

decide that Park's case should be dismissed under an interest of justice statute, there would be no determination on its merits. As a semi-voluntary defendant, such a dismissal would constitute his one bite of the apple.

If Parks ceased his treatment regimen and/or committed another crime (depending on whatever agreement was made as a condition for his dismissal) the court could grant the prosecution's application to resubmit Park's original indictment to a grand jury. This procedure contrasts sharply with the complete acquittal Parks would normally receive if he were found to have acted unconsciously (the actual outcome of *Parks*), or, at the other extreme, his potential candidacy for life imprisonment. In the United States, Parks would be eligible for the death penalty if he were found to have acted consciously and in a premeditated manner.

CONCLUSION

There are all sorts of line-drawing dilemmas throughout the criminal law. However, my research indicates that the problems with the voluntary act requirement are particularly acute:

- (1) The requirement is the initial filter (at least conceptually) for all individuals potentially eligible for the criminal justice system. It therefore assesses actors with the widest possible range of mental states, behaviours and potential defences, because the system has yet to determine if they should proceed or be acquitted entirely. A forced "voluntary/involuntary" dichotomy amidst such heterogeneity can produce particularly artificial choices with potentially extreme variations in sanctions for similar types of behaviours depending on how they are categorised (e.g. involuntary, insane, voluntary and dangerous).
- (2) Other criminal law doctrines (such as culpability) have a relatively broader line-drawing selection (for example, the four mental states under the Model Penal Code) within a more homogenous group of individuals (persons who have already been determined to commit

only voluntary acts). Therefore, the line-drawing choices and their consequences are far less extreme than those faced by voluntariness determinations.

- (3) Voluntariness determinations rely relatively more on factual medical/psychological information than do other dichotomous conceptions (such as reasonableness versus unreasonableness), which depend on jurors' views of appropriate social and moral norms of behaviour. The criminal justice system presumes that jurors know what kind of behaviour is unreasonable based on their own kinds of life experiences. Insanity determinations also have a strong normative component, even though expert testimony and legal standards provide guidance. Yet, involuntariness doctrines or jury instructions commonly offer specific examples of what that term means (for example, unconsciousness due to sleepwalking) because jurors typically are not going to know otherwise (insanity provisions do not contain such specific examples). In this sense, the science of involuntariness (and unconsciousness) is particularly critical.

My research concludes that the criminal law, as it currently exists, is sufficiently robust to incorporate new research on consciousness without being dismantled philosophically. Consciousness research does not threaten the criminal law's free will foundation any more than traditionally accepted science and doctrines. Rather, the research enlightens our normatively held beliefs and values. Potential claims to the contrary predict, prematurely, a type of deterministic society and individual that may exist only in novels. Time will tell, but that time has not yet arrived. 

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Note: This essay summarizes a larger, forthcoming, article entitled 'Crime and Consciousness: Science and Involuntary Acts'. For reprints of this article, please contact Deborah Denno, Fordham University School of Law, 140 West 62nd Street, New York, New York 10023, USA.

Powers and process in revenue law

C Stefanou and H Xanthaki, *A Legal and Political Interpretation of Article 215(2) [new Article 288(2)] of the Treaty of Rome: The individual strikes back*, Ashgate Dartmouth 2000, ix + 236 pp, £ 39.95.

This monograph is an interesting piece of the puzzle depicting the relationship between the individual and the state (national and European). The authors have drawn relevance from different disciplines (law, political science, international relations) and constructed some basic assumptions to support their thesis. Stefanou and Xanthaki's pivotal point is a detailed analysis and a

splendid case-law codification of the non-contractual liability regime *ante* and *post Francovich*, which builds their argument that Article 215(2) EC could be utilised as the procedural basis for joint liability of EU institutions and member states (and their authorities) for failure to implement Community law.

The authors recognise the limited role individuals, as subjects of Community law, play in the European integration process, in its legal and political dimensions. A thorough and informative summary of integration theories in Chapter 2 leads the reader to the conclusion that the European integration process is predominately a state affair (from the traditional public international law perspective), although the individual is explicitly a subject of the new legal order alongside member states.

