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Book Review

HARMONIZATION OF EUROPEAN COMPANY LAWS: NATIONAL REFORM
AND TRANSNATIONAL COORDINATION by *Eric Stein*. Indianapolis:
The Bobbs-Merrill Company, Inc., 1971 pp. 558, \$22.50.

This is primarily a book about the legal process. It concerns a specific legal process—the process of harmonization of laws within the European Economic Community—and, despite the author's modest disclaimer, is the best work that anyone, be he lawyer or political scientist, is likely to produce. Professor Stein is sophisticated in his views, appallingly universal in his research, subtle in presenting arguments, yet generally sound in the judgments he makes and the conclusions he draws.

The book in fact concerns harmonization only as it relates to company law,¹ and Professor Stein makes no claim to universality in his conclusions. But the process of harmonization of company law is an excellent model for other areas in which the process will be used in the future. First, company law is primarily a technical matter, which will be of interest mostly to the experts in the field: government officials, organizations representing business interests, private lawyers, and law professors. Unlike the area of turnover taxes, it lacks the urgency for immediate action. Second,

1. Company law can roughly be defined as corporation law. The book considers the impact of other areas also, such as choice of law and tax problems.

however, there are some issues, largely on the fringes of Professor Stein's principal concerns here, that are highly political in nature, running to the heart of the ideologies of many of the influential political parties within each nation. Finally, certain issues of company law are still struggling for liberation from the extraordinarily theoretical constructions common in the United States at the turn of the century. This trinity will be present in most other areas where harmonization will be sought, and the processes described by Professor Stein will apply there also.

Writers on the substantive law of the EEC suffer the same fate as those who publish works on American tax law. Without supplementation, the black-letter law they relate is often dated within a year or two of publication. In a sense, the same is true of this volume. The first and second directives, discussed at length therein, have been followed by three more proposed directives on company law and one on capital contributions taxes in the two years since the volume went to press. Yet in each case, Professor Stein anticipated the problems dealt with in those proposals and discussed them at length. Thus, the substance, the issues, and the arguments are included, and the reader knows as much as he can about the subject without having looseleaf supplementation. But Professor Stein clearly did not intend to write a hornbook on company law; indeed, it is quite clear that the extensive discussions of company law are inserted to aid in the study of the process of harmonization of law.

What then is the substance of the study? The American people must realize that the EEC, despite the symphonic (but often interrupted) sounds of integration wafting across the Atlantic for the last fifteen years, is probably less united now than the United States was when John Marshall was appointed Chief Justice. We are accustomed to the ease with which one deals across state lines. The Delaware Corporation simply complies with a few formalistic rules to establish itself in California. Under our normal conflict of laws rules, it is governed by the law of its state of incorporation in its internal dealings. All corporations are subject to the federal income tax, and state corporation taxes, while not identical, are generally similar in imposition and rates. Even where one must deal with many states, as in blue-skying a national securities issue, the differences are at the level of annoyances rather than obstacles.

The European situation during the period under discussion was quite the contrary, and is even more so with the recent admission of Denmark, Ireland, and the United Kingdom to membership. Corporate rules differ substantially from nation to nation. Companies are generally governed by the law of their seat, which is the place where effective management is exercised, though the Netherlands adheres to the American place of incorporation rule. A corporation is considered dissolved if it transfers its seat from one country to another, thereby effectively precluding what we refer to as "statutory mergers." Likewise, each country imposes its own system of taxation, and the similarities can be minimal. For instance, there are three entirely different systems for taxing corporations and shareholders within the six original EEC members.

Given an extraordinary divergence of laws, the founders of the EEC foresaw that some harmonization of laws would be necessary in order to effectuate the economic integration the Treaty of Rome sought. The principal problems lay in reducing the barriers of trade and competition between the member nations, and seeking freedom of movement for capital and business enterprises within the community. It is thought that European firms can only compete within and without the EEC with the large, multinational firms primarily of American origin by merging to seize the advantages of size. Several treaty provisions mandate work on harmonization where this is necessary to realize the goals of the community.

After three introductory chapters concerning harmonization in general, the reasons for harmonization in the field of company law, and a look at typical company law provisions, Professor Stein examines the company laws of the member states in detail. This examination is doctrinal, historical, and an attempt to project trends within each country. Then follow two chapters on the early EEC efforts at harmonization which culminated in the First Directive, tracing particularly the impact on that directive of the procedures of the community as the directive passed from one stage to another, and the effect each national company law had on the proposal.

The purpose of the directive is to change national laws in some respects so that they will harmonize. Thus, an impact on national laws should be expected. But the impact is not automatic, and can take any number of forms, since harmonization, unlike the drafts of our Uniform Acts, is intended to create complementary, rather than identical, rules. The First Directive deals with three

areas: publicity of financial information, ultra vires, and nullity of the company. The next chapter discusses the changes wrought (and not wrought) in national laws as a result of the directive.

Had Professor Stein dropped his pen at this point, he would have contributed a valuable and perceptive study to the scholarly world. Fortunately, he chose to continue with a long chapter entitled "Projects and Prospects" in which he details and analyzes work simultaneously undertaken in related projects, such as the further harmonization with respect to stock companies, including what later became the Second Directive, merger, annual financial reporting, the Convention on Mutual Recognition of Companies and Legal Persons, and the European company project. Finally, he draws together the book with a summary and some concluding remarks.

Professor Stein concludes that each harmonization, whether at the community level or a unilateral action of one nation, brings forth a positive return in accelerating the pace of harmonization in other areas. To some extent, this reflects the fact that the entire work is in the hands of a small circle of individuals composed of the technical experts in the national ministries of Justice, the professorial experts and, of course, the Eurocrats. The more these individuals work together, the more they operate on the basis of mutual trust, rather than mutual distrust.

A superficial reading would indicate that harmonization is not generally the road to reform. Harmonization generally sought a compromise between the many alternatives in order to seek agreement. But Professor Stein draws no such conclusion. He makes it clear that the areas of greatest controversy were generally left for later resolution. This wise phasing of issues for harmonization permits some progress while more difficult issues are discussed. Currently the Commission has taken a stronger stand for reform, recently endorsing the "classical" system of corporate and dividend taxation used by the Netherlands, while ignoring the split-rate German system and the imputation systems in force in France, Belgium and the United Kingdom. Likewise, the Commission's latest proposed directive on company law would require co-determination in the form of representation of workers on the supervisory council, even though few countries have such a requirement, and it is likely to be decried in Britain by both industry and labor.

Professor Stein also points to the puzzling centralization of harmonization decisions in executive hands. The Commission, the Community executive, proposes; the Council of Ministers, who represent the executives of the member states, disposes. Prior to proposing, the Commission must consult the European parliament and the Economic and Social Committee, but is not bound by the views of either. Thus, the community executive can, without legislative imprimatur, force the national legislatures to change their laws. Perhaps the ministers on the Council, who must decide with an eye to their own legislatures, provide a sufficient legislative check, but such executive power is unlikely to survive the ten years of the Community in a legislature-conscious policy.

Throughout the book, Professor Stein's mastery of European law is clearly evident, and unexpected gems appear. One can learn a great deal about national and community laws and processes ostensibly unrelated to company law, even though the book is sharply focused on a technical subject. It is an excellent work, that repays reading and rereading.

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