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Stein: Harmonizing of European Company

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HARMONIZATION OF EUROPEAN COMPANY LAWS. By *Eric Stein*. Indianapolis: Bobbs-Merrill. 1971. Pp. lxii, 558. \$22.50.

Professor Stein anticipates the first reaction to this book: Whom should it interest? A study of the harmonization of the corporation laws of the European Communities' Member States is not headed, self-evidently, for legal best-seller lists even if it claims to be a complete study of substantive company law, which this does not. More pointed, and pointing more to Stein's actual concerns, is the related observation that the book is not necessarily headed for political science best-seller lists either. It is Stein's assumption, which I share, that this reflects upon a shortcoming among some social scientists: their timidity—perhaps through inexperience, perhaps through aversion—in dealing with the more technical aspects of the subject matters of regional integration as they develop hypotheses concerning the processes and mechanisms through which integrative results occur.

These observations set the framework for Stein's book. He wishes to test the role in integrative processes of legal homogeneity as one component of social and economic homogeneity, which in turn are entrants, among others, in the category of presumptively integration-furthering conditions. But Stein is first a lawyer; and he recognizes in an admirably perceptive foreword that to the extent he is applying political science, both the bent of the craft and the substantive direction of his interests make the resulting work mainly an offering, in case study form, to the political scientists to draw upon in pursuing their own analytical efforts; it is a sounder, more competent, and subtler primary study of a difficult subtopic of assimilation of laws among integrating nation-states than their own dip into the thicket

could provide. At the same time the book is, of course, offered to lawyers concerned with company law, both national and Community, in Europe. It is, I think, detailed as well as broad enough not to fall between these two stools as Stein disarmingly fears. Whether it sits comfortably on both is less a function of its own qualities than of the underpinnings, or, more precisely, the exact needs of each group of specialists.

The latter group of specialists—the lawyers—receive here an excellent review of three facets of European corporation law: a country-by-country analysis of presently critical doctrinal developments; a historical, topical, and critical statement of the substance of the First Directive, 1968, of the Council of Ministers, to the Member States to harmonize their national legislation in specified ways with respect to the three areas of “publicity” attendant upon the formation of companies, scope of authority of officers, and consequences of defective formation (plus a brief, excellent status report on both the Second Directive concerning capital structure and the then-proposed Third Directive on financial disclosures); and a succinct review of the state of progress toward a legal regime for a supranationally based European company.

On all these matters the book is admirable. In brief format the contextual significance of the legal problems, including their political context, is explained, and the actual legal problems analyzed. There is no better English language treatment of company formation law, of the complex problems of invalidity, or “nullity,” in the case of defective formation, of the still relevant *ultra vires* problems in European jurisprudence, and so forth. The discussion of substantive legal reforms at the national level is, if anything, even more instructive; I would highlight particularly the review of German doctrine in the area of intraenterprise and affiliated-company transactions, and the review of French changes in corporate-hierarchy structures. In short, any lawyer concerned with the changing European company law scene—national and Community—will profit significantly, and without undue expenditure of time, from assimilating these major sections of the book. Only the treatment of the still-in-draft-form *Societas Europea* is truncated—but only by the accident of timing, not because of any shortcomings of the author.

The problem of timing is always serious in writing on matters of such topical concerns, and exists here. Nevertheless, the book should retain its value to the corporation lawyer through several years of Community developments mainly because Stein, in a major chapter of almost 200 pages entitled “Projects and Prospects,” has given a detailed overview of all current activities at both legislative levels, and, again, has indicated the economic and political, as well as legal, context that will shape the eventual results of these reform and harmonization efforts.

Lawyers as well as political scientists are concerned with the institutional aspects of law development and enforcement in the European Communities, and, as would be expected from Professor Stein's past contributions to this subject, here the treatment is masterly. The "constitutional" framework (Stein's quotation marks) of the technical process of law harmonization and of the Council's competence to apply this process to company law is detailed and comprehensive, and fairly reflects the variety of dogmatic and interest-oriented views about these touchy topics that have abounded in the debates of the past fifteen years. The heart of his contribution, however, probably lies in the two chapters devoted to describing the process by which the First Directive was achieved: the early groping for the jurisdictional base and for the proper subject matter for this first exercise; and the slow, spiral—at times circular—path to fruition. Most of the questions about the dynamics of this "legal homogenizing" process are raised at this stage, and what is particularly arresting about the narrative, which here at times necessarily takes on a journalistic character, is its view of the relation between the legal nature of the subject and participants, and the particular political process involved in this integrative effort. One might expect the relatively low intensity of the problem to make for easy ascendancy of central bureaucratic decision makers over the contrariety of professional views diffusing these issues. In fact, the same professional milieu and low-intensity conditions created the frustrating situation in which significant interest-group jousting not only continued until the last stage of Council deliberations, but also forced major changes of content and value at what normally would have been the final, confirming stages of the Council's directive-issuing process.

In a concluding speculative chapter, Stein reviews this among other specifics of the experience he has so ably described, and especially discusses the interplay of Community and national legal-institutional groups, and the effects upon each (and, within each, upon the component actors) of exposure to the others in this joint process. With this he transmits the work to the larger arena in which traditionalists, functionalists, and neofunctionalists continue their study of nation-integrating processes.

Both groups of addressees are fortunate that one of the few scholars versed in both styles of address undertook this effort. Stein's *Harmonization of European Company Laws* is large in scope, rich in utility, and a creative contribution to the large inquiry of which it is a part.

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