

## The Politics of Justice in European Private Law

*The Politics of Justice in European Private Law* intends to highlight the differences between the Member States' concepts of social justice, which have developed historically, and the distinct European concept of access justice. Contrary to the emerging critique of Europe's justice deficit in the aftermath of the Eurozone crisis, this book argues that beneath the larger picture of the Monetary Union, a more positive and more promising European concept of justice is developing. European access justice is thinner than national social justice, but access justice represents a distinct conception of justice nevertheless. Member States or nation-states remain free to complement European access justice and bring to bear their own pattern of social justice.

**Hans-W. Micklitz** is Professor of Economic Law at the European University Institute in Florence, Italy. He is Finland Distinguished Professor at the University of Helsinki, 2015–2020, and Head of the Institute of European and Consumer Law (VIEW) in Bamberg. He has also been a consultant for the OECD, UNEP and CI (Consumers International), a visiting professor at the University of Michigan–Ann Arbor and at Columbia University, and a Visiting Fellow at Somerville College, University of Oxford.

Cambridge University Press  
978-1-108-42412-7 — The Politics of Justice in European Private Law  
Hans-W Micklitz  
Frontmatter  
[More Information](#)

---

Hans Micklitz's new book explores and illuminates the social and economic transformations leading to the emergence of European private law. It furthermore elucidates the concept of access justice on which European private law relies, and provides a spirited defense of the legal order it constitutes. *The Politics of Justice in European Private Law* is a major contribution to private law theory, and an essential reading for anyone serious about private law beyond the nation state.

Hanoch Dagan, Stewart and Judy Colton Professor of Legal Theory and Innovation, Tel-Aviv University

Hans Micklitz's unerring pursuit of social justice through private law provides us here with an inspiring vision of societally responsible regulation in a post-State era. His reflections on the emergence of a specifically European legal consciousness are both a thoughtful response to the justice deficit critique frequently addressed to EU law in general, and a profound reflexion on the social values that lie somewhere beneath the surface of private law.

Horatia Muir Watt, Professor, Sciences-Po Law School, Paris

'This new book by one of the leading voices in the debate on European private law and its politics, invites us to understand a wide range of seemingly incoherent interventions by EU law into the private laws of the member states, in the light of one single, powerful idea: access justice. The argument is lucid, thought-provoking and impassioned at times. A must-read for anyone interested in the justice of European private law.'

Martijn W Hesselink, Professor of Law, University of Amsterdam

## Cambridge Studies in European Law and Policy

This series aims to produce original works which contain a critical analysis of the state of the law in particular areas of European law and to set out different perspectives and suggestions for its future development. It also aims to encourage a range of work on law, legal institutions and legal phenomena in Europe, including 'law in context' approaches. The titles in the series will be of interest to academics; policymakers, especially those who are interested in European legal, commercial and political affairs; practising lawyers, including the judiciary; and advanced law students and researchers.

### *Joint Editors*

Professor Dr Laurence Gormley  
*University of Groningen*  
Professor Jo Shaw  
*University of Edinburgh*

### *Editorial Advisory Board*

Professor Kenneth Armstrong, *University of Cambridge*  
Professor Catherine Barnard, *University of Cambridge*  
Professor Richard Bellamy, *University College London*  
Professor Marise Cremona, *European University Institute, Florence*  
Professor Michael Dougan, *University of Liverpool*  
Professor Dr Jacqueline Dutheil de la Rochère, *University of Paris II Pantheon-Assas,*  
*Director of the Centre for European Law, Paris*  
Professor Daniel Halberstam, *University of Michigan*  
Professor Dora Kostakopoulou, *University of Warwick*  
Professor Dr Ingolf Pernice, *Director of the Walter Hallstein Institute,*  
*Humboldt University of Berlin*  
Judge Sinisa Rodin, *Court of Justice of the European Union*  
Professor Eleanor Spaventa, *Durham University*  
Professor Neil Walker, *University of Edinburgh*  
Professor Stephen Weatherill, *University of Oxford*

Books in the Series

*The Politics of Justice in European Private Law*

Hans-W. Micklitz

*The Transformation of EU Treaty Making: The Rise of Parliaments, Referendums and Courts Since 1950*

Dermot Hodson and Imelda Maher

*Redefining European Economic Integration*

Dariusz Adamski

*Human Rights in the Council of Europe and the European Union*

Steven Greer, Janneke Gerards and Rosie Slowe

*Core Socio-Economic Rights and the European Court of Human Rights*

Ingrid Leijten

*Green Trade and Fair Trade in and with the EU: Process-Based Measures within the EU Legal Order*

Laurens Ankersmit

*New Labour Laws in Old Member States*

Rebecca Zahn

*The Governance of EU Fundamental Rights*

Mark Dawson

*The International Responsibility of the European Union: From Competence to Normative Control*

