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MORE ON EUROPEAN COMMUNITY LAW

*Trevor Hartley**

YEARBOOK OF EUROPEAN LAW 1981. Edited by *F.G. Jacobs*. Oxford: Clarendon Press. 1982. Pp. viii, 472. \$89.

European Community law is a comparatively new area of study — the first of the Treaties was signed in 1951 — but in Europe it has now become a major discipline, taught in almost all law schools. It is also one of the fastest-growing and most rapidly developing branches of the law: the judgments of the European Court alone amount to about 4000 pages of print each year and the volume of Community legislation, admittedly for the most part ephemeral agricultural regulations, is already causing storage problems in law libraries. In spite of its increasing importance, however, Community law is still regarded by most English lawyers as a rather obscure and esoteric branch of the law, understood only by a few specialists. The main exceptions are the large London law firms, who have realized the practical importance of Community law for their clients, and those lawyers in government service who had to learn the subject the hard way when the United Kingdom first joined the Community.

In spite of this it is interesting to note that academic interest in Community law began at a fairly early stage in the English-speaking world. Among the pioneers one thinks of are Donald Valentine in England¹ and Eric Stein and Peter Hay in the United States.² Nevertheless, Community law was not really studied to any significant extent in England until the United Kingdom joined the Community in 1973. Broadly speaking, therefore, one can say that Community law studies in Britain are only about ten years old.

Much has happened during this period. Most law schools have established courses on Community law, though the teachers of these courses were, at least in the beginning, self-taught. In the 1970's there was something of a stampede by law publishers in England to

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1. In 1965 Valentine published a two-volume work, one volume of text and one of materials: D.G. VALENTINE, *THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES* (1965). He also established what was probably the first course in the subject in England. This course was on the Law of European Institutions and was taught at the London School of Economics.

2. See E. STEIN & P. HAY, *CASES AND MATERIALS ON THE LAW AND INSTITUTIONS OF THE ATLANTIC AREA* (1963) (the precursor of later, more specialized materials). The April 1984 issue of the *Michigan Law Review* will be devoted to a *festschrift* in Professor Stein's honor. Dean Hay will be among the participants and has contributed an article entitled *The Case for Federalizing Rules of Civil Jurisdiction in the European Community*.

bring out books on Community law. As a result, there are probably now as many titles in the field as in such old-established subjects as contracts or property, though it must be admitted that not all the books are as carefully thought out or as well written as the average book in the more traditional areas.

Where textbooks and casebooks lead the way, law journals are bound to follow. The first English-language journal exclusively devoted to Community law was the *Common Market Law Review*, originally an Anglo-Dutch co-production, though written exclusively in English. Today this review is edited and published in the Netherlands, though it is still written exclusively in English and still retains English links.³ In 1976 the first all-British Community law journal, the *European Law Review*, started publication. This journal comes out six times a year and has established a name for itself for its very up-to-date coverage of new developments. Another purely Dutch review, *Legal Issues of European Integration* (also published in the English language) features longer articles, often of the survey type.

This is the scene in which the newest entrant — the *Yearbook of European Law* — finds itself. This is the second purely British review: it is published in Oxford and its editor is Francis Jacobs, a Professor at London University (King's College). Needless to say, however, the contributors are drawn from all over Europe and indeed from all over the world.

Because it is published only once a year, the *Yearbook* cannot compete in the market for up-to-date information. Instead it has set itself the goal of publishing "substantial and original work of enduring interest" (p. v). This is a noble aim and it is obviously impossible to decide, on the basis of the first volume alone, whether it has been achieved. Nevertheless it must be said at once that the prospects look good.

Volume I contains eleven main articles, all of good quality and many of great interest. These cover not only Community law, but also the law of other international organizations in Europe (such as the European Patent Organization) and European conventions such as that on the suppression of terrorism and, above all, the European Convention on Human Rights. The editor uses the phrase "transnational law" to designate these areas (p. v). Purely national law is

3. It is appropriate to pay tribute at this stage to the efforts of Dutch academics to educate their colleagues in the English-speaking world on the subject of Community law. Many of their books have been translated into English, see, e.g., P.J.G. KAPTEYN & P. VERLOREN VAN THEMAAT, *INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES* (1973), and some Dutch writers have paid us the compliment of writing in English in the first place, thus obliging their students to use a textbook in a foreign language. See, e.g., P.S.R.F. MATHIJSEN, *A GUIDE TO EUROPEAN COMMUNITY LAW* (3d ed. 1972); H. SCHERMERS, *JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES* (1976).

outside the scope of the *Yearbook*, unless it is considered "in a wider European context" (p. v).

