

Alter, Karen J. *The European Court's Political Power*. Oxford: Oxford University Press, 2009.

Karen J. Alter, one of the most prolific authors in transnational judicial politics, has been studying the European Court of Justice for two decades. Her latest book collects the various fruits of this research that were previously only accessible in different journals and collections. Although the chapters – some of which are co-authored, some slightly revised – stand for themselves, taken together, they tell a common story about “how the ECJ became a political actor that was capable of transforming European and international politics” (3). Readers familiar with Alter’s writings will want to have a look at the introduction and conclusion in which the author draws more general lessons and outlines a research agenda for the future. They will also be interested in reading the newly written fourth chapter on the role of “jurist advocacy movements in Europe”. All others will find a remarkably creative and stringently argued analysis. The organization of the book follows from a historical logic, beginning with the founding moments of European legal integration and ending with the more recent developments.

Section one contains the introduction and a brief and useful primer summarizing the evolution of ECJ scholarship and explaining the ECJ rulings that have transformed EU primary law into a constitution for Europe. According to the overarching narrative, spelled out in the introduction, the ECJ became influential by strategically and cautiously allying with domestic actors to encourage respect for European law. The most relevant factors are thus exogenous to the ECJ. Indeed, simply replicating the ECJ’s institutional design is not enough for other international courts to become effective vis-à-vis recalcitrant governments. The court’s own agency as well as its activation and support by societal actors are key. The introduction also situates Alter’s work within the somewhat dated battle between neofunctionalism and intergovernmentalism. Between the devil and the deep blue sea, Alter chooses neither. Instead, she confesses a preference for historical institutionalism (HI). Whether this means that she proposes HI as yet another contender or whether in fact she joins in the now popular farewell song to all paradigmatic debates in favour of “sometimes-true” theories and “analytic frameworks” depends on the status she attests to HI – a question that is left open.

The chapters of the second section seek to explain the transformation of the ECJ from a weak and ineffectual actor to the Supreme Court in all but name of an integrated EU legal system. Chapter three examines the point of origin. Why was the ECJ so weak during the ECSC period? Part of the answer is that neither

member states nor societal actors were interested in a truly integrated coal and steel market. Contrary to the idea that legal integration is strongest during political paralysis, the ECJ refrained from aggressive rulings in this period and left practically no imprint. But while the ECJ was timid in the ECSC, it was bold in the early EEC. In the newly written fourth chapter, Alter takes another look at this period of legal revolution, thereby putting into perspective both the legalist story according to which the ECJ simply “discovered” the supremacy and direct effect of EU law, and the neofunctionalist idea that lawyers and litigants through their individual usage of the preliminary ruling procedure set the process in motion. The chapter shows how a network of prestigious Euro-law scholars and ECJ judges actively orchestrated their efforts to construct a “hegemonic constitutional narrative”. This new, Bourdieusian interpretation is in part also a revision of Alter’s own prior analysis, reprinted in chapter five, which essentially drew on a structural argument. The main claim being that the preliminary ruling system in conjunction with the doctrines of supremacy and direct effect created an opportunity for lower courts to side-step higher courts and thereby facilitated the penetration of EU law into national law. Why did national governments not intervene? The section’s last chapter refutes claims based on principal-agent theory that the major rulings basically reflect the interests of Paris and Berlin. Indeed, the Court camouflaged far-reaching doctrinal innovations in politically innocuous rulings and it bred allies in national courts. When the full implications of its new doctrines became manifest, it was too late to turn the wheel around.

The third section asks when and how the ECJ will influence political outcomes. Social support is the crucial enabling factor. Chapter seven examines the *Cassis* decision, famous for developing the principle of mutual recognition. It argues that the ruling neither reflected the interests of powerful member-states, nor can it be seen as creation of mutual recognition by supranational fiat. Instead, what Alter calls “political follow-through” is key: “ECJ decisions affect policy by helping to mobilize interests in support or opposition of the law, and then by provoking political responses” (17). If “follow-through” is needed to implement judgments, what are the pre-conditions for activating the European legal system in the first place? Analyzing the successful legal challenge to British gender policy, chapter eight identifies several “thresholds”. Transnational variation in court activation, it is argued, can be accounted for by the difficulty of surmounting these thresholds, which in turn depends on (Olsonian) cost-benefit distributions and domestic institutional factors. EU law is not a “one-way ratchet” leading to an ever-closer union. According to chapter nine, the thresholds model implies that “national and



EU legal systems can also be used by private litigants to challenge advances in European integration” (211). Some examples for such a legal backlash are cited, but they still seem few and far between. The final chapter of this section examines the international constraints of judicial law making. Using the WTO banana trade dispute as example, the chapter is an elaborate treatment of the complex interrelation between different legal regimes on several levels of governance.