Andrés Delgado Casteleiro

*Frontex and Non-Refoulement: The International Responsibility of the EU*

Roberta Mungianu

*Gendering European Working Time Regimes: The Working Time Directive and the Case of Poland*

Ania Zbyszewska

*EU Renewable Electricity Law and Policy: From National Targets to a Common Market*

Tim Maxian Rusche

*European Constitutionalism*

Kaarlo Tuori

*Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity*

Antoine Vauchez

*Services Liberalization in the EU and the WTO: Concepts, Standards and Regulatory Approaches*

Marcus Klamert

*Referendums and the European Union: A Comparative Enquiry*

Fernando Mendez, Mario Mendez and Vasiliki Triga

*The Allocation of Regulatory Competence in the EU Emissions Trading Scheme*

Joséphine Van Zeben

*The Eurozone Crisis* Kaarlo Tuori and

Klaus Tuori

*International Trade Disputes and EU Liability*

Anne Thies

*The Limits of Legal Reasoning and the European Court of Justice*

Gerard Conway

*New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy*

Mark Dawson

*The Lisbon Treaty: A Legal and Political Analysis*

Jean-Claude Piris

*The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*

Patrycja Szarek-Mason

*The Ethos of Europe: Values, Law and Justice in the EU*

Andrew Williams

*State and Market in European Union Law: The Public and Private Spheres of the Internal Market before the EU Courts*

Wolf Sauter and Harm Schepel

*The European Civil Code: The Way Forward*

Hugh Collins

*Ethical Dimensions of the Foreign Policy of the European Union: A Legal Appraisal*

Urfan Khaliq

*Implementing EU Pollution Control: Law and Integration*

Bettina Lange

*European Broadcasting Law and Policy*

Jackie Harrison and Lorna Woods

*The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*

Jo Shaw

*The Constitution for Europe: A Legal Analysis*

Jean-Claude Piris

*The European Convention on Human Rights: Achievements, Problems and Prospects*

Steven Greer

*Social Rights and Market Freedom in the European Constitution: A Labour Law Perspective*

Stefano Giubboni

*EU Enlargement and the Constitutions of Central and Eastern Europe*

Anneli Albi

# The Politics of Justice in European Private Law

---

Hans-W. Micklitz  
*European University Institute*

Cambridge University Press  
978-1-108-42412-7 — The Politics of Justice in European Private Law  
Hans-W Micklitz  
Frontmatter  
[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,  
New Delhi - 110025, India  
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781108424127](http://www.cambridge.org/9781108424127)  
DOI: 10.1017/9781108539777

© Hans-W. Micklitz 2018

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2018

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

Names: Micklitz, Hans-W., author.

Title: The politics of justice in European private law / Hans-W Micklitz,  
European University Institute, Florence.

Description: Cambridge [UK] ; New York, NY : Cambridge University Press, [2018]

| Series: Cambridge studies in European law and policy

Identifiers: LCCN 2018024668 | ISBN 9781108424127

Subjects: LCSH: Justice, Administration of – Political aspects – European Union countries. | Civil law – European Union countries. | Monetary unions – European Union countries. | Monetary policy – European Union countries. | European Union countries – Economic policy. | Financial crises – European Union countries | Social justice – European Union countries.

Classification: LCC KJE3655 .M53 2018 | DDC 346.4–dc23

LC record available at <https://lccn.loc.gov/2018024668>

ISBN 978-1-108-42412-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



## Contents

<i>Preface</i>	page xv
<i>Series Editors' Preface</i>	xix
<i>Table of Cases</i>	xxii
<b>Introduction</b>	1
The Argument	2
Introduction: Justice, State/the EU and Private Law	3
1 The Transformation of Private Law, the Nation-State and Social Justice	4
1.1 The Transformation to the Law of the Labour and Consumer Market Society	7
1.2 The Transformation of the Nation-State and the European Experiment	10
1.3 The Transformation of National Social Justice and European Access Justice	12
2 The Theoretical Localisation of Access Justice	18
2.1 Social Distributive, Allocative Libertarian and Access Justice	19
2.2 Critique: Equal Opportunity and Market Justice	24
2.3 Access Justice and Social Justice in Tandem	27
3 Preconceptions and Methodology	30
3.1 Ideological Criticism	31
3.2 The Post-Classical Move	35
3.3 Intellectual History and Legal Consciousness	38
4 How to Read the Book	41

