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Stein & Hay: Cases and Materials on the Law and Institutions of the Atlantic Area

Homer G. Angelo

Brussels, Belgium, Former Chairman, Section of International and Comparative Law, A.B.A.

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RECENT BOOKS

CASES AND MATERIALS ON THE LAW AND INSTITUTIONS OF THE ATLANTIC AREA. Edited by *Eric Stein* and *Peter Hay*. Ann Arbor: The Overbeck Company. 1963. Pp. xix, 457; with a separate volume of documents. \$10.00.

The post-World War II dialogue between Europe and the United States is being spoken by many voices in many forums. Academically and professionally, not the least significant of these transatlantic exchanges have taken place in legal affairs. Indeed, since the formation of the European Economic Community in 1958, scarcely a symposium or annual meeting of national legal organizations has taken place in America without one or more sessions on "legal aspects" of doing business in Europe, international trade, or comparative United States and European antitrust legislation and enforcement.

Until recently, the main thrust of this legal study and interchange of ideas has been about economic problems. With its traditional pragmatic orientation, the American legal profession has dogged the tracks of United States investment in and trade with Europe to identify and seek solutions to legal problems of American government and enterprise in these new relationships. On the other side of the Atlantic, the European legal profession has not been slow in responding since the mid-1950's to the new opportunities presented by the post-war intensification of economic relationships. Various European institutes and symposia, and even national groups of what hitherto had been highly individualized bars of each nation are now, through associations such as the *Fédération de Droit Européen*, similarly grappling with the comparative and practical legal problems in United States-European commercial interchanges.

Hence, a new publication on United States-European legal, economic problems would not by itself constitute an innovation, even though the documentary and doctrinal aspects of legal affairs in Europe need much more systematic exposition than is currently available. But what is new, timely, and specially valuable as a forerunner to other comparative studies, is the inclusion in the Stein-Hay collection on *Law and Institutions of the Atlantic Area* of constitutional, political, diplomatic, and civil rights aspects of the emerging European institutions.

The editors of these volumes recognize that there is no simple answer to the historic question of whether economic relations usually do, or ideally should precede political institutions, or vice versa. But in this collection, they make the point clearly and validly that the legal profession should address itself to the constitutional and political elements of emerging international relationships as well as to the economic issues which contribute more obviously to the expertise and livelihood of the conventional lawyer.

Designed as a casebook for a teaching program in the latter portion of a United States law school curriculum, these materials manifestly are not designed as a day-to-day working tool for the practicing lawyer. In the aggregate, however, they offer a strikingly useful collection of European

documents, excerpts and citations which are not otherwise so readily available to United States lawyers as research sources. More important, the overview readers of this compilation will gain of the nature of institutional, legislative, political, administrative, and treaty factors which affect the conduct of affairs in Europe—and to some extent between Europe and the United States—can provide insights and fundamental knowledge otherwise not presented to the American student in the conventional United States law school curriculum.

The materials are set forth in chapters running from: national law as a source of power for international institutions, an outline of the legislative and judicial institutions of the European Communities, through the free movement of goods, commercial policy, competition (antitrust), access to economic activities (including the establishment of business enterprises), and coordination of economic and social affairs, to those elements which add the special dimension to current Atlantic legal studies: "civil rights" and "military and political policy coordination."

Throughout the often painstakingly elaborate interconnection of excerpts, references, and comments, the collection illustrates the depth and breadth of scholarship displayed in such studies by Professor Stein, a pioneer in European-United States legal research and exposition. The collaboration, started earlier between Professor Stein and Professor Hay in the set of essays which have now become a standard reference for lawyers on both sides of the Atlantic, Stein and Nicholson, *American Enterprise in the European Common Market: A Legal Profile*, to which Professor Hay contributed two chapters, is now continued in casebook form available to law school students and lawyers through the impressive collection reviewed here.

American law faculties no longer need a reminder, as they did prior to 1945, that comparative law materials are a useful tool in study of domestic legal institutions and decision-making techniques. But these volumes on Atlantic institutions demonstrate, with relevance in both public law and private law, the rich interchanges available for study between civil-law and common-law institutions. For such benefits alone, to say nothing of the specific pedagogical values of these materials on United States-European problems, the current compilation, both in its present preliminary and in its later final editions should be a primary casebook source for the use of the comparative approach in American law schools in the next several years.

