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Book Reviews

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BOOK REVIEWS

HARMONIZATION OF EUROPEAN COMPANY LAWS, NATIONAL REFORM AND TRANSNATIONAL COORDINATION. By Eric Stein. Indianapolis: The Bobbs-Merrill Company Inc. (1971). Pp. 558. $22.50.

The Research and Policy Committee for Economic Development declared in 1959 that the European Economic Community "was one of the most important undertakings of the twentieth century."[1] More than 14 years have elapsed since the signing of the Treaty of Rome[2] in March of 1957, and although much progress has been made, the creation of a truly common European market seems to be many years away. If it does come, it will comprise a population approximately the same size as the United States, would be the largest world trader, the second largest producer of cars and the third largest industrial unit in the world.[3]

Among the many problems which must be dealt with in order to achieve such a regional market is that of bringing about a more uniform type of company law within the territories of the six Member States.

As suggested by its title, Professor Stein's book considers in great detail the history and evolution of the efforts of the Common Market to coordinate, assimilate and harmonize company laws within the EEC. It is extremely well researched, drawing upon French, English, German, Dutch and Italian language sources. It gives the reader some insights into the evolution of company law in each of the Member States, and the attitudes and positions taken by various national groups toward Community efforts to "harmonize" those laws. Beginning with a description of the general background and milieu in which harmonization efforts have taken place, the book proceeds with an overview of the company law and company law reform in each of the Member States. This is followed by a description of the organization and inner-workings of the various institutional and working groups within the Community as they set about the task of harmonization in the early 1960's. A lengthy study is

[1] RESEARCH AND POLICY COMMITTEE FOR ECONOMIC DEVELOPMENT, THE EUROPEAN COMMON MARKET AND ITS MEANING TO THE UNITED STATES: A STATEMENT ON NATIONAL POLICY 19 (1959).

[2] Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 14 (1958).

[3] THE EUROPEAN COMMON MARKET — THE EUROPEAN COMMUNITIES 12 (1968).

then presented of how the First Coordination Directive[4] issued by the Council of Ministers on March 9, 1968 was put together, and its impact on the company laws of Member States. The balance of the book is devoted to present, unfinished efforts of the Community in the area of company law harmonization, a discussion of the concept of the "European Company," and finally the author's broader view of national reform and Community coordination of company law.

Until recent years, European companies have been organized and geared almost exclusively toward national markets. They have relied on local capital for their financing, thereby restricting their size, and, to the extent they have bought and sold outside their national boundaries, they have done so on an import-export basis. If such companies now are to serve a market of more than 200,000,000 people, they will obviously require expanded sources of capital with its implications of "foreign" share ownership. They will need to organize on a multinational basis, which implies the establishment of subsidiary enterprises, branches and sales offices throughout the territorial markets they serve, without regard to national boundaries. Furthermore, national companies will need to be freer to combine or merge with companies in other Member States in order to more efficiently and effectively serve the regional market. Such freedom can also help *create* a common market by facilitating the flow of goods and services across national boundaries.

As noted by Professor Stein, the EEC Treaty has attempted to deal with some of the foregoing needs in at least two different ways relevant here. First, Articles 52 through 66 contain rules and empower the Commission and Council of the EEC to prescribe rules to guarantee freedom of establishment or the right of national companies to engage in business on a nondiscriminatory basis in any Member State. Secondly, two articles of the Treaty authorize the institutions of the Common Market to "coordinate" and "approximate" company laws of the various Member States. Article 54(3)(g) provides for the coordination of company laws dealing with the protection of the interests of members of companies and of third parties, and Article 100 calls for the issuance of directives for the approximation of those national statutes and administrative rules which directly affect the establishment or functioning of the Common Market.

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[4] J.O. No. L 65 at 8-12, in E. STEIN, HARMONIZATION OF EUROPEAN COMPANY LAWS 515-25 (1971).

There is a third possible method for facilitating the activities of commercial enterprises across national boundaries, a possibility not dealt with by the Treaty but nevertheless under consideration within the Community. That would be the creation of Community policy and regulation to permit the establishment of "European" companies. A detailed draft European Stock Corporation Law prepared by Professor Pieter Sanders in 1967 at the request of the Commission of the EEC suggests the earnest interest that exists for such an approach.[5]

The First Coordination Directive of the Council, the only Community directive published thus far under the harmonization provisions of the Treaty, establishes minimum requirements for Member States' company law in the areas of public disclosure of company affairs, validity of company undertakings and invalidity of the company (failure of formation due to failure to meet specified legal requirements). The requirements of the Directive are rather general, leaving the details and methods of implementation to the Member States. The Directive required Member States to adjust their national laws accordingly within eighteen months of its publication;[6] a deadline which was met only by the Federal Republic of Germany. In Belgium and Luxembourg, implementing action was pending in mid-1970. In only two of the six Member States, France and Italy, was implementation possible without parliamentary action.