<b>Part I</b>	<b><i>The Awakening of the Social and Its Transformation in England, France and Germany</i></b>	45
<b>1</b>	<b>Socioeconomic and Political Background of Social Justice in France, Germany and England</b>	47
1.1	A Chart towards Orientation	48
1.2	The English Model: A Liberal and Pragmatic Design Fit for Commercial Use	50
1.2.1	English Pragmatism and English Personalism	50
1.2.2	Origins of Utilitarian Thinking	54
1.2.3	Societal Continuity and Economic Success	57
1.2.4	Intrusion of Social Justice into Labour Law	58
1.2.5	Intrusion of Social Justice into Consumer Law	64
1.3	The French Model: An Intellectual Political Design of a (Just) Society	67
1.3.1	French Intellectualism	68
1.3.2	Origins of the Intellectual and Political Conception	73
1.3.3	Constitution and Code beyond National Boundaries	76
1.3.4	The Rise of ‘The Social’ via Self- and State Help	79
1.3.5	Politicising Private Law as Social Law	83
1.4	The German Model: A Paternalistic Market Design	89
1.4.1	The Axiomatic Role of Law	92
1.4.2	Paternalistic Market Pragmatism and Idealistic Societal Visions	97
1.4.3	From Authoritarian to (Ordo-)Liberalism	100
1.4.4	Turmoil and Continuity	103
1.4.5	The German Civil Code and <i>Sonderprivatrecht</i>	106
1.5	Conceptions of Social Justice in Comparison	111
1.5.1	Perceived Patterns of Justice	111

1.5.2	Perceived Function of the Role of Law in Remediating Social Justice Deficits	113
1.5.3	Interaction between Market Order, Society and the Social	115
1.5.4	Social Expectations, Relationship between State and Individuals	117
<b>2</b>	<b>Success and Failure of Social Justice through Private Law</b>	119
2.1	The 'Social' Effective, Desirable, Affordable and Efficient	119
2.2	Measuring the Distributive (Collective) Effectiveness of Private Law	124
2.2.1	A Blind Eye on Facts	125
2.2.2	Expert Statements	128
2.2.3	Collective Control of Standard Contract Terms	130
2.3	Measuring the Social (Individual) Effectiveness in Private Law	134
2.3.1	Imbalance of Power	135
2.3.2	Status	137
2.3.3	Access to Justice	140
2.4	Social Effectiveness vs. Economic Efficiency	145
2.4.1	Relaxed Attention: Socially Achieved?	146
2.4.2	Efficiency and Society	148
<b>3</b>	<b>Path Dependency, Irritations: The Post-Classical Move?</b>	152
3.1	Irritations at the Foundational Level of the Three Models	153
3.2	Irritations at the Surface Level of Labour and Consumer Law	156
<b>Part II</b>	<b><i>Justice beyond the Nation-State: The European Experiment</i></b>	161
<b>1</b>	<b>Socioeconomic and Political Background of Social Justice in the EU</b>	163
1.1	A Chart towards Orientation	164

## XII CONTENTS

1.2	The First Thirty Years Built on the Common Intellectual History	166
1.2.1	The First Thirty Years, 1957–1986	166
1.2.2	The Common Heritage	168
1.3	The Heyday of the Social, 1986 until 2000 and Beyond	172
1.3.1	The Second Phase	173
1.3.2	The Limits of the Common Heritage	176
1.4	The Post-Classical Move in the European Integration	180
1.4.1	The Lisbon Council, Economic Efficiency and Social Inclusion	181
1.4.2	Constitutional Standstill and Political Move to Financial Inclusion	186
1.4.3	The Post-Classical Foundations	191
<b>2</b>	<b>The Impact of EU Law on Employment, Non-Discrimination and Consumer Law</b>	<b>196</b>
2.1	A Chart for an Overview of Primary and Secondary EU Law	196
2.2	The Impact of the Determinants on Labour and Non-Discrimination Law	201
2.2.1	Establishing the Free Movement of Workers	203
2.2.2	Building Social Europe after 1986	207
2.2.3	From Labour to Non-Discrimination Law after Lisbon 2000	211
2.2.4	The Post-Classical EU Labour and Non-Discrimination Law	215
2.3	The Impact of the Determinants on Consumer Law	222
2.3.1	Establishing the Consumer Protection Paradigm	225
2.3.2	Building European Consumer Law after 1986	228
2.3.3	From Consumer Protection Law to Consumer Law and Back	233
2.3.4	The Post-Classical Consumer Law	239

