

Professor Dr Jürgen Schwarze 1944–2024

It was with a profound sense of sadness that I learned of the death of Jürgen Schwarze in May 2024, although the news did not reach me until July following his death. Professor Schwarze had been unwell for some considerable time following a serious accident.

The news brought home vividly the memories I had of him in Freiburg, London, Rome, Berlin, Lisbon and in Hull, where he was a frequent visitor, and elsewhere. The occasion was invariably a seminar or a conference. Among those precious thoughts was of him at the FIDE 1996 conference in Berlin which he organized. There he was standing at the balcony showing the participants where President Kennedy made his famous ‘Ich bin ein Berliner’ speech in 1963. So many rich memories of a man generous in spirit, in giving his time, in his companionship and in celebration. A wonderful host in Freiburg at the seminars he chaired, he was equally at home and gregarious in any locality. And a wonderful scholar with a vaunted reputation throughout Europe expressing his ideas and the fruits of his scholarship not only in his native German, but also in perfect English and French. His publications were numerous.

I knew of his esteem long before I met him for the first time in Rome at the 1994 FIDE conference in the autumn of that year. Shortly after I made my first visit to Freiburg for the seminar on ‘Administrative Law Under European Influence’. This was published in an edited book in 1996 by Nomos Verlagsgesellschaft Baden-Baden. The seminar involved studies by national lawyers of their own national legal systems and the mutual reciprocal influence of their system of administrative and EC law and ECHR law.

Earlier, he had published *European Administrative Law* (Nomos Verlagsgesellschaft) in German in 1988 as well as subsequently in English and French in 1992 and 1994 respectively, which was revised in 2006. This was truly a masterful study in the development of an administrative law that was shaped by national and EU and ECHR forces. The treatise was scholarly and detailed in its appraisal of the emergence of something new under the influence of different sources of law. Schwarze’s study did not fall into simplistic divisions of convergence and divergence. He etched in fine scholarly detail the influence of national systems’ administrative law on EC law, as it then was, and the emerging influence of EC administrative law on national systems. In his 2006 revision he wrote:

As regards the future perspectives for the completion of EC administrative law, at present and for the foreseeable future, all hopes, with the exception of partial and sectoral legislative codifications, rest upon a gradual, cautious and pragmatic further development of case law in the Community.¹

He placed his faith in careful, incremental development of principles by judicial decision. The power of course of the common law at its best.

A further seminar in Freiburg led to *The Birth of a European Constitutional Order* by Nomos in 2000 which sought to explore the possibilities and limitations of European constitutional integration which presaged the emergence of the EU constitution, its rejection by French and Dutch voters in referenda and its re-emergence in the Treaties of Lisbon and Charter of Fundamental Rights. Again, Schwarze was not advocating a grand overriding procrustean bed for all but was exploring the ways in which constitutions were giving and deriving mutual influence in a Europe that was becoming more integrated and in which its community was expanding. At the very end of this work he wrote:

The birth of such a European constitutional order needs time, however, for sufficient grounding and consolidation. As a consequence, it should always be borne in mind that a European constitutional project runs a greater risk of failure the more ambitious its intended contents are and the faster it tries to unify differing partners.²

I remember his aperçu that administrative law invariably reflects the soul of a country whereas constitutional law is often far more subject to foreign influence. Think of the German and French constitutions and their debt to America. Think of the American constitution and its debt to English common law. Think of the US Supreme Court and its recent majority opinion reviving almost in its entirety the immunity of George III under the constitution for their president in his official acts.³ Think of the profound impact of the ECHR and CHR through the Human Rights Act on the UK's growing protection of human rights. Human rights were of course so long regarded as an 'alien concept' in English law. And the HRA, CHR, ECHR were so recently subject to abusive threats by right-wing ideologues befuddled by their success in Brexit. Within just a few days of the general election in the United Kingdom of the 4 July who remembers them?

For Schwarze, the hope was for a constitutional order that fostered democracy, the rule of law, human rights protection and equality. For the British, without a written constitution, the EU constitution was a step too far and Tony Blair seized upon its rejection by the French and Dutch to declare its demise. There then followed the assault on our membership of the EU itself and its

¹ J. Schwarze, *European Administrative Law* 1465 (Revised 1st ed. Sweet and Maxwell 2006).

² J. Schwarze, *The Birth of a European Constitutional Order* (Nomos 2001).

³ *Trump v. United States* No. 23-939 (2024) 1 Jul.

association with flooding by aliens and overseas domination. There was no-one in government to put an effective case for the EU. Demagogic populists had the ear of the majority whose general response to social tension was not to lance the boil but to aggravate and stimulate it. But we will carry the influence of our membership of the EU for years to come in terms of our judicial review and the fact that under the EU–UK Withdrawal Agreement ‘Separation Agreement Law’ – including the governance of Northern Ireland and citizens’ rights as protected – has to comply with EU law including that taboo for UK governments the Charter of Fundamental Rights. This is in addition to the legacy of the bulk of EU law catered for under the Retained EU Law (Revocation and Reform) Act 2023. European human rights law was too deeply established in our domestic law by the Human Rights Act to be uprooted by right wing fantasists of the Conservative party.

My last recollection concerns Jürgen’s immense encouragement for my own works in European Public Law. He was pivotal in his support for this journal which bears this obituary to him. His support and work in the Institute of European Public Law at Hull University were exemplary as was his advice on my book *European Public Law*. One could not have asked for a more kindly and better informed tutor. To you Jürgen I owe so much. Thank you. *Ave atque vale*.

Patrick Birkinshaw.