The authors question the dynamics which underpin *access to justice* for individuals within the remit of centralised Community law enforcement in Chapters 3 and 4. An excellent critique of cases relating to action for damages under 215(2) EC before the ECJ and the judicial developments *post Francovich* shows the painfully difficult route individuals have to take (both in admissibility and substantive terms) in order to seek compensation for damages caused by wrongful acts or omissions of EU institutions. A glimpse of the concurrent liability scenario between EU institutions and member states, *post Francovich*, prepares the ground for the main theoretical thrust of the thesis: the utilisation of Article 215(2) EC as the legal basis for concurrent liability.

Chapter 5 contains the intellectual justification of concurrent liability between EU institutions and Member States for damages awarded to individuals in cases of wrongful acts or wrongful implementation of EC law. The authors assume that the existing decentralised judicial avenues of reference procedures under Article 177 EC represent a major drawback to the individual, as national courts interpret differently the *Francovich* formula. This appears as a valid statement, since national procedural and substantive rules cannot provide for a uniform mechanism of state liability across the European Union, thus hindering the principles of legal certainty and legitimate expectation. However, empirical evidence supporting the above assumption is missing from the debate. Are individuals precluded from seeking damages due to national judicial procedures and their unpredictable outcome? Is judicial centralisation the panacea in state liability cases? The authors seem to think that a centralised judicial route of concurrent liability will afford individuals better protection and enforceability of Community law.

Finally in Chapter 6, Stefanou and Xanthaki attempt to paint the political picture of the concurrent liability scenario and its effects upon the integration process. The value of this chapter rests with the angle that it focuses on the individual. The authors assume (correctly in my opinion) that joint liability of national and federal authorities places 'government' within the European Union in a more accountable pedestal and provides the individual much better chance in holding that government accountable. However, there are issues that deserved a lengthier coverage.

Firstly, the design and the mechanics of the EC non-contractual liability regime reveal the need to protect the

EU institutions from speculative litigation and reduce the case-law burden for the ECJ rather than to afford individuals a system whereby compensation is provided for damages caused to them. How would a revamped Article 215(2) EC address these issues?

Secondly, the avenue afforded to individuals for annulment of Community acts (Article 173 EC) follows the same pattern (in procedural and substantive terms) with Article 215(2) EC. This sort of action is a stringent, restrictive, qualified and an exclusive way of the individual having a direct attack at the law-making of EU institutions. There is certainly a correlation between an action for annulment and an action for damages. How would the concurrent liability scenario accommodate these independent, yet closely related, types of action before the ECJ?

Thirdly, national courts appear more comfortable than ever before in dealing with Community law. Developments and mechanisms such as direct effect, indirect effect and the *Francovich* formula have inserted an element of subsidiarity to national judiciaries. How would a centralised system of concurrent liability and an increasingly important role of the ECJ balance the role of national courts in applying and enforcing EC law?

Finally, Stefanou and Xanthaki have not sufficiently addressed the effect of the nature of European Community legal instruments upon the individual's access to justice. Indeed, directly applicable normative acts which are binding *erga omnes* (Regulations) are beyond the control of individuals, save for the draconian provisions stipulated in Article 173 EC, but elevate national judiciaries as enforcement *fora* of the individual's rights. Interestingly, Directives (and their implementation) which feed compliance procedures litigation before the ECJ (Article 169 EC) aspire towards the same outcome via the principle of direct effectivity. In both *legal uniformity* and *legal harmonisation* routes, national courts play a central role in applying and enforcing EC law. How would the concurrent liability system take into account the existing dynamics of applying and enforcing EC law?

Despite the above comments, Stefanou and Xanthaki's contribution to the academic debate concerning the role of the individual in the European legal and political integration process is a valuable one. Their monograph is an original, well-positioned and structurally sound interdisciplinary thesis that deserves careful consideration equally from EU institutions and Member States, particularly in an era where accountability is in the heart of the European integration process. I gladly welcome C Stefanou and H Xanthaki, *A Legal and Political Interpretation of Article 215(2) [new Article 288(2)] of the Treaty of Rome: The individual strikes back*, and highly recommend its reading to academics, practitioners and specialists in EU law and policy. 

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