<b>3 Post-Classical European Private Law in Outline</b>	246
3.1 General Features of Post-Classical Private Law	246
3.2 General Features of the Private Law Laboratory	251
<b>4 The Way Ahead: Rationality Test, Shared Responsibilities, Fragmented Status</b>	257
4.1 The Power and Reach of the Rationality Test	258
4.2 Shared Public-Private Competences and Shared Public-Private Responsibilities	265
4.3 Fragmented Status, Fragmented Justice and Legal Consciousness	270
<b>5 Summary: Social, Access and Societal Justice</b>	276
<b><i>Part III Considerations on the Post-Classical Private Law</i></b>	281
<b>1 The Basic Elements of the Tripartite Private Law Order</b>	283
<b>2 Universal Service Obligations (USOs)</b>	288
2.1 The Vulnerable	291
2.2 Access and Substance	295
2.3 Rights, Remedies and Procedures	302
2.4 Balancing of USOs and Residence Rights	307
2.5 Order of Competence and Responsibilities	310
<b>3 The Law of the Labour and Consumer Market Society</b>	316
3.1 The Vulnerable, the Weak and the Confident	318
3.2 Access and Substance	325
3.3 Rights, Remedies and Procedures	334
3.4 Balancing of Rights, Expectations and Needs	344
3.5 Order of Competence and Responsibilities	352
<b>4 The ‘Societal’ Private Law</b>	358
4.1 The Self and the Societally Responsible	360
4.2 Substance Shaping	364
4.3 Rights, Remedies and Procedures	368
4.4 Balancing of Legitimate Expectations beyond the State	373
4.5 Order of Competence and Responsibilities	377
<b>5 Summary</b>	383

## XIV CONTENTS

<b><i>Conclusions and Outlook</i></b>	385
1 Path Dependency of National (Social) Legal Consciousness	386
2 European (Social) Legal Consciousness	388
3 Hybridisation of Legal Consciousness	389
4 European Access Justice and European Societal Justice	390
5 The Tripartite European Private Legal Order	392
6 Shared Competences, Shared Responsibilities of the EU, MS and PPs	393
7 Drivers behind the Transformations	395
8 Rationality Test	396
9 European Laboratory	398
10 Brexit, the Social and European Legal Consciousness	400
11 Interaction between European and National Private Law	402
12 'Geometric' and 'Relative' State	404
<i>Bibliography</i>	406
<i>Index</i>	451

## Preface

The idea of the book has preoccupied me since I accepted Thomas Wilhelmsson's invitation to speak at the University of Helsinki in 1993 on the subject of social justice in European private law. It is there I developed the concept of 'legitimate expectations' as a European model of justice. The second trigger was an invitation by Horatia Muir Watt and Ruth Sefton-Green at the French *Cour de Cassation* in 2007 to speak about social justice. How does the European concept of legitimate expectations fit into the nation-state's understanding of social justice in private law? The French Revolution, the elaboration of the Code Civil and its transformation were the 'natural' starting points for such a research question, complemented by England/the United Kingdom and Germany. However, Germany was 100 years behind in nation-state building and private law building. The comparative analysis encouraged me to dive into the intellectual history of the three countries. The book project took shape when I joined the European University Institute in 2007. It led, in a first step, to the edited volume *The Many Concepts of Social Justice in Private Law*, published in 2011. The different contributions combine three strands of discussions: the legal philosophical debate on social justice, the path dependence of social justice in nation-states, and the development of social justice beyond the nation-state through the European Union (EU) and through international institutions.

My European Research Council (ERC) project on European Regulatory Private Law (2011–2016)<sup>1</sup> enabled me to give shape to the European

<sup>1</sup> The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP/2007–2013) / ERC Grant Agreement no. [269722].

regulatory private law and its patterns of justice. The present book bears a comparative dimension on the path dependency of national private law orders, on the rise and decline of social justice in private law during the twentieth century and on the genuinely European dimension that started by and large with the adoption of the Single European Act in 1986, which paved the way for the EU to engage in social regulation. In the aftermath of the now uncertain future of the EU, it is a book on risks and opportunities, on if and how social justice in European private law appears and how it may look in the post-nation-state area. In that sense, it will not lose its importance even if the EU collapses. It informs about the opportunities and the limits of transnational justice and the remaining responsibility of the nation-state.

Ten years of thinking and writing were also ten years of discussion, of feedback, and of rewriting. I presented earlier versions of the argument at the universities of Amsterdam, Bigli Istanbul, Helsinki, Oxford and Tel Aviv. I would like to thank G. Alpa, O. Ben Shahar, R. Brownsword, F. Cafaggi, H. Collins, G. Comandé, H. Dagan, M. Freedland, F. Gomez, R. van Gestel, L. Gormley, S. Grundmann, A. Hartkamp, A. Héritier, M. Hesselink, C. Hodges, A. Höland, E. Hondius, G. Howells, P. Letto-Vanamo, M. Loos, C. Mak, G. Miller, M.-A. Moreau, F. Möslein, H. Muir Watt, L. Niglia, K. Nuoti, A. Potocki, K. Riesenhuber, T. Roethe, P. Rott, C. Sabel, M. Safjan, R. Sefton-Green, C. Sieburg, J. Smits, A. Somma, J. Stuyck, K. Tonner, C. Torp, Tuori, S. Weatherill, T. Wilhelmsson, C. Willett and B. de Witte for their critique and their enduring scepticism over so many years. Three of my colleagues deserve more than just a general expression of gratitude. N. Reich, my mentor, colleague and friend, accompanied me through the early years of formation and thinking. He could not share the final version with me, but his written comments allowed me to engage into a spiritual dialogue. The German words of my colleague and friend Dennis Patterson spoken in his wonderful American accent will ring in my ears forever: Hans, *Du musst Dein Buch schreiben* ('Hans, you must write your book'), as did his lasting challenge 'What is your argument? I do not see your argument'. Thomas Roethe and I have conducted an endless number of projects. We discussed the deeper questions behind the book in all variations without coming even close to agreement. He does not share my optimism:

