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The First Steps of Europe's Most Contested Authority

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The First Steps of Europe's Most Contested Authority*

In his legal dissertation, Martin Thiele undertakes an extensive study covering the early days of the EEC-Commission and its predecessor, the High Authority (HA) of the European Coal and Steel Community (ECSC). He attempts to write a legal history from a public law perspective (15). His approach is threefold. First, regarding the institutional set up of the HA, he focuses on the key actors' legal thought, the negotiations of the ECSC-Treaty of 1951 and its reception in legal science, as well as the failures of the European Defence and European Political Community (EDC and EPC). Secondly, he studies the first steps of the HA in its ambition to secure room to manoeuvre both internally and externally. Thirdly, the last chapter contains an analysis of the Rome Treaty negotiations with a particular focus on the HA's role, as well as an overview of the activities of the early EEC-Commission concluding with the Merger Treaty.

In his first chapter, Thiele analyses the considerations in the French Planning Commissariat under Jean Monnet. He depicts Monnet's experiences in the allied planning authorities during both world wars in a biographical manner (69). His emphasis of Paul Reuter, the adjoint jurist consult in Schuman's Ministry for Foreign Affairs, is noteworthy. Reuter was crucial for drafting both the Schuman Declaration and the initial French proposal for the ECSC-Treaty. Thiele shows how the idea of a powerful sectoral authority found its way from the US Tennessee Valley Authority, which was instrumental in fighting cartels and an example of federal governance, into the Schuman Declaration through a combination of Reuter's suggestions and Monnet's technocratic preferences. Reuter then was one of the presidents of the judicial group during the negotiations and he published the leading study on the ECSC-Treaty

in 1953. Despite his multifaceted role, Reuter and his relationship to Monnet, who eventually replaced him with the later General Attorney Maurice Lagrange, still deserves further research. By combining drafts and publications, Thiele explains Reuter's legal thinking and influence. He analyses how the omnipotent HA in the initial French proposal, whilst remaining the main actor, was restrained by adding a Special Council of Ministers and a Court (109). He also shows how the German delegation, which had to back down on its federal demands, succeeded in the establishment of a permanent Assembly (197). It is illuminating to read about the German delegation's frustration at attempting to convey the need for a federal structure – and, indeed, the very concept of federalism – to their French and Belgian counterparts (120 f.). The other delegations' opposition against the German desire for a federal European constitution, however, did not stop its representatives, such as the later EEC-Commission president Walter Hallstein, from using the federal constitution as a metaphor to describe the ECSC (123). Thiele is also interested in the relationships between these different actors, and he relies on biographies and oral history collections, for example, to emphasise the good atmosphere during the negotiations, which makes his work an enjoyable and at times surprising read (133–137).

Thiele then evaluates the contemporary legal literature on the Treaty (143 ff.) and refers to recent sociological accounts of the debate on the legal nature of the ECSC (Bailleux, *Penser l'Europe par le droit*, 2014). He highlights the practical importance of this question: If the Treaties were regarded as international law, this would have led to a narrow interpretation of the HA's competences, so as to safeguard the sovereignty of the member states (157). Like Delfs (*Komplementäre Integration*,

* MARTIN THIELE, *Motor der Integration: Europarechtsgeschichtliche Grundlegung der Europäischen Kommission*, Tübingen: Mohr Siebeck 2019, 569 p., ISBN 978-3-16-157566-2

2015), Thiele emphasises the importance of the debate between monism and dualism in international law scholarship for the development of Community law (165). Whilst one should be aware of the debate, it appears an oversimplification to state that proponents of an independent, supranational European legal order followed monism, and adherents of an international law model followed dualism (166 ff.). To map out the actual effects of this debate is difficult. The example is again Reuter, who – despite being a dualist – was a strong proponent of the supremacy of community law and supranationalism, as Thiele himself shows (170, 352). He then provides an account of the negotiations on the EDC and EPC (§ 3). Here he struggles to link these to the later EEC-Treaty, which seems to be only possible by showing where negotiators of the latter declared that they had relied on or decided against the EPC/EDC-drafts. The drive for a more state-like shape of the EPC, for example, with laws instead of decisions (266), led to a standstill. To secure ratification of the EDC-Treaty, France demanded a veto right in the Council and that the latter should only decide unanimously for the first eight years – almost a blueprint for the empty chair crisis of 1965/66. In order to understand later developments, it is important to analyse the growing intergovernmentalism, which led to the failure of the EDC. This made it questionable to what extent the HA had discretion to act independently and led its officials to conceive themselves as the »dernier bastion communautaire« (293).