As the editors suggest, an assessment of the value of this set of materials can be made best after use of the volumes in regular course or seminar programs. This casebook has only recently been published, and law school curricula and source materials are usually determined at least several months before actual presentation. Hence a thorough evaluation of the Atlantic area casebook vis-à-vis other elements in the law school curriculum must await a year or two of testing.

Pending such analyses, the following scattered comments are offered as viewpoints on some elements of the Stein-Hay collection:

1. Despite the laudable inclusion of materials on military, diplomatic, and political problems in the Atlantic nations, noted above, the casebook's balance would be enhanced if the chapter or chapters on these subjects were placed at the outset of the book and included more materials and editorial comments on the relationships between the Atlantic organizations and principles of general international law, the United Nations Charter, and other treaties and principles affecting the international order and efforts to maintain peace and security. The benefits of such a textual arrangement, obviously considered and rejected by the editors in the current edition, may in the future outweigh the disadvantages and the risks of overlap of materials in conventional casebooks on public international law.

2. That besetting curse of all casebook editors—how to condense and cut the relevant materials into acceptable limits—doubly pressed Professors Stein and Hay in selecting their sources from the diverse elements of the Atlantic institutions. But from the immunity of the sidelines, this reviewer ventures the advice that future editions of the book include additional materials in two other areas of importance to the American practicing lawyer who must work on European problems:

a. Although the book's title suggests a coverage of "the law" as well as the institutions of the Atlantic area, the substance of the collection contains little about the civil-law system as such. Nor, except for some portions on national laws affecting functions such as antitrust, are there sections showing the different substantive laws of various nations in Europe as contrasted with those in the United States and Canada. Here the problems of selection are formidable, it is agreed. But the usefulness of the collection to second- and third-year law students who will become responsible practitioners, whether in private offices or in government or teaching posts, of selected excerpts and comments highlighting the differences between the civil-law system and national European laws, on the one hand, and United States doctrines and practice, on the other, will more than justify the burdens of additional pages and publishing costs.

b. Similarly, the future editions will benefit from more detailed attention to the intensely practical problems affecting American enterprises in their relations with European legal systems in such prosaic, but critical, fields as taxation and obtaining national (and possibly European institutional) permits to engage in commercial activities. Out of some three hundred pages on economic aspects of Atlantic relations, only a handful discuss the frequently crucial issues of European taxation and its relation to the foreign impact of federal and state tax laws in the United States. Moreover, although the Stein-Hay casebook contains an excellent pioneering chapter on the "Access to Economic Activities in Europe" this material could be supplemented, to the benefit of all interested governments and private establishments, by detailed materials and case experiences illuminating the steps in carrying through from A to Z the procedures outlined by Professors Stein and Hay. Such problems on the level of the "fonctionnaire" and the

corporate manager often determine the economic and political history reflected in academic treatises and in legislation.

3. At the moment of preparing these notes, this reviewer is also outlining lectures to European law students on the legal aspects of doing business between Europe and the United States. The Stein-Hay materials are invaluable in setting forth many European references to laws, regulations, and practices affecting United States enterprises in Europe. But the same materials are scanty in citations to the diverse federal and state laws in the United States which apply to the increasing "interpenetration" of European economic interests across the Atlantic. The plea in this paragraph is, therefore, not for an expansion of the current Stein-Hay casebook, but for the preparation of a companion set of materials to be available in French and German, elaborating the United States and Canadian systems for treatment of foreign, and particularly European, governmental and private business enterprises entering and operating in North America.

This examination of the Stein-Hay casebook on the "Atlantic Area" against its companion set of background essays, *American Enterprise in the European Common Market: A Legal Profile*, leads ineluctably to a conclusion expressing mixed elements of admiration and challenge. The formidable scholarship of Professors Stein and Hay has provided American law schools with the start of what may safely be prophesied as an indispensable, though minority, segment of the future law school curriculum. Beyond this, it has presented American and European scholars with a challenge to produce similar materials for the use of European law faculties in training their students for future participation in the inevitable growth of cross Atlantic activities. And for both disciplines Professors Stein and Hay courageously have begun the exploration of the legal aspects of the efforts to achieve diplomatic, defense, and political coordination between Atlantic nations toward what President Kennedy called the Atlantic contribution to a "world of law and free choice."

*Homer G. Angelo,
Brussels, Belgium,
Former Chairman, Section of
International and Comparative Law, A.B.A.*