Nothing, neither access justice nor the experimental character of the EU, will ever work. The municipal reality in the Land of Lower Saxony [where he lives] is



identical. The EU has erroneously safeguarded universal instead of particular (EU fortress) rights. The EU leaves alone all those citizens who are the true Europeans between Niebüll (Northern Germany) and Salzburg (Austria) and who still know how everything fits together.

Over the last ten years, I have continuously asked young researchers for their input, critique and advice. My wholehearted thanks go to L. de Almeida, M. Cantero Gamito, K. Carr, G. Comparato, R. Condon, E. Deutscher, L. Diez-Sanchez, I. Domurath, J. Habib, B. Kas, B. v. Leeuwen, H. Marjosola, F. della Negra, P. Palka, K. Purnhagen, H. Schebesta, B. Schüller, Y. Svetiev, R. Vallejo, R. Xenidis and J. Zgliniski. You raised endless questions that challenged my argument and allowed me to sharpen my ideas. Rónán Condon became my interlocutor on the theoretical dimension of access justice; Yane Svetiev on the implications of the turn to experimentalist governance and its theoretical implications for European private law; and Guido Comparato sharpened my awareness on nationalism in private law and on financialisation. Rónán Condon brought the book written in my best ‘Germish’ into better English, giving it hopefully an Irish flavor. Dawn Wade offered additional editing help. Betül Kas supported me patiently in formatting footnotes and producing a bibliography. Without you this book would not exist and certainly not in the current form! I owe you more than you might think. Last but certainly not least, I bow to my wife, Alexandra, for her patience, for her encouragement over so many years and for the uncountable hours she saw me sitting at my computer and supplied me with tea, juice, fruits and vegetables. And not only this: my wife, as well as my daughter Maxie, were so empathic with my research that, though both are non-lawyers, they discovered two foundational books that influenced the overall argument.

Cambridge University Press  
978-1-108-42412-7 — The Politics of Justice in European Private Law  
Hans-W Micklitz  
Frontmatter  
[More Information](#)

---

## Series Editors' Preface

The European Union's aim, expressed in Article 3(1) TEU, is 'to promote peace, its values and the well-being of its peoples'. Unsurprisingly, it is to work for, *inter alia*, 'a highly competitive social market economy, aiming at full employment and social progress (Article 3(3) TEU), and is to promote, *inter alia*, 'social justice and protection'. The values on which the Union is founded include the rule of law, and Article 47 of the Charter of Fundamental Rights of the Union emphasizes the right to an effective remedy and a fair trial. Access to justice becomes an element of access justice, which is at the heart of the various rights guaranteed to European citizens and market participants. It is also at the heart of the duties to ensure those rights imposed by the TEU and the TFEU on the Member States and on the Union institutions.

Access justice moves beyond national social justice, becoming transformed into societal justice through participation in the development of the Union and the achievement of its objectives. In this European transnational context, in which European citizens and market participants perceive familiar private law rights and duties balanced and rebalanced in the light of wider objectives, the wider horizons afforded by European societal private law are not always welcomed by those concerned with protecting their cosy cartels or their local petty protectionist practices. Yet the European Union Treaties, like the American Constitution, are founded on the basis that we all sink or swim together, and that European society is broader than life in the local hamlet. The European Union project makes an appeal to greatness of soul, not pettiness of mind: the village next door is not the limit of the neighbourhood, and my neighbour may well be a European market participant, not

necessarily a European citizen. While the European vision does not displace national conceptions, it complements and at the same time challenges them by affording new dimensions. It seeks to enrich minds rather than to close them.

This book seeks to counter the arguments about a perceived justice deficit, which are frequently raised in the literature. Micklitz rightly observes that 'What is missing in the debate is the post-nation-state dimension that is enshrined in the European integration project. Most of the time, more implicitly than explicitly, the benchmark for measuring the EU is an idealised version of the old national welfare state. In the transnational society beyond the nation-state, the responsible consumer-citizen has more freedom but also more responsibilities towards society' (p. 363).

