opportunities and thus lead it to investigate possibilities that might otherwise be ignored.

In the light of these considerations, the authors recommend an ingenious type of tax incentive of limited scope. This involves the creation of a special class of domestic corporations, called United States Foreign Business Corporations, which would be authorized to defer payment of United States tax on their foreign income so long as such income was not used or distributed in the United States. Such corporations would be permitted to engage in export as well as foreign investment operations. The proposal appears to have certain advantages over other proposals for tax incentives, particularly those involving a simple rate reduction under existing principles. Thus, it would not give a windfall to existing investments, but would be conditioned on the undertaking of new investments. Also, it would avoid what appears to be a serious technical difficulty: it gives tax concessions through rate reduction to foreign investment income while not providing a tax windfall to income from export operations. On the other hand, it would supply an incentive for exporters to expand into foreign investment, since their earnings so invested would be tax free. In common with proposals currently before Congress, it would end the present anomaly whereby reinvested earnings of subsidiaries are tax free while earnings plowed back by foreign branches of United States corporations are subject to the full United States tax.

The above account of the tax analysis and recommendations contained in the the volume does not do justice to the detailed examination of the existing tax system and alternative incentive devices in the last section of the study. This should prove highly valuable to all concerned with the tax aspects of international investment.

WALTER A. CHUDSON†

THE COURT OF JUSTICE OF THE EUROPEAN COAL AND STEEL COMMUNITY. By D. G. Valentine. The Hague: Martinus Nijhoff, 1955. Pp. xi, 273. Guilders 18.30

THE European Coal and Steel Community is an unprecedented international organization. The Court of Justice is one of the Community's truly original and remarkable features, so unique that it does not lend itself to any traditional categorization. Its jurisdiction, for example, is manifold: the Court may function as an administrative or judicial court, as a constitutional court and in some specific instances as an international court with compulsory jurisdiction. For this reason alone it is misleading and futile to attempt to classify the Court under the heading of a traditional international court.

The considerable powers of the High Authority (the executive organ of the

†The author is a member of the United Nations Secretariat, but the opinions expressed are personal and do not necessarily reflect those of the Secretariat.

Community), necessitated an extensive judicial control. Thus not only the member states, but also the individual coal and steel enterprises and their producers' associations, and even, in some instances, third persons may challenge before the Court the validity of an act of the High Authority.[1] Upon appeal, the Court may review and annul any act of the Authority found illegal "on the grounds of lack of legal competence, major violations of procedure, violation of the Treaty or of any rule of law relating to its application, or abuse of power."[2] To assure an independent operation of the Community, the Court has exclusive jurisdiction over disputes concerning the validity of acts of the High Authority and other organs of the Community,[3] as well as disputes arising directly out of the formation and administration of the common, competitive market for coal and steel.[4] National courts are explicitly disqualified to deal with such disputes or even to interfere with the execution of the judgments of the Court.[5]

By its nature the Treaty may be considered the constitution of the Community; it merely declares the principles of administration, delimits the powers of the High Authority and conditions the exercise of these powers. The Court, therefore, will perform an unusually extensive law-creating function. Particularly when dealing with appeals for review and annulment or with indemnity actions against the Community, the Court will develop a Community case law.[6] This is necessarily so, because neither the national law of the member states nor international law can offer a useful and workable framework. National law was developed in a context different from that of the Community and would seldom be applicable. Similarly, traditional international law has never dealt with a problem of international control of business to the extent that the Treaty does, and hence has not developed suitable precedents. Under these circumstances the Court will elaborate its own law in the light of the Community objectives and the particular exigencies of each case. The Court may, at best, consult the doctrine and practice of national courts dealing with similar problems.

The novelty of the Court and its crucial role in formulating the Community case law will raise a host of entirely new problems. For this reason Valentine's

1. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, April 18, 1951, arts. 33, 35, 36, 63(2), 65(4), 66(4) (English translation published by the High Authority of the European Coal and Steel Community, hereinafter cited as TREATY).

2. *Id.* art. 33, par. 1.

3. *Id.* art. 41.

4. *Id.* arts. 34, 40.

5. *Id.* art. 92.

6. Conclusion of Court Advocate Lagrange in *Affaire No. 3-54 entre 'Associazione Industrie Siderurgiche Italiane' (Assider) et la Haute Autorité* reproduced in 1 COUR DE LA JUSTICE DE LA COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER, RECUEIL DE LA JURISPRUDENCE DE LA COUR 146, 148 (1955) (hereinafter cited as RECUEIL).