Of perhaps special interest to the American reader is Chapter 3 of the book, which deals in part with American "Common Market" law. Critics of EEC efforts to harmonize company law can point to the fact that American corporations have grown quite gigantic and affluent while serving national markets spreading through fifty-one state and district jurisdictions which have unharmonious company laws. More difficult for the outsider to perceive are the unifying and harmonizing factors which to a great extent have offset the labyrinth of state commercial laws. Perhaps foremost among these factors are the centralized capital market represented by the national stock exchanges, and the unifying federal "company laws" dealing with securities, financial reporting, bankruptcy, patenting, labor and taxation. As a practical matter, state laws deal more with a company's form and federal law deals with its commercial operations. Although the foregoing is a considerable oversimplifi-

[5] Sanders, *European Stock Corporation-Text of Draft Statute with Commentary*, CCH COMMON MKT. REP. (1969). *See also* European Community Information Service Release (July 22, 1970), 2 CCH COMMON MKT. REP. ¶ 9381 (1970).

[6] First Coordination Directive, art. 12.

cation, the multistate company in the U.S. is forced to devote many more man-hours to, and its lawyers are usually much more familiar with, problems of doing business under federal as opposed to state law and regulations. Professor Stein interestingly notes that because of the density of the Federal regulatory forest and the diversity of state regulation, the role of the American corporate lawyer is both different and broader than his European counterpart.

When the reader has finished the last page of this book, he is struck by the effort, debate, thought, research and writing, and the number of groups and individuals which have been involved in the process of harmonization of European company law thus far. Although the problems and considerations are complex and political as well as technical, it is equally striking what meager fruits have been harvested from such a large effort. Nevertheless, Professor Stein concludes on a note of cautious optimism, pointing out that 1) "any sensible appraisal must proceed on the assumption that the First Directive . . . constitutes only the first step, to be followed by further measures of coordination . . . ," 2) law making and reform are inherently slow processes, and 3) the late 1960's were years of Community stagnation which may now give way to the "Hague spirit," infusing new life into assimilation efforts.

As an analytical study of the meaning, interpretation and impact of the present "law," *i.e.*, the First Directive, the book is not complete. This is true for perhaps two reasons. The Directive is still relatively new. Its interpretation has not yet been tested. And whether the specific forms of implementation introduced in Member States fully and adequately comply with the Directive remain to be seen. Second, the full impact of the Directive is perhaps measured best quantitatively, a task beyond the scope of the book and of legal analysis.

As a detailed historical record of what has happened politically and legally in the Community thus far in the area of company law coordination, Professor Stein's book represents an exhaustive and valuable contribution to the literature.

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U.S. CHINA POLICY AND THE PROBLEM OF TAIWAN. By William M. Bueler. Boulder, Colorado: Colorado Associated University Press. (1971). Pp. 140. $5.95.

The complexity of past events and present policy considerations in China is unraveled and documented in *U.S. China Policy and the Problem of Taiwan.* By assuming nothing and analyzing closely, the author creates an enlightening factual framework of the history and probable future developments of this crucal area of the world.

With the financial and military support of the United States, the regime of General Chiang Kai-shek has occupied Taiwan since 1947. Since the initial occupation of this rather small island, no less than five American administrations have keyed their support on "a futile and foolish dream"[1] expressed by the General to return and conquer the China mainland. This feat is to be accomplished with the support of the U.S. and the Taiwanese natives. The General has led the free nations of the world in his advocacy of total destruction of the Communist dictatorship now occupying mainland China.

