

A. FISCHER-LESCANO / F. ROEDL / C. U. SCHMID (eds.):

Europäische Gesellschaftsverfassung. Zur Konstitutionalisierung sozialer Demokratie in Europa

Baden-Baden 2009

Nomos, 408 p.

For years Europe's »social imbalance« has been subject to criticism, which the current Constitutional process has done nothing to rectify. European social democracy has developed an ambivalent attitude to this reproach: on the one hand, it calls for the creation of a »Social Europe«; on the other hand, it frankly presents the existing order of the EU as, in principle, open to social composition and locates the »social imbalance« rather in the dominance of neoliberal parties and in the neoliberal orientation of the European Court of Justice.

Against this background, the book produced by the Zentrum für Europäische Rechtspolitik (ZERP) in Bremen, »Europäische Gesellschaftsverfassung« (A European Societal Constitution), could represent an important contribution to further analysis and theoretical discussion. The guiding theme of the 20 contributions collected in the book is clearly discernible from the subtitle: no less than the possibility of a »constitutionalization of social democracy in Europe« is to be examined. In the foreword the editors refer to another important point: modern constitutions tend to be »societal constitutions,« their inherent goal being to permeate the entire social sphere.

Around half of the contributions collected in the book are devoted to the areas of private, labor, and economic law. In this connection, the editors expressly invoke the social democratic debate on constitutional theory during the Weimar Republic and the early Federal Republic, a theoretical line to which several of the authors refer in another section under the heading »Prospects of a Social Democratization of Europe.« A concluding section is dedicated – setting out from the thesis that a »return to the nation-state« is impossible – to the possibilities of a »conceptualization of a transnational societal constitution.«

The EU's imbalance with regard to a labor and social constitution has often been discussed. The contributions brought together in this volume attempt to understand this in individual thematic areas, but above all seek the reasons for this development. As far as general private law is concerned, it is a body of law which hitherto has rarely been the focus of critical consideration. The authors consciously distance themselves from »jurisprudence's illusion of neutrality,« as Brigitta Lurger writes in her contribution.

Considerable space is also given over to discussion of the European welfare state and the labor constitution. For example, Florian Rödl, in a very readable contribution, comes to the sobering conclusion that the discussion of a »Social Europe« has finally proved to be an »interminable blind-alley,« while the model of a European Social Union has been talked into being in defiance of the facts.

Christoph U. Schmid, in his contribution, addresses the »judicial expansionism« of the European Court of Justice (ECJ) in recent years. Schmidt examines in detail the ECJ's argumentation which, according to his analysis, can by no means be characterized simply as the dogmatic prioritization of the basic freedoms over European basic rights. The calm dissection of juristic argumentation and its testing against its practical effects here is also an attraction of other contributions in the book.

Under the rubric of »social democracy« a number of contributions explicitly take up the social democratic constitutional theory of the Weimar Republic – associated above all with Hermann Heller and Wolfgang Abendroth – and of the early Federal Republic. In these terms, according to Hans-Jürgen Bieling's interpretation, forms of democratic intercourse remain fragile in two respects in a society characterized by antagonistic interests: on the one hand, sharp lines of conflict and division could impair political stability, and on the other hand, the processes of democratic representation are in many ways not utilized adequately and thereby come to nothing. Therefore, the formal rule of law should be supplemented by institutions of labor law, economic democracy, and the welfare state.

»Social democracy« is therefore not to be understood in a party-political sense here, but the discussion is nevertheless fascinating. The »social imbalance« of European unification has often been addressed. Criticisms have mainly been formulated as political demands and do not tend to find their way into social science or jurisprudential theory. On the contrary, European jurisprudential debate has been characterized for many years by an almost total lack of consideration of the social conditions and consequences of juristic norms and decisions.

Taking up the social conditions pertaining to juristic decisions could also prove to be a possible path for a self-conscious social democratic (in the party-political sense) European legal policy: in that case, legal policy would have to be understood as policy aimed at shaping society as a whole and ultimately as enabling and extending democracy – as does, for example, Oliver Eberl with his plea to regard democracy and the welfare state as inseparable for the development of social democracy.

With its attempts at a »conceptualization of a transnational social constitution« the volume is expanded to take in another fundamental jurisprudential perspective. In their contribution, Andreas Fischer-Lescano and Kolja Möller start from the assumption that difference and not unity is the key characteristic of modern societies. Within the framework of a »constitutional pluralism« it comes to a decision between »technocratic« and »societal collision management.« Legal collisions, in the sense of »societal collision management,« should be left to societal negotiation processes and not be decided »technocratically« by judicial process through the construction of hierarchies of norms.

In particular, the connection established with the line of debate after Abendroth and Heller is fascinating. It should be linked to the debates on

constitutional pluralism. The establishment of societal unity was a complex problem for Heller and Abendroth. As the contributions collected in the volume show, the level of complexity has increased with Europeanization and internationalization. The approaches put forward in the book offer intelligent food for thought concerning why the simple – hasty – conclusion »back to the nation-state« cannot be drawn, but also how the reality of a society legally integrated at various levels can be captured theoretically and above all how it can be opened up for measures which shape it in a social direction. All in all, therefore, this collective volume represents critical scholarship at its best.

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**J. CALLAGHAN / N. FISHMAN / B. JACKSON / M. MCIVOR (eds.):
In Search of Social Democracy. Responses to Crisis and Modernisation**

Manchester and New York 2009
Manchester University Press, 304 pp.

**P. DIAMOND / R. LIDDLE (eds.):
Beyond New Labour. The Future of Social Democracy in Britain**

London 2009
Politico's, 288 pp.

Much has been written recently about the dire state of social democracy, its intellectual emptiness, and the need for programmatic and organizational renewal. After all, in 2010, only five out of 27 member states of the European Union are ruled by social democrats. Britain, France, Germany, and many other states are governed by center-right and liberal parties, with the social democrats trying hard to re-build their credentials in opposition. It seems to be the perfect moment to re-define social democracy and adapt it to a fast-changing global context.

Two edited volumes, both published in 2009, approach the topic from different, yet often complementary angles. »In Search of Social Democracy,« edited by John Callaghan, Nina Fishman, Ben Jackson, and Martin McIvor, is a collection of academic essays. It presents a critical, yet optimistic and forward-looking alternative to the apocalyptic writings of the moment. The strength of this book lies in its comparative and multidisciplinary approach to social democracy. Divided into three parts, the book strikes the (difficult) balance between the past, present, and future of social democracy and manages to successfully link classic socialist and republican thought with the challenges of modern policy-making in various countries across Europe and abroad.