For a general discussion of this problem see DAVID, MALMSTRÖM, VAN HECKE & AUBIN, EUROPÄISCHE ZUSAMENARBEIT IM RECHTSWESEN (1955).

recent study of The Court of Justice deserves special attention. It attempts to explain in a detailed and authoritative manner the peculiar nature of the Court and its intricate function. The almost minute discussion of the organization, competence and procedure of the Court is most exhaustive. In the opinion of the present reviewer the book represents one of the most comprehensive treatments of this subject. The author's opening analysis of the revealing ratification debates in the legislative bodies of the member states[7] is a truly original contribution, well justified even by practical considerations. Since there are no records of the Conference which drafted the Treaty, these debates and particularly the reports of various legislative committees may shed very helpful light on the meaning of the Treaty provisions. On at least one occasion the Court Advocate himself resorted to these reports when interpreting a Treaty provision.[8]

In all fairness, however, some critical remarks and further clarification remain to be made. The basic weakness of the book, in the reviewer's opinion, is the manner in which the author approaches the problem. His rigid, positivistic analysis is painstaking to the point of legal nihilism. By this analysis he separates and makes clear a wide array of possible interpretations, but he stops, almost paralyzed, at the crossroad of the alternative ways. His approach pushes into complete oblivion the real purpose for which the Treaty provisions stand. He shies away from considering the various interpretations in the light of existing political and economic conditions and the objectives sought. The author seems to forget that an analysis becomes meaningful only if it serves as an instrument for advancing an interpretation that is not only feasible under the particular circumstances present, but also likely to accomplish the aims desired. In this respect he unfortunately fails to offer a creative, constructive interpretation oriented towards the purpose of the Community.

It is not surprising, then, that the author engages in many barren considerations, such as whether a member state or the Council of Ministers are required when appealing to the Court to show that their interests are affected.[9] A realistic appraisal of the distribution of political powers within the Community would have suggested to the author that there is no room for such speculation. The member states or the Council are still the most powerful components of the Community—a fact which the Treaty recognizes. For this reason the restrictions on their right of appeal, which the author attempts to read into the Treaty, are utterly unrealistic.

The author is so much the victim of positivism that he fails to visualize practical problems the Court is likely to encounter. He ignores, for example, the consequences that stem from the "constitutional" character of the Treaty. The immense law creating function of the Court is not discussed. Nor is the

7. Pp. 6-33.
8. Conclusion of the Court Advocate Lagrange, *supra* note 6, at 154, 156.
9. Pp. 58-60.

possible nature and development of the Community law considered. Instead we are offered an inconclusive interpretation of Article 31 of the Treaty:

> "Thus, it is not clear whether the words 'shall ensure the respect of law' are to be taken as meaning that the Court is to be guided by the general principles of international law, and is to subordinate the interpretation and application of the Treaty to these principles; or whether the phrase has a more restrictive sense and merely implies that in the interpretation of the Treaty, the Court is to be bound by recognised rules of interpretation and that the application of the Treaty shall be subordinate to the law as set out in the Treaty thus interpreted."[10]

Some of the Treaty provisions are evidently misconstrued, particularly in the discussion of the admissibility of appeals. For example, the author generalizes too quickly when he claims that "the doubt whether a party must . . . have special interest in the matter in question before it can start legal action is nowhere resolved by the Treaty."[11] A mere glance at article 66(5), which grants to "any person *directly interested*" an appeal against an order of the High Authority separating enterprises or assets illegally concentrated, disproves the author's contention. Careful analysis would have disclosed that the Treaty attempts to differentiate between the interests of the various parties.[12] Moreover, in his discussion of the conditions under which enterprises may appeal, the author misinterprets a remark made by one commentator. According to the author that commentator erroneously maintains that "the party suing need establish no such interest in the case. . . ."[13] This is an unjustified criticism, for the remark is made in reference only to a member state, which is not required to show any interest when appealing.[14] The commentator in the article referred to makes it unmistakably clear that he considers it necessary for the coal and steel enterprises to allege interests affected when appealing an illegal act of the Authority.[15]

The author's assumption that a member state must likewise show that its interests are affected is nowhere borne out by the Treaty. The arguments advanced by the author as to the enterprises and other parties cannot apply to

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10. P. 56.

11. P. 57.

12. This seems to be confirmed by the conclusion of Court Advocate Lagrange, *supra* note 6, at 174.

13. P. 57.

14. Munch, *Die Gerichtsbarkeit im Schuman-Plan* in GEGENWARTSPROBLEME DES INTERNATIONALEN RECHTS UND DER RECHTSPHILOSOPHIE; FESTSCHRIFT FÜR RUDOLF LAUN 123, 128 (Constantopoulos & Wehberg eds. 1953) explicitly stating: ". . . Klageberechtigt sind zunächst Rat und Mitgliedstaat, *ohne ein besonderes Interesse* nachweisen zu müssen." (Emphasis added.)

