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Valentine: The Court of Justice of the European Communities

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THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES. 2 vols. By *D. G. Valentine*. London: Stevens and Sons; and South Hackensack, New Jersey: Fred B. Rothman and Co., 1965. Pp. xlv, 601; xxvi, 873. \$65.50.

Dr. Valentine's two-volume work on the Court of the European Communities is indeed imposing. Volume I begins with a brief outline of the history of the present Court, which succeeded the earlier Court of Justice of the European Coal and Steel Community (ECSC) in 1958 when the European Economic Community (EEC) and European Atomic Energy Community (Euratom) Treaties came into force. This historical framework is followed by a detailed examination of the Court's organization and its procedural rules, and here the author refers to pertinent judgments to show how the Court has applied these rules. The largest part of Volume I—three chapters—is devoted to an analysis of those articles in the three

Community Treaties that confer jurisdiction upon the Court. This task is carried out in the usual manner of German legal commentaries: the articles are examined in the order of their appearance in the three treaties and their text is broken down into sentences, phrases, and even words for careful scrutiny and interpretation. Wherever possible the author has again drawn on the decisions of the Court for the interpretation of ambiguous and controversial passages. This section of Volume I is logically followed by a survey and appraisal of the methods used by the Court for interpreting the Community Treaties. Also included is a discussion of certain assumptions that seem to form the basis for the logical reasoning adopted by the Court. The author next describes the objectives of the three Communities and the functions of the various institutions set up in the treaties to accomplish these objectives. In the final section of Volume I, the full texts of the Statutes of the Court, the Rules of Procedure, and other relevant documents are reproduced.

Volume II consists of abbreviated translations of all judgments rendered by the Coal and Steel Community Court and those of the present Court until the end of 1960. These judgments are not presented in chronological order, but rather are grouped in nine chapters according to their subject matter. Individual chapters deal with such problems as the publication and observance of price lists, subsidies to Belgian coal mines, the Ruhr coal monopoly, control of transport, the problems of steel scrap, and contracts of employment. Each chapter is introduced by a brief discussion of the relevant economic and political conditions, and is followed by a summarization of the pertinent decisions and communications of the High Authority and other organs of the Community. In order to save space in the presentation of the judgments, the author has summarized the facts and arguments of the parties in his own words and has also drawn on the submissions of the two Advocates General attached to the Court. Moreover, for the sake of clarity, he has provided the reader with a summary of the ruling immediately before the translation of its actual text. Finally, in an Appendix to Volume II, Dr. Valentine reports briefly on all of the cases brought to the Court prior to 1960 but withdrawn before judgment.

It is evident from this short description of Dr. Valentine's two volumes that a tremendous amount of energy, thought, and time has been expended and that the end product is very comprehensive in scope. However, there appear to be a number of weaknesses, especially in Volume I, and it is to this part of the author's work that attention must first be directed.

In terms of the organization of this volume, the aims of the three treaties and the institutions created by them should have been discussed at the outset rather than at the end. Dr. Valentine cor-

rectly states in the Preface (p. viii) "that there is nothing more annoying than constantly to read about, say, the High Authority, without being able readily to find out exactly what it is and what it does." Since most of the legal practitioners who might want to use this book are likely to possess little knowledge about the powers and functions of the Community organs and may be unacquainted with the very important institutional setting of the Court, a proper introduction at the beginning of the book would have been particularly valuable.