The second chapter analyses how the HA became the »motor« of the ECSC. Concerning the internal sphere of the ECSC (§ 4), Thiele focuses on a series of judgments of the European Court of Justice (ECJ) balancing the HA's need for discretion and the boundaries set by the Treaty. He shows how the HA tried to frame these issues in a constitutional law terminology (303). Both Michel Gaudet, the well-known head of the Legal Service (298 ff.), and Lagrange advocated for a discretion of the HA along the lines known from administrative law, whereas the French government, represented by Reuter, advocated for a restrictive interpretation of the HA's competences as applied to international treaties. The ECJ accepted the HA's discretion to weigh different interests (306), a ruling that corresponded closely to Reuter's writings, as Thiele points out (311). He analyses the case law on the problem of implied powers (317) and combines

this with sociological and historical findings on Gaudet's agenda to align the ECJ to the US Supreme Court. Whilst a first decision in 1956 seemed to open the door on implied powers, the Court eventually decided against this possibility in 1960 (320 ff.). Here it would have been interesting to discuss how the EEC-Treaty of 1957, which provided for a variety of competences, influenced the Court's willingness to find implied powers in the ECSC-Treaty. Regarding the HA's relation to the Council and the Assembly, Thiele relies strongly on traditional accounts. The institutional entanglements of the Commission and national civil servants in the Council and expert commissions led to permanent debates. At each stage in the process, Monnet wanted an exchange with all the relevant interest groups to secure acceptance; he even sought unanimity where it was not required (330–333). This model of continuous negotiation – despite criticism – has remained in practice ever since. Concerning the external sphere, Thiele also highlights Monnet's aim to secure international recognition and treaty-making power for the ECSC (§ 5). Monnet succeeded in preserving US representation to the ECSC and in involving the HA in the association agreements with the UK. Thiele then takes a brief look at the HA's reaction to the coal crisis of 1959 (§ 6), which does not add significantly to the overall picture but exemplifies the extent to which the ECJ accepted the HA's discretion.

The last chapter provides an account of the efforts of the HA (§ 7) leading to the negotiations of the Rome Treaties (§ 8). Thiele approaches this classic part of integration history with a focus on the HA's role and includes sources from EU and German archives. One criticism is that due to this focus, he slightly overstates the HA's influence, for example, on the cross-sectoral approach of the EEC. His analysis of the shift of power from the supranational authority to the Council of Ministers in the negotiations, however, is quite illuminating. Monnet's confidant Pierre Uri, when editing the famous Spaak Report, advocated the Commission's exclusive right to make legislative proposals (412 ff.), which was combined with a mechanism allowing the Council to only deviate from these proposals with unanimity. Thiele leaves it open to what extent the head of the French delegation, Robert Marjolin, was responsible for this mechanism and whether this contradicts Uri's claims of authorship (419 ff.). His account of this

important element in the relationship between Commission and Council is highly useful to better understand the development of the EEC's institutional set-up. He also provides a nuanced account of the well-known legal drafting group (428). Analysing the points in the Treaty attributed to its members, he shows which were their own original propositions, and which were just fleshed out concepts developed at an earlier stage. In doing so, he shows that the group's influence has been exaggerated in past accounts. Thiele then focuses on how the Commission used its right of initiative as a »motor« (§ 9). When explaining the constant exchange between Commission and national officials, he could have emphasised the continuity of this practice to the one established by Monnet in the HA. In any case, he rightly points out that already the earliest Commission proposal for sec-

ondary legislation could be the result of extensive negotiations (457). Regarding the Luxembourg Compromise, Thiele shows to what extent it only summarised already established negotiation routines. After a glance at the origins of comitology, Thiele concludes with an important milestone in European institutional history, namely the merger of the Institutions of the three Communities (§ 10).

All in all, Thiele provides a highly useful account of the first one and half decades of European integration and the institutional development of the Community. His work is well written and a good starting point for every lawyer and historian interested in the legal history of this nascent period of European integration. ■

Anselm Küsters, Anna Quadflieg

Stell Dir vor, die EU regelt die Weltwirtschaft und keiner sieht hin*

Januar 2021: China vermeldet inmitten der COVID-19-Pandemie als einzige große Volkswirtschaft ein Wirtschaftswachstum für das zurückliegende Jahr. Joe Biden übernimmt die US-Präsidentschaft. Die Welt blickt gespannt nach Washington und Peking. Würden die beiden Supermächte nach vier Jahren des Trump'schen Protektionismus und einer Pandemie wieder zu dem Multilateralismus zurückkehren, der den weltweiten Handel seit der Mitte des 20. Jahrhunderts geprägt hat? Die Vereinigten Staaten und China – die beiden vermeintlichen Taktgeber der Weltwirtschaft – stehen einmal mehr im Fokus. Der finnischen Columbia-Rechtsprofessorin Anu Bradford zufolge gerät die Europäische Union (EU) dabei zu Unrecht aus dem Blickfeld. Sie argumentiert in *The Brussels Effect. How the European Union Rules the*

World, dass die Union den globalen Handel durch ihre Regulierungen europäisiert und dadurch weltweit Unternehmens-, Produktions- und Verarbeitungsstandards anhebt. Mit diesem Perspektivwechsel bereichert Bradfords Buch den Diskurs um den Einfluss des Europarechts auf den Welthandel.

Das Werk weist eine klassische Gliederung in Theorie, Empirie und kritische Diskussion um die Relevanz des *Brussels Effects* auf. Wenngleich der stark operationalisierende Aufbau zu häufigen Wiederholungen führt, gelingt Bradford eine leserfreundliche Struktur mit zahlreichen anschaulichen Beispielen. Im ersten Teil legt sie die Hintergründe und Funktionsweisen des *Brussels Effects* dar. Sie zeigt auf, dass eine Regulierungsbehörde wie die EU in der Lage ist, unilateral Standards

* ANU BRADFORD, *The Brussels Effect. How the European Union Rules the World*, Oxford: Oxford University Press 2020, 404 p., ISBN 978-0-19-008858-3