This work is a remarkable and thought-provoking contribution to the literature on European law and policy, and it forces its readers to look at the dimensions of the European project, in particular its private law aspects, through wider, yet more clearly focused eyes. Micklitz recognises that 'Access and societal justice are the result of a dynamic interactive process where the Member States, the EU and private parties are involved' (p. 391). Normatively, he sees access justice as requiring the breaking down of barriers limiting participation and access, strengthening the position of workers and consumers in enforcing their rights in a multi-governance legal order, and establishing an institutional design capable of coping with the move from social protection laws to laws on the consumer and labour market. Societal justice requires in his vision a further step, an overarching element opening up private law relationships to take account of third parties affected by interpersonal agreements. It embraces the people, the workers, the consumers, the employers, and suppliers in a European society. This society is market-biased, but is not limited to the market, as Micklitz well demonstrates. Moving away from the focus on classical legal categories into a new understanding or a new perception is fundamental to the understanding of the challenges and perspectives opened up by the European societal order.

Micklitz's book challenges established ideas and confronts them with their limitations. It presents a vision and understanding that sees a clear path. There is clearly a way to go, and Micklitz does not shy away from the problems, but this important work will broaden the horizons of scholars, policymakers, and the judiciary, and

Cambridge University Press  
978-1-108-42412-7 — The Politics of Justice in European Private Law  
Hans-W Micklitz  
Frontmatter  
[More Information](#)

---

## SERIES EDITORS' PREFACE      XXI

stimulate researchers to plough new furrows and broaden their horizons. This impressive work is the product of mature reflection by a distinguished scholar, and we are very pleased indeed to welcome it in the *Cambridge Studies in Law and Policy* series.

Laurence Gormley  
Jo Shaw

## Table of Cases

### ECJ Case Law

- Case 8/74, *Dassonville* [1974] ECR 837.  
Case 36/74, *Walrave and Koch v. Association Union Cycliste Internationale and Others* [1974] ECR 1405.  
Case 43/75, *Defrenne v. Sabena* [1976] ECR 455.  
Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* [1979] ECR I-649.  
Case 14/83, *Von Colson and Kamann v. Land Nordrhein-Westfalen* [1984] ECR I-1891.  
Case C-143/83 *Commission v. Kingdom of Denmark* [1985] ECR 427  
Case 178/84, *Commission v. Germany* [1987] ECR I-1227.  
Case 103/88, *Fratelli Costanzo v. Comune di Milano* [1989] ECR I-1839.  
Case C-262/88, *Barber v. Guardian Royal Exchange Assurance Group* [1990] ECR I-1889.  
Case C-339/89, *Alsthom Atlantique* [1991] ECR I-107.  
Joined cases C-6/90 and C-9/90, *Francovich and Bonifaci v. Italy* [1991] ECR I-5357.  
Joined cases C-241/91 P and C-242/91 P, *RTE and ITP v. Commission* [1995] ECR I-743.  
Case C-93/92, *CMC Motorradcenter v. Baskiciogullari* [1993] ECR I-5009.  
Case C-127/92, *Enderby v. Frenchay Health Authority and Secretary of State for Health* [1993] ECR I-5535.  
Case C-392/92, *Schmidt v. Spar- und Leihkasse der früheren Ämter Bordesholm, Kiel und Cronshagen* [1994] ECR I-1311.  
Case C-408/92, *Smith and Others v. Avdel Systems* [1994] ECR I-4435.

