘How should one conceptualise this “middle ground” between international and national law?’ (at 3). It did not take Schütze too long to search for examples which would help to address this issue. He turned to the US for the main approaches to federalist thinking. What he discovered was revealing: the continental binary dogma ‘a federation is a state – a confederation is not’ simply does not withstand any empirical scrutiny, especially when put into a legal-historical perspective. In fact, a federation has been historically characterized as a mode of organization of power which would fall clearly in between ‘national’ and ‘international’. Indeed, this is any federation’s strongest point, which is well known and abundantly illustrated by the complex history of US federalism. In a simple and powerful move, Schütze puts the EU into the classical federalist framework, only to discover that it fits *perfectly*. To come to this conclusion, he tests the reality of EU law against the analytical dimensions of US federalism as outlined by Madison in Federalist No. 39, including ‘foundational’ (the essence of the *Grundnorm*) (at 48), ‘institutional’ (the essence of the institutions) (at 52), and ‘substantive’ (the characteristics of governmental powers) (at 56) dimensions.

While, in the words of de Tocqueville, the US ‘brought together . . . two systems theoretically irreconcilable’ (at 27), the EU provides a clear example of the same. The importance of the conclusion concerning the EU’s federal essence is not to be underestimated: ‘European constitutionalism is gradually unlocking itself from [the] dead end. The “renaissance” of the federal principle and the idea of a “Federation of States”, allows us to analyse the European Union in federal terms and, finally, to ask what sort of federation the European Union is’ (at 4). In this context, there is clearly no use for ‘*sui generis*’ any more, since the EU, simply, is not. Like any other federation it has a ‘*dual*

government, *dual* sovereignty, and also *dual* citizenship’ (at 29).

Once the federal essence of the EU is established, Schütze turns to the analysis of the dynamics of EU federalism to establish the essence of the European federal Union, and documents the gradual move from dual to cooperative federalism, which also allows for the making of important predictions about the development of integration in the near future. In dual federalism the competences between the local authorities and the federation are divided field by field, and each level of law is exclusively competent in its sphere. Cooperative federalism is different: there the legal regulation of different levels competes to regulate the same areas (at 5). Like the US (at 122), started as a dual federalist project by the Schuman declaration – the first step to the *fédération européenne* – the EU has moved away from there to grow a most complex cooperative federative structure which no longer knows any clear dualism.

The whole ‘special part’ of the book is dedicated to the masterful analysis of this transformation (at 167–391). The work majestically draws on the whole history of EU law from the prism of federalist theory and focuses on several specific fields, especially the free movement of goods (section 4(I)), the Common Agricultural Policy (section 4(II)), and the Union’s external powers (chapter 6) in order to trace the most important line in the development of EU law: the shift from dual to cooperative federalism. The latter seems definitive. Unlike a number of other federations in the world where fluctuation between the two federalist philosophies is possible, the EU now has cooperativism inserted into the foundational texts through the principle of subsidiarity and the essence of complementary competences (at 284).

In fact, what the book abundantly demonstrates, and is its strongest point, is that it is much more appropriate to study the phenomena of real life with one’s eyes open. In a way, the whole exercise can be compared with the initiation lessons for children at painting schools. Coming to paint for the first time, they

know that the sea is blue, that grass is green, and that the sky is blue too. It can sometimes take years to let children see the reality behind what they 'know': it takes getting rid of inherent dogmatism and all that your mother has been repeating for years on end to pick greyish-green for the sky. Looking at Europe with his eyes open, Schütze exposes 'three constitutional denials' which are directly connected to the *sui generis* thinking: 'Europe was said to have *no* people, *no* constitution, and *no* constitutionalism' (at 63). All three denials are masterfully analysed, only to be trashed, leaving place for real research.

This indispensable book will mark the development of the discipline for years to come and will obviously be deeply irritating for some. To avoid disappointment, those who are blind out of principle should not read this work. Schütze relies on Ezra Pound in sounding his warning: '[t]he book is not addressed to those who have arrived at full knowledge without knowing the facts' (at p. viii).

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doi: 10.1093/ejil/chq073