15. *Id.* at 129. ". . . Der Plan folgt dem französischen Recht, bei dem es genügt, dass sich der Verwaltungsakt gegen den Kläger gerichtet hat oder dass dieser ein 'intérêt froissé' nachweisst."

the privileged position that the member states are quite naturally granted.[16] The history of the drafting of article 33 clearly shows a considerable reluctance to grant any *locus standi* at all to the coal and steel enterprises.[17] And when finally a compromise was reached on this matter, there was no intention of placing the enterprises on the same footing as the member states. This differentiation is quite evident in the Treaty. A State may appeal regardless of interests affected [18] and may appeal even a general act on any ground of illegality recognized by the Treaty.[19] On the other hand the enterprises may appeal only if their interests are affected; and they can appeal a general act only on the very strict grounds of patent misinterpretation of the Treaty or of specially qualified misapplication of power.[20]

The strong imprint of French administrative law on the structure and law of the Community is undeniable, as is the strong influence of United States anti-trust legislation on the provisions of articles 65 and 66 of the Treaty. In several instances the author overplays this impact. An example is his inaccurate assertion that the appeal against the inaction of the Authority provided in article 35 was patterned after the French law;[21] Italian,[22] German [23] and implicitly Belgian law [24] admit similar appeals. Equally overstated is his assumption that article 34, which commits the Authority to give effect to the Court's annulment of an act, follows French law.[25] This principle is by no means peculiar to French law. As a logical consequence of separation of power, Italian, German and Belgian law likewise recognize such a principle.

Within the limits of these shortcomings this is an important book that deserves a full, critical appraisal. The criticisms offered cannot detract from its

16. P. 58.

17. Schüle, *Grenzen der Klagebefugnis vor dem Gerichtshof der Montanunion*, 16 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 226, 237-8 (1955).

18. Confirmed by the Court in *Arrêt de la Cour dans l'Affaire No. 3-54 entre 'Associazione Industrie Siderurgiche Italiane' (Assider) et la Haute Autorité*, 1 RECUEIL 125, 138, and *Arrêt de la Cour dans l'Affaire No. 4-54 entre Industrie Siderurgiche Associate (I.S.A.) et la Haute Autorité*, 1 RECUEIL 179, 193.

19. TREATY art. 33, par. 1.

20. *Id.* art. 33, par. 2. See further the conclusion of Court Advocate Lagrange, *supra* note 6, at 171-73.

21. P. 95.

22. GALEOTTI, THE JUDICIAL CONTROL OF PUBLIC AUTHORITIES IN ENGLAND AND IN ITALY 98 (1954); ZANOBINI, CORSO DI DIRITTO AMMINISTRATIVO Vol. II, 139-40 (6th ed. 1952).

23. EYERMANN & FROEHLER, VERWALTUNGSGERICHTSGESETZ 120-21 (2d ed. 1954); FORTSHOFF, LEHRBUCH DES VERWALTUNGSRECHTES 446 (5th ed. 1955).

24. VELGE, LE CONSEIL D'ETAT 172 (1947); Moureau & Simmonard, *Le Conseil d'Etat Belgique*, 64 REVUE DU DROIT PUBLIC ET DE LA SCIENCE POLITIQUE 159, 175 (1948).

The Dutch administrative law seems also to know the concept of an appeal against administrative inaction, KRANEBURG, NEDERLANDSCH STAATRECHT 430 (10th ed. 1951).

25. P. 71 n.4.

great merits. In a way this is a pioneering work, and thus by its very nature bound to be occasionally lacking in sophistication.

GERHARD BEBR†

THE MORAL DECISION. RIGHT AND WRONG IN THE LIGHT OF AMERICAN LAW. By Edmond Cahn. Bloomington: Indiana University Press, 1955. Pp. ix, 342. $5.00.

MR. CAHN, in his most recent book, has given us a painstaking study of a subject that holds vital interest for all thinking persons. The book may perhaps best be described as a detailed analysis and appraisal by a very thoughtful man of the influence of morals on American law, chiefly our decisional law. The author says:

> "Our purpose is to learn what we can about good and evil and other moral concerns by looking critically at the way American law deals with them."[1]

Although he definitely seeks the advancement of a high moral plane—the "good-in-law," to use his expression, his treatment is based almost entirely on the natural order. For this reason some will miss, as I do, more explicit recognition of the pervading influence of the supernatural in the realm of morals.

There are three parts—The Legal and the Good, Moral Guides in the American Law of Rights, and Moral Guides in the American Law of Procedure. The arrangement is excellent, with well chosen subdivisions, pointing up appropriately the diverse problems with which the author deals in his intense studies of his subject. There is also a short bibliography, and the book is well housed.

The characteristics of self and the role of the conscience are among the many factors discussed in the analysis presented of the moral "constitution" that underlies much of our behavior. And because the author is aware of "the beauty of those general standards that stem directly" from this constitution,[2] the codified standards of moral legislation take on a broader and deeper sense than mere enactments by legislative bodies. For example, "we see [moral legislation] . . . in objective behavior because a subjective individual has enacted it in his conscience."[3] Again, after a wealth of illustrations reviewing those factors which have played a part in the growth of moral legislation, the author concludes that such legislation "will always reflect the mutations of times and places—but it does so in the mirror of an expanding moral constitution. . . ."[4]

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1. P. 11.
2. P. 19.
3. P. 31.
4. *Ibid.*