Of more far-reaching significance is the propriety of the arrangement used for the discussion of the Court's jurisdiction. Is the treatment of the various articles conferring jurisdiction upon the Court in the numerical order in which each is placed in the three Community Treaties the most effective method of importing knowledge to the uninitiated, but interested reader? In fact, is it the very best method of analyzing the jurisdictional assignments in general? It would perhaps have been better to employ a systematic approach which would have permitted the simultaneous analysis and appraisal of those jurisdictional attributions that were based on similar assumptions and provided the same or comparable remedies. Had this approach been used, such articles as 33 of the ECSC Treaty, 173 of the EEC Treaty, and 146 of the Euratom Treaty, all of which deal with appeals against acts of Community organs, and articles 40 of the ECSC Treaty, 178 and 215 of the EEC Treaty, and 151 and 188 of the Euratom Treaty, all of which are concerned with actions for damages, would have been treated together. This would have permitted the common concepts underlying these provisions as well as the subtle differences to emerge more distinctly. It is true that when Dr. Valentine discusses the jurisdiction of the Court under the EEC Treaty, he refers to the comparable provisions in the ECSC Treaty. But especially for the novice in European Community law, this requires a considerable amount of leafing with the possible result that comprehension of a difficult subject matter is retarded. Moreover, even if one were to accept Dr. Valentine's method as proper, it seems essential to this reviewer that the examination of the Court's jurisdiction be preceded by an introductory chapter which would attempt to clarify the often confusing terminology employed in the three treaties. Although the differences between such terms as "decisions," "recommendations," and "opinions" as used by the ECSC Treaty on the one hand, and the EEC and Euratom Treaties on the other, are carefully explained in the chapter dealing with the Court's jurisdiction under the EEC Treaty, such a discussion would have been more profitable had it been placed prior to the discussion of the jurisdictional assignments of the ECSC Treaty. Similar considerations also apply to other terms

with which common law practitioners are generally not familiar, such as *faute de service*, *faute personnelle*, and *pleine juridiction*.

The organization of Volume I is in part also responsible for certain substantive imbalances in the text, which have been aggravated by the fact that the last judgment considered by the author in his analysis of the Court's jurisdiction dates from February 5, 1963,¹ although the book under review was published in 1965 and the Preface written on January 1, of that year. Since prior to 1963, most judgments of the Court arose from disputes under the ECSC Treaty, the reader finds an over-emphasis on the jurisdictional provisions of that Treaty. Indeed, nearly 160 pages are devoted to the jurisdiction under the ECSC Treaty, whereas only 70 pages deal with the jurisdictional powers assigned to the Court by the EEC Treaty which today come into much greater play than those provided by the older treaty. One may of course rationalize this imbalance by pointing out that the basic principles developed by the Court for its contemporary jurisprudence stem from the earlier period of its operations. But this argument pales when one recalls that courts frequently alter or completely overthrow the principles upon which earlier jurisprudence has been based.

The impact of the imbalance shows up most strikingly in the relatively scanty discussion of perhaps the most important provision of the EEC Treaty, article 177. Although Dr. Valentine refers to both the *Bosch* and *Van Gend* decisions,² he focuses primarily on the procedural problems which they raise. He completely ignores the very significant and forthright statements of the Court in the *Van Gend* decision about the novel judicial order established by the EEC Treaty under which the Community law is able to create, on its own, individual rights for the citizens of member states—rights that become part of the legal systems of these states. There can be no doubt that the author should have given considerably more emphasis to the tremendous significance of this article for the legal and political life of the Community. Moreover, because of the unfortunate early cut-off date, Dr. Valentine was unable to draw for his analysis of article 177 on the cluster of salient preliminary decisions rendered by the Court during the remainder of 1963 and 1964.³

1. Preliminary decision in the case of N.V. Algemene Transport—en expeditie onderneming Van Gend & Loos v. Administration Fiscale Neerlandaise, Dec. No. 26-62, Feb. 5, 1963, 9 Recueil de la Jurisprudence de la Cour 1.

2. Preliminary decision in the case of Kledingverkoopbedrijf Co. de Geus v. (1) Robert Bosch GmbH, (2) Willem van Rijn Inc., Dec. No. 13-61, April 6, 1962, 8 Recueil de la Jurisprudence de la Cour 89; Preliminary decision in the case of N.V. Algemene Transport—en expeditie onderneming Van Gend & Loos v. Administration Fiscale Neerlandaise, *supra* note 1.

3. The most important of these decisions clearly was the case of Costa v. E.N.E.L., Dec. No. 6-64, July 15, 1964, 10 Recueil de la Jurisprudence de la Cour 1141.

This early cut-off date created other undesirable consequences. By not being able to refer to the case of *Plaumann & Co. v. EEC Commission*, decided on July 15, 1963,⁴ Dr. Valentine missed a significant ruling of the Court regarding the capability of private parties under article 173 of the EEC Treaty to file appeals against certain decisions not specifically addressed to them. In contrast to Dr. Valentine's opinion (p. 291), the Court held that decisions of "direct and individual concern" which can be appealed under article 173 could not be taken to mean the same as decisions "concerning" these parties—phraseology used by article 33 of the ECSC Treaty. The Court thus afforded private parties less legal protection than Dr. Valentine seemed to assume would be available under the EEC Treaty.