To accomplish this avowed goal, Chiang Kai-shek has suspended elections in Taiwan since his occupation in 1947, imprisoned his vocal opponents, and caused a mass exodus of those native Taiwanese possessing idle dreams of an independent Taiwan expunged of freedom loving dictators. Examining the 14 million inhabitants of Taiwan, a population is noted consisting of 85% native Taiwanese and 15% exiled China mainlanders. With rare exception, government positions have been filled by exiled mainlanders, with the Army lacking even a single native Taiwanese officer above the rank of Major. Many scholars, including the author of this book contend "that if genuinely open elections were held, following a free and thorough debate, the people of Taiwan would vote Chiang Kai-shek and his political appointees out of office by a substantial majority and would establish an independent Taiwan."[2]

At this point, the analysis directs itself to the question of how the United States became involved in the regrettable circumstances of permitting itself to defend freedom by creating a repressive dictatorship. Such domestic factors as the emergence of the reactionary freedom lobby in Congress, the effects of the McCarthy "witch hunt" on the decisions made by the State Department, and the unconstructive dialogue of partisan politicians (placing the blame solely

[1] W. BUELER, at 34.

[2] *Id.* at 125.

on the Democrats for losing China) imposed an overwhelming burden on the foreign policy decision makers. Under normal circumstances, the author submits, practical experience would very possibly have led them to arrive at an entirely different conclusion.

In 1947, Secretary of State Dean Acheson listed three conditions for any new government to obtain U.S. recognition: 1) It must exercise effective control, 2) it must recognize international obligations, and 3) it must govern with the consent of the people. Because President Truman's main consideration was with U.S. relations with the China mainland, neither he nor the Secretary of State were willing to commit wholehearted support to the government in exile of Chiang Kai-shek. The "let the dust settle policy" was dashed by the outbreak of the Korean conflict and what many citizens were led to believe was the strategic interest of the U.S. The Korean conflict led to the neutralization of the Formosa Straits by the Eisenhower administration, the build up of Nationalist troops on Quemoy and Matsu, the passage of the Formosa Resolution in 1955,[3] and the ultimate rationale that to defend the "Free World," we are compelled to support a one man dictatorship whose dream is to reestablish himself in power at any cost, including global warfare. The Kennedy and Johnson administrations varied little from the script written in the fifties and early sixties. In toto, the "Free China" policy has cost the U.S. 2 billion dollars in foreign aid and military support. In addition, it committed the U.S. to a policy of nonrecognition of one of the world's major powers.

The history of the Chinese Communist reaction to our policy on "Free China" has been one of overt hostility that precluded normal relations between the two powers. Until recently, all diplomatic encounters with Peking were preconditioned on the removal of U.S. troops and support from the Nationalist regime. However, events over the last year have led many experts to believe that a thaw has occured at the policy level in the Chinese capital. There has been an expressed desire by Chinese leaders to establish normal relations with the U.S. Many scholars believe that there are hopeful signs that the intransignent demands for the return of Taiwan have been somewhat softened to encourage the idea of compromise. Additionally, since this book has been published, The Peoples Republic of China has been successful in their request for admission

[3] In March, 1955, the United States and the Nationalists signed the mutual defense treaty in which the U.S. committed itself to the defense of Taiwan and the Percadores and such other territories as may be determined by mutual agreement.

to the United Nations and, more importantly, to occupy the seat formerly held by the Nationalists.

President Nixon is now in a position to reevaluate the strategic self interest of the U.S. in light of these developments. It seems evident that our past decisions in regard to "Free China" have excluded any consideration for the rights of the native Taiwanese. The time seems right for the United States to reexamine the old myths based upon the return of the Nationalists to the China mainland. The current Nixon doctrine favoring "Two Chinas" pleases neither the Nationalist nor Peking government and satisfies no strategic interest of the U.S. Peking's previous demands for the return of Taiwan seems to be equally unsatisfactory. Obviously, a compromise must be reached that will allow both parties to save face and abandon old assumptions for new realities. One alternative is for the people of Taiwan to declare independence without interference from either Peking or Washington. This would more easily enable both parties to absolve themselves from their presently intractable positions. It remains to be seen whether sufficient nationalist spirit exists among the native Taiwanese to establish and maintain an independent government.

Mr. Bueler has very capably organized and presented the various issues involved in this complex problem. He is adept at analyzing the effects of domestic political pressures on U.S. foreign policy decisions and his travels to Taiwan add another dimension to past observations of the current situation in that country. The only apparent improvement that could be suggested is that more energy might have been expended examining the various policy ramifications confronting the Nixon administration. Events occurring among the two Chinas and the U.S. have consequences beyond these three governments. Particularly perplexing to the reader will be the lack of treatment of the effect of possible policy changes on Japan and the Soviet Union. This, however, does not detract from the generally informative aspects of the book and presents the pleasant possibility of future work on the subject by the author.

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