- Joined cases C-46/93 and C-48/93, *Brasserie du pêcheur v. Bundesrepublik Deutschland and The Queen / Secretary of State for Transport, ex parte Factortame and Others* [1996] ECR I-1029.
- Case C-415/93, *Union royale belge des sociétés de football association and Others v. Bosman and Others* [1995] ECR I-4921.
- Case C-192/94, *El Corte Inglés v. Blázquez Rivero* [1996] ECR I-1281.
- Case C-233/94, *Germany v. Parliament and Council* [1997] ECR I-2405.
- Case C-265/95, *Commission v. France* [1997] I-6959.
- Case C-269/95, *Benincasa v. Dentalkit* [1997] ECR I-3767.
- Case C-67/96, *Albany* [1999] ECR I-5751.
- Case C-85/96, *Martínez Sala v. Freistaat Bayern* [1998] ECR I-2691.
- Case C-220/98, *Estée Lauder* [2000] ECR I-117.
- Case C-240/98, *Océano Grupo Editorial and Salvat Editore* [2000] ECR I-4941.
- Case C-281/98, *Angonese* [2000] ECR I-4139.
- Case C-376/98, *Germany v. Parliament and Council* [2000] ECR I-8419.
- Case C-381/98, *Ingmar GB* [2000] ECR I-9305.
- Case C-309/99, *Wouters and Others* [2000] ECR I-1577.
- Case C-453/99, *Courage and Crehan* [2001] ECR I-06297.
- Case C-481/99, *Heininger* [2001] I-9945.
- Case C-541/99, *Cape and Idealservice MN RE* [2001] ECR I-9094.
- Case C-96/00, *Gabriel* [2002] ECR I-6367.
- Case C-183/00, *González Sánchez* [2002] ECR I-3901.
- Case C-473/00, *Cofidis* [2002] ERC I-10875.
- Joined cases C-397/01 to C-403/01, *Pfeiffer and Other* [2004] ECR I-8835.
- Case C-147/03, *Commission v. Austria* [2005] ECR I-5969.
- Case T-289/03, *BUPA and Others v. Commission* [2008] ECR II-81.
- Case C-436/03, *Parliament v. Council* [2006] ECR I-3733.
- Case C-27/04, *Commission v. Council* [2004] I-6649.
- Case C-144/04, *Mangold* [2005] ECR I-9981.
- Case C-295/04, *Manfredi* [2006] ECR I-06619.
- Case C-13/05, *Chacón Navas* [2006] ECR I-6467.
- Case C-127/05, *Commission v. United Kingdom* [2007] ECR I-4619.
- Case C-168/05, *Mostaza Claro* [2006] ECR I-10421.
- Case C-341/05, *Laval un Partneri* [2007] ECR I-11767.
- Case C-411/05, *Palacios de la Villa* [2007] I-8531.
- Case C-429/05, *Rampion and Godard* [2007] ECR I-8017.
- Case C-432/05, *Unibet* [2007] ECR I-2271.
- Case C-438/05, *The International Transport Workers' Federation and The Finnish Seamen's Union* [2007] ECR I-10779.

## XXIV TABLE OF CASES

- Case C-64/06, *Telefónica O2 Czech Republic* [2007] ECR I-4887.  
Case C-243/08, *Pannon GSM* [2009] ECR I-04713.  
Case C-404/06, *Quelle* [2008] ECR I-02685.  
Case C-445/06, *Danske Slagterier* [2009] ECR I-2119.  
Case C-501/06 P, *GlaxoSmithKline Services and Others v. Commission and Others* [2009] ECR I-9291.  
Case C-54/07, *Feryn* [2008] ECR I-5187.  
Case C-205/07, *Gysbrechts and Santurel Inter* [2008] ECR I-9947.  
Case C-227/08, *Martín Martín* [2009] ECR I-11939.  
Case C-237/07, *Janecek* [2008] I-06221.  
Case C-239/07, *Sabatauskas and Others* [2008] ECR I-7523.  
Case C-555/07, *Küçükdeveci* [2010] ECR I-00365.  
Case C-40/08, *Asturcom Telecomunicaciones* [2009] ECR I-9579.  
Case C-58/08, *Vodafone and Others* [2010] ECR I-4999.  
Case C-137/08, *VB Pénzügyi Lízing* [2010] ECR I-10847.  
Case C-147/08, *Römer* [2011] ECR I-3591.  
Case C-265/08, *Federutility and Others* [2010] ECR I-3377.  
Case C-310/08, *Ibrahim und Secretary of State for the Home Department* [2010] ECR I-1065.  
Case C-317/08, *Alassini and Others* [2010] ECR I-2213.  
Case C-325/08 *Olympique Lyonnais* [2010] ECR I-02177.  
Case C-480/08, *Teixeira* [2010] ECR I-1107.  
Case C-484/08, *Caja de Ahorros y Monte de Piedad de Madrid* [2010] ECR I-4785.  
Case C-34/09, *Ruiz Zambrano* [2011] ECR I-1177.  
Case C-45/09, *Rosenblatt* [2010] ECR I-9391.  
Case C-65/09, *Gebr. Weber und Putz* [2011] ECR I-5257.  
Case C-208/09, *Sayn-Wittgenstein* [2010] ECR I-13693.  
Case C-236/09, *Association Belge des Consommateurs Test-Achats and Others* [2011] ECR I-773.  
Case C-250/09, *Georgiev* [2010] ECR I-11869.  
Case C-391/09, *Runevič-Vardyn and Wardyn* [2011] ECR I-3787.  
Case C-70/10, *Scarlet Extended* [2011] ERC I-11959.  
Case C-76/10, *Pohotovost'* [2010] ECR I-11557.  
Case C-453/10, *Pereničová and Perenič* [2012] ECR I-000.  
Case C-472/10, *Invitel* [2012] ECR I-000.  
Case C-618/10, *Banco Español de Crédito* [2012] ECR I-000.  
Case C-12/11, *McDonagh* [2013] ECR I-000.  
Case C-92/11, *RWE Vertrieb* [2013] ECR I-000.  
Joined Cases C-335/11 and C-337/11, *HK Danmark* [2013] I-000