Another weakness of Volume I is the lack of depth in the analysis of controversial issues. The opinions of other commentators are cited only rarely and their views are never explored critically or extensively. The opinions of the Court are accepted in most cases without any criticism and become the basis for all interpretation. In the chapters on the organization and procedures of the Court, many problematical questions, such as the divergencies between the Court's Statutes, are treated insufficiently, if at all. The space in these chapters is primarily devoted to a description and explanation of the pertinent provisions contained in the Treaties, the Statutes of the Court, and Rules of Procedure, and of their interpretation by the Court.

Although the author states in the Preface that every article in the three Community Treaties that confer jurisdiction upon the Court would be analyzed in the three main chapters of Volume I, articles 103 through 105 of the Euratom Treaty are not treated at all. These articles authorize the Court to rule on the compatibility with the Treaty of international agreements concluded by the member states.⁵ The author's announcement (p. vii) that in his analysis of the Court's methods of interpretation he would show "whether, to use popular terms, it is concerned with the economic and social effects of its judgments" raises high expectations, but the author has disappointingly little to say about this topic.

Finally, one may wonder how much Dr. Valentine's English translation of the various treaties and documents has improved the understanding of the provisions he has examined. There are now three English translations—those of Dr. Valentine, Her Majesty's Stationery Office, and the Communities themselves—and since all of them are somewhat different, the result is apt to be confusion rather than clarification and greater knowledge. In some cases, Dr.

4. Dec. No. 25-62, 9 Recueil de la Jurisprudence de la Cour 197.

5. They are, however, referred to in the chapter on Procedure.

Valentine has retained the French words in his texts; for example the word *délibérations* in articles 38 of the ECSC Treaty and 180 of the EEC Treaty and the words *pleine juridiction* in article 36 of the ECSC Treaty were not translated because it was considered too difficult to find an English word that would convey the precise meaning of the French word. But is refusing to translate really a solution when the goal is a better and clearer *English text*?⁶

Turning now to Volume II, there can be little doubt that it fulfills an urgent need of the English-speaking world since English translations of the Court's judgments have been available only since 1961 when the Common Market Law Reports initiated the regular publication of the Court's decisions. The circumspect manner in which Dr. Valentine presents the judgments must arouse the greatest enthusiasm of interested lawyers, political scientists, historians, and economists alike. The question may be raised, however, whether it would not have been valuable to reproduce the submissions of the Advocates General *in toto*. The Court rules in the first, last, and only instance on cases before it and the judgment, following Continental practice, does not divulge the voting pattern of the judges. The recommendations of the Advocates General, especially if they are not accepted by the Court, are highly significant because they reflect the culmination of the judicial efforts which are often performed by the lower courts for other supreme jurisdictions and they can also be viewed as "dissenting opinions." However, since hundreds of additional pages would have been required to print the submissions of the Advocates General, it is possible that the expense would have outweighed the value.

Another bonus, especially for political scientists, would have been the inclusion in the Appendix of reasons for the withdrawal of certain cases before judgment, as well as the manner of their settlement. In particular, when actions were brought by member governments against the High Authority—for example, the complaints of the French government against High Authority decisions affecting the state-controlled operations for the import of coal (cases 5-56 and 2-58)—important political considerations were obviously at stake and it was evidently felt that out-of-court settlement was preferable to an adjudication by the Court. Again, the non-availability of space may have precluded the enlargement of the Appendix.

The criticisms of Volume I should not obscure the overall value of Dr. Valentine's work. It represents an important contribution to the study and development of European Community law and to the understanding of the Court itself. Without question, both

6. In the German version of the treaties the word *Beschluss* is used for *deliberation*. The English word "resolution" therefore seems to be an appropriate translation and is used both by the Stationery Office and the Community translators.

volumes are very useful tools for both the English-speaking practitioner and the teacher of law and they will serve to stimulate further the already wide-spread interest in the exciting experiment which the establishment of the supranational Court of the European Communities constitutes.

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