After an article by a Canadian writer, Professor Easson, on directives for the harmonization of laws (pp. 1-44), there are two articles by members of the legal staff of the Commission of the Community. One, by G.L. Close, on the exercise of the external powers of the EEC, is an attempt to reconcile the rather heady theory of the Community's international competence with the somewhat more sober realities dictated by politics (pp. 45-68); the other by Richard Wainwright, is a discussion of one of the most controversial and bitterly contested areas of Community law, that relating to the common fisheries regime (pp. 69-91).

These are followed by two articles concerned with the power of the European Court under Article 177 of the EEC Treaty to give rulings on the validity of Community legislation on a "reference" (which is different from an appeal) from national courts in the member states. This topic has been of increasing importance lately in view of the restrictions that the Court's case law has placed on other, more direct, ways of obtaining judicial review. The first article, by Christopher Harding, is more of a general survey (pp. 93-113); this is nicely complemented by an article by M. Waelbroeck (pp. 115-123), a well-known Brussels lawyer who has attained equal distinction in the practical and academic fields. Waelbroeck deals with a very specific, and highly controversial, question: can the European Court limit the retrospective effect of its judgments under Article 177? The arguments on both sides are marshalled with the clarity and incisiveness one has come to expect from Mr. Waelbroeck, though it is unfortunate that the subsequent developments in the maize cases, where the French courts ruled that the European Court had exceeded its jurisdiction, occurred too late for consideration.⁴

Next come two articles on human rights in the Community. The first, by M.H. Mendelson, is a general survey of the European Court's case law (pp. 125-65). It traces the development of human rights as a "general principle of law," a device necessitated by the absence of a Bill of Rights (or indeed any mention of human rights as such) in the Community Treaties. The second article (pp. 167-205), by two well-known writers, Jeremy McBride and L. Neville Brown, focuses on the much more specific question of whether the Community should become a party to the European Convention on

4. The European Court judgment was *Roquette Freres v. French State-Customs Admin.*, 1980 E. Comm. Ct. J. Rep. 2917. However, the French court that had made the reference refused to follow the European Court's ruling insofar as it held that its decision on the validity of the Community measure was not retroactive. Judgment of July 15, 1981, Tribunal d'instance de Lille, Fr., 1982 Recueil Dalloz-Sirey, *Jurisprudence* 9. This judgment, by a court of first instance, has been followed by other courts of first instance in the same group of cases, but a ruling has not yet been given on appeal.

Human Rights. (All ten Member States are parties to the Convention but the proposal now is that the Community itself should become a party in its own right.) The authors favor accession, at least as an interim measure until the Convention can be amended to include economic and social rights relevant to the Community's activities, or until the Community can draft its own catalog of rights (pp. 202-05).

The next article, by D.L. Perrott, examines the extent to which the pricing policy of manufacturers could be affected by Community law (pp. 207-48). This is followed by a short, but very instructive, article by Lawrence Collins (another practicing lawyer who also functions as an academic) on interim relief against foreign parties and the Convention on Jurisdiction and the Enforcement of Judgments (Brussels Convention) (pp. 249-65). These articles tie together a number of issues of both theoretical and great practical interest.

Finally there is an article by Joseph Weiler on the concept of "supranationalism," which will be of particular interest to political theorists (pp. 267-306), and an article by Michael C. Wood on the European Convention on the Suppression of Terrorism (pp. 307-31).

These major articles make up about two-thirds of the book; the remainder consists of surveys and reviews of books. There is also a table of cases and an index.

One's overall impression is that this is an important new development and that the articles published so far are of the highest caliber. It should be read by all those interested in European law; it is unfortunate, however, that the high price (\$89, with the second volume recently published at \$105) for a volume of under 500 pages will mean that the *Yearbook* subscribers will mainly be libraries.