The final section puts the ECJ in comparison. Alter first presents her comparative framework, in chapter eleven. Here, she moves her previous critique of principal-agent analyses onto a more theoretical plane. The chapter contrasts the two-sided relationship between agent (court) and principals (governments) with the three-sided “trustee” relationship, where a third actor, called the “beneficiary” changes the constellation: Governments as well as the court, understood as “trustee” rather than “agent”, want to convince the “beneficiary” that their decision is in the public’s best interest. This shapes the politics among courts and governments: Rhetorical and legitimacy politics are more important than sanctioning and shirking. The next chapter asks for the differences that make the ECJ stand out. Why is it more active and more influential than other international courts? Interestingly, the most salient factor, access for private litigants, is no longer rare among “new style” international courts. Indeed, by comparing the ECJ with its carbon-copy, the Court of Justice of the Andean Community, Alter argues that it is not the institutional design per se that matters, but rather the socio-political environment, because it shapes the actual usage of access. On the other hand, institutional design is not primarily driven by bargains about the delegation of power but by functional considerations. This sophisticated argument opens the way for comparisons with domestic courts, which also have different functions – administrative review, civil law adjudication etc. – and concomitant design features.

The conclusion of the book spells out lessons for the future study of international courts. The ECJ’s success story is seen as part of a more encompassing development in European history, in which courts in particular, and the rule of law in general have gained importance after the Second World War. For the study of European legal integration, Alter therefore advocates a larger research agenda, connecting European level changes to national evolutions.

This message suggests an orientation towards historical research, even towards the history of ideas. It is in line with Alter’s preference for complexity over parsimony. There is, as she notes “no set of unidirectional hypotheses that predicts when, why, and how the ECJ will be activist or influential” (4). It also suits her

frequent use of counterfactual analysis (would history been different if...?) and her preference for diachronic single-case studies. In addition to the fascinating substantive output, a methodological retrospection of Alter’s research would have been interesting to read. Another blind spot is the normative evaluation of the ECJ’s development and of how it transformed the EU legal system. What for some is akin to a coup d’état, others embrace as civil-rights empowerment. Alter’s is a positive analysis but it cannot escape this question. Not least when the author considers how the European “success” can be transplanted to other international courts, she implicitly takes a (cosmopolitan) normative stand. The “trustee” model in which court and governments justify their decisions in front of the “beneficiary”, a public audience, potentially offers a fruitful framework also for normative theorizing. Yet it is always easy to criticize a book for what it is not rather than appreciate it for what it is: An impressive journey through two decades of ECJ scholarship that nobody interested in EU politics and international legal studies can afford to miss.

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Andreas Dür. *Protection for Exporters: Power and Discrimination in Transatlantic Trade Relations, 1930-2010.* Ithaca, NY: Cornell University Press, 2010.

Protection for Exporters is a history of 20th-century transatlantic trade liberalization centered on a set of hypotheses on the export lobby. Andreas Dür is professor of international politics at the University of Salzburg. In this work he explains the dynamics of the transatlantic trade policies through the testing of the following five hypotheses on the key role of exporters in trade negotiations:

1. The mobilization hypothesis: Exporters increase their lobbying efforts whenever they face losses in foreign market access resulting from the formation (or the amplification) of a preferential trading arrangement among foreign countries.
2. The influence hypothesis: The stronger the lobbying efforts of exporters, the more concerned a government should be about the protection of exporter interests, while continuing to cater to those import competitors that engage in lobbying.
3. The choice of strategy hypothesis: The more vulnerable a country, the more likely it is to of-

