

IN MEMORIAM

ERIC STEIN (1913–2011)

*By Daniel Halberstam, Steven Ratner, and Mathias Reimann**

On July 28, 2011, Eric Stein, pillar of international law, pioneer of the legal study of European integration, and master of comparative law, passed away in Ann Arbor, Michigan. He was ninety-eight years old. He joined this *Journal's* Board of Editors in 1963, serving as a regular member until 1978, and thereafter as an honorary editor. Stein was the last of that great generation of European-educated jurists who fled Nazism and became leading figures in comparative and international law in the United States.

Like most emigrant jurists, Eric Stein was two scholars in one: a continental civil lawyer and an American common lawyer. Born to Jewish parents in Bohemia in 1913, when it still belonged to the Austro-Hungarian Empire (and thus as a toddler a subject of Emperor Franz Joseph), Stein grew up in an upper middle class environment and was educated in the traditional humanist European fashion of the day. He received his first legal education in the 1930s at the Charles University in Prague in the classic civil law tradition. That background forever shaped his legal mind, as thereafter he always searched for broad ideas and systematic connections. He briefly practiced law in Prague and was drafted into the Czechoslovak army. In 1939, sensing the threat to Jews in his homeland as it came under Nazi occupation, he set out on his own, narrowly escaping (on a Gestapo-monitored train) to Italy. Thanks to the good graces of an American consulate official in Naples (who overstepped his legal authority by granting a student visa), Stein sailed from there to the United States in May 1940. He received his second legal education at the University of Michigan, graduating in 1942. This experience decisively influenced his thought in that he came to see law as ultimately expressed in cases and in the actions of legal officials. In 1955, after several years of government service, he joined the law faculty of his American alma mater, where he taught until his retirement in 1983, and remained active as a scholar for almost three additional decades.

Eric Stein's initiation into the practice of international law was a baptism by fire as staff lawyer to the U.S. Army in the occupation of Italy.¹ From then on, public international law would remain at the core of his work. After returning from the war, he served in the Department of State (where he recruited his friend Louis Henkin to join him), including as a legal adviser to

* Eric Stein Collegiate Professor of Law, Bruno Simma Collegiate Professor of Law, and Hessel E. Yntema Professor of Law, respectively, all of the University of Michigan Law School.

¹ See Eric Stein, *War, Politics, Law—and Love: Italy 1943–1946*, 32 MICH. J. INT'L L. 553 (2011); Eric Stein, *Application of the Law of the Absent Sovereign in Territory Under Belligerent Occupation: The Schio Massacre*, 46 MICH. L. REV. 341 (1948).

the U.S. delegations involved in the early years of the United Nations and its specialized agencies. He quickly developed a keen, but sober interest in the promise of international organizations. In particular, his experience from the interwar period informed his belief that political will and the nuts and bolts of governance would ultimately determine institutional failure or success.

Even as Stein set his hopes on regional integration in Europe, whose transformation would be the focus of his scholarship, he always kept one eye on the United Nations. Thus, he offered the first academic commentary on the new International Atomic Energy Agency in 1957 (noting, in his typically wry way, that “[t]he headquarters of the Agency in Vienna would not be a particularly suitable location for storage [of nuclear material]”).² Later, in these pages, he would strongly defend Dag Hammarskjöld’s vision of the role of the UN secretary-general against Soviet critics³ and exhaustively appraise France’s withdrawal from NATO’s military command, ultimately condemning it as illegal.⁴ Long after his retirement in 1983, Stein advised the leaders of post-Communist Czechoslovakia and the Czech Republic on the place of international law in the domestic legal order and applauded them for taking a position that would strongly internalize international human rights protections.⁵ He subsequently wrote an award-winning book on the Czech/Slovak breakup.⁶ In 2001, after a lifetime of examining the powers and processes of numerous international organizations, he offered an appraisal in this *Journal* of the tensions and connections between international integration through strong institutions and strengthened demands for democracy.⁷ And in 2009, at age ninety-six, he contributed to an analysis of the protection of human rights in administering the UN sanctions regime against individuals.⁸ He greatly valued his long-term association with the *Journal* and membership on its Board of Editors.

Eric Stein remains associated the world over, however, with his pioneering work on European integration. In 1955, he penned the first English-language article on the initial set of rulings of the European Court of Justice—before the Rome Treaty had been signed and when the Court was thus operating solely as the judicial institution of the European Coal and Steel Community.⁹ In January 1956, during his first year at Michigan, he taught the first course on what we would now call European Union law. Not content with secondhand knowledge, Stein took a research leave in 1962–1963 to spend time in the European Commission’s Legal Service. In Brussels, he found himself in a room with the ingenious Michel Gaudet, then director-general

² Bernhard G. Bechhoefer & Eric Stein, *Atoms for Peace: The New International Atomic Energy Agency*, 55 MICH. L. REV. 747, 768 (1957).

³ Eric Stein, *Mr. Hammarskjöld, the Charter Law and the Future Rôle of the United Nations Secretary General*, 56 AJIL 9 (1962).

⁴ Eric Stein & Dominique Carreau, *Law and Peaceful Change in a Subsystem: “Withdrawal” of France from the North Atlantic Treaty Organization*, 62 AJIL 577 (1968).

⁵ Eric Stein, *International Law in Internal Law: Toward Internationalization of Central–Eastern European Constitutions?*, 88 AJIL 427 (1994).

⁶ ERIC STEIN, *CZECHO/SLOVAKIA: ETHNIC CONFLICT, CONSTITUTIONAL FISSURE, NEGOTIATED BREAKUP* (1997).

⁷ Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AJIL 489 (2001). This article has been viewed and downloaded from the JSTOR database more often than any other *AJIL* article.

⁸ Daniel Halberstam & Eric Stein, *The United Nations, the European Union, and the King of Sweden: Economic Sanctions and Individual Rights in a Plural World Order*, 46 COMMON MKT. L. REV. 13 (2009).

⁹ Eric Stein, *The European Coal and Steel Community: The Beginning of Its Judicial Process*, 55 COLUM. L. REV. 985