REVIEW OF EUROPEAN ADMINISTRATIVE LAW; VOL. 11, NR. 2, 129-131, PARIS LEGAL PUBLISHERS © 2018

Joana Mendes and Ingo Venzke (eds.), *Allocating Authority. Who Should Do What in European and International Law?*, Bloomsburry, 2018

In 2018, a new book entitled 'Allocating Authority. Who Should Do What in European and International Law?' has appeared. Joana Mendes and Ingo Venzke have gathered a team of internationally renowned experts in the field to address a pertinent question for the 21st century concerning the allocation, division and legitimacy of public power. This cannot be more relevant in the times when an increasing number of powers have been delegated to executive branch institutions and the executive has become dispersed within and beyond nation state borders. Indeed, who should do what beyond the nation state border, *i.e.*, in the European Union and International Law?

After the Introduction chapter by the editors, the book is structured in two parts. Part I is on 'Empirical and Normative Traction' and discusses related concepts and notions. Susan Rose-Ackerman starts the debate by commenting on democratic legitimacy and executive rule-making from the perspective of positive political theory in comparative public law (Chapter 2). Eoin Carolan and Deirdre Curtin continue with a search for a new model of checks and balances for the EU (Chapter 3). Mikael Rask Madsen discusses the possibility of bolstering authority by enhancing communication using the example of the European Court of Human Rights (Chapter 4). Jochen von Bernstorff gives a historical sketch of authority monism in international organisations (Chapter 5). Andreas von Staden analyses checks and balances in global governance (Chapter 6). Part II is on 'Interactions in Practice' and chiefly focuses on the role of individual institutions and sectors and how we could discuss the legitimacy of their actions. Here, Bruno de Witte explores the role of the Court of Justice in the European Union in shaping the Institutional Balance in the EU (Chapter 7). Joseph Corkin considers refining the relative authority in the judicial branch and the new separation of powers (Chapter 8). Dominique Ritleng zooms into EU administrative discretion in judicial review (Chapter 9). Chantal Mak writes about judicial rule-making in European private law (Chapter 10). Maurizia De Bellis investigates legitimacy debates in the area of EU financial regulation (Chapter 11). The book is concluded by a chapter by Diane A Desierto, who analyses relative authority and institutional decision-making in World Trade Law and International Investment Law (Chapter 12).

The book addresses an ambitious question, namely how authority can be divided and allocated in a legitimate way and who should strike the 'right balance'. I think that the main answer to this question has been that 'it depends'. It depends on the actors, regimes and rules involved in a particular setting in the EU and in the context of International Law. In other words, as the editors themselves mention, public authority is relative between actors and relative to specific legitimacy assets, such as accountability and transparency. Thus, one should not expect a single particular 'formula' or 'right balance'; rather, "balances

need to be constantly re-enacted and renegotiated" (p. 10). The main concept behind the book is thus that authority is relative. The legitimacy of it and the 'rightness' of its allocation needs to be discussed in relation to other actors and, what the editors call, 'legitimacy assets'. "No exercise of authority can ultimately rely on inclusion, specialization or rights protection alone. Relative authority is as much about connections as it is about divisions. A parliament cannot do without expertise. Decisions of the executive leaning on the specialized knowledge of its authors may fall short of inclusion. Each may conflict with fundamental or contractual rights" (p. 11).

The individual chapters give more concrete illustrations to this idea and the notion of relative authority from more normative (Part I) and more empirical (Part II) standpoints. Susan Rose-Ackerman offers an interesting perspective on, and a general explanation of, the degree of judicial scrutiny found in different states. With the help of a positive political theory, she shows that judicial review could be more intrusive in presidential than in parliamentary systems of government. This is because a presidential system creates different incentives for legislators to constrain executive power through judicial oversight. In a parliamentary system, "the legislature does not have an incentive to empower the courts to review administrative policy-making. The reason for this is straightforward. So long as the lower house has primary law-making authority, the governing coalition has no interest in a statute that would limit its exercise of policy-making discretion" (p. 36). Taking this into account, Andreas von Staden rightly notes that "the real question is not whether authority is relative, but rather how relative it is, with authority (and power) being more concentrated, or dispersed, in some systems than in others, both as a matter of their formal legal allocation and their factual exercise" (p. 115). Here, the contributions by Bruno de Witte, Joseph Corkin Dominique Ritleng, and Chantal Mak shed more light on the different aspects of judicial authority in different regimes.

Furthermore, Mikael Rask Madsen argues that the interplay between law and politics needs to be considered seriously to ensure workable feedback mechanisms between international courts and political interlocutors. Indeed, if we move beyond the nation state border, it is important to realize that "international institutions originally were constructed according to a principle of enhancing one single institutional entity: national administration. Their functional raison-d'être originally was to exclusively empower national executives for specific tasks in an increasingly globalized economic and societal environment" (p. 100, Jochen von Bernstorff's chapter). Thus, authority beyond the nation state may be limited by the 'original design'. It is relative "because of the impact that rules established by global regulators have" on the regulatory authority of national and EU decision-makers (p. 259, Maurizia De Bellis' chapter) and the possible difference between 'theory' (e.g. legislative design) and how it "*actually* operates" (p. 54, Eoin Carolan and Deirdre Curtin's chapter).

All in all, as Diane A Desierto further shows, nearly all jurisdictions are different in terms of how authority has been divided, allocated and legitimized through the institutions reflecting the 'classic separation of powers' and checks and balances systems, to a greater (e.g. the WTO system) or lesser (International Investment system) extent.

In my opinion, the added value of this book is its message that authority is relative and any search for legitimacy and proper balances relates to the actors involved and various legitimacy assets present. One could have expected the book to finish with a concluding chapter by the editors that brings all the relevant concepts together – separation of powers, checks and balances, and legitimacy assets – to offer guiding contours or, if feasible, a 'list' of necessary elements for a future assessment framework when dealing with the evaluation and design of international regimes' authority. The book leaves this task to the reader and further research instead. As Mikael Rask Madsen has noted, "The separation of power can inspire but not solve the question of legitimate global governance; that is, it is helpful for thinking about the different roles, strengths and legitimacy assets of each of the involved institutions and their interdependences, but it does not provide a workable recipe for global governance" (p. 78). Similarly, this book offers hearty food for thought about the questions of allocation and legitimization of authority beyond nation state borders. The recipes for possible 'right balances' under specific circumstances are yet further to be explored.

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* DOI 10.7590/187479818X15481611819903 1874-7981 2018 Review of European Administrative Law
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