- Case C-171/11, *Fra.bo* [2012] ECR I-000.  
 Case C-202/11, *Las* [2013] ECR I-000.  
 Case C-283/11, *Sky Österreich* [2013] ECR I-000.  
 Case C-394/11, *Belov* [2013] ECR I-000 000.  
 Case C-399/11, *Melloni* [2013] ECR I-000.  
 Case C-415/11, *Aziz* [2013] ECR I-000.  
 Case C-426/11, *Alemo-Herron and Others* [2013] ECR I-000.  
 Case C-472/11, *Banif Plus Bank* [2013] ECR I-000.  
 Case C-604/11, *Genil 48 und Comercial Hostelera de Grandes Vinos* [2013] ECR I-000.  
 Case C-32/12, *Duarte Hueros* [2013] ECR I-000.  
 Case C-174/12, *Hirrmann* [2013] ECR I-00.  
 Case C-270/12, *United Kingdom v. Parliament and Council* [2014] ECR I-00.  
 Case C-222/13, *TDC* [2014] ECR I-00.  
 Case C-333/13, *Dano* [2014] ECR I-00.  
 Case C-370/12, *Pringle* [2012] I-00.  
 Case C-497/13, *Faber* [2015] ECR I-00.  
 Case C-1/14, *Base Company und Mobistar* [2015] ECR I-00.  
 Case C-36/14, *Commission v. Poland* [2015] ECR I-00.  
 Case C-83/14, *CHEZ Razpredelenie Bulgaria* [2015] ECR I-00.  
 Case C-169/14, *Sánchez Morcillo and Abril García* [2014] ECR I-00.  
 Joined Cases C-381/14 and C-385/14, *Sales Sinués* [2016] ECR I-00.  
 Case C-508/14, *T-Mobile Czech Republic and Vodafone Czech Republic* [2015] ECR I-00.  
 Case C-613/14, *James Elliott Construction* [2016] ECR I-00.  
 Case C-105/15 P, *Mallis and Malli v. Commission and the ECB* [2016] ECR I-00.  
 Case C-119/15, *Biuro podróży Partner* [2016] ECR I-00.  
 Case C-121/15, *ANODE* [2016] ECR I-00.  
 Joined cases C-154/15, C-307/15 and C-308/15, *Gutiérrez Naranjo* [2016] ECR I-00.  
 Case C-191/15, *Verein für Konsumenteninformation* [2016] ECR I-00.  
 Case C-201/15, *AGET Iraklis* [2016] ECR I-00.  
 Case C-219/15, *Schmitt* [2017] ECR I-00.  
 Case C-75/16, *Menini and Rampanelli* [2017] ECR I-00.  
 ECJ Opinion 2/13, *Adhésion de l'Union à la CEDH*.

## UK Case Law

- High Court, *Ford Motor Co v. Amalgamated Union Of Engineering And Foundry Workers (A.U.E.W.)* [1969] 2 QB 303.

XXVI TABLE OF CASES

Supreme Court, *Liverpool v. Irwin* [1977] AC 239.  
 High Court, *Customs and Excise Commissioners v. ApS Samex* [1983] 1 All ER 1042, 3 CMLR 194.  
 Supreme Court, *James v. Eastleigh Borough Council* [1990] 2 AC 751 HL.  
 Supreme Court, *Office of Fair Trading v. Abbey National plc & Others* [2009] UKSC 6.  
 Supreme Court, *Cavendish v. Makdessi; ParkingEye v. Beavis* [2015] UKSC 67.

### German Case Law

Bundesverfassungsgericht, *Lüth* [1958] 1 BvR 400/51.  
 Bundesarbeitsgericht, *Friedenspflicht – Schlichtungsvereinbarung der IG Metall* [1958] 1 AZR 632/57.  
 Bundesverfassungsgericht, *Bürgerschaftsverträge* [1993] 1 BvR 567/89, 1 BvR 1044/89.  
 Bundesverfassungsgericht, *Vertrag von Lissabon* [2009] 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08, 2 BvR 182/09.

### French Case Law

Cour de Cassation, *Bancherau v. Chronopost*, D. 1997, Jur., p. 121.

### Others

High Court of Australia, *Hollis v. Vabu* [2001] HCA 44.  
 Appeal Court of Brussels, *D. Duchesne v. Office of Fair Trading* [2005].  
 ECHR, *Grainger v. the UK* [2012] No. 34940/10.  
 Spanish Supreme Court, [2013] No. 241/2013 (ES:TS:2013:1916) and [2015] No. 139/2015 (ES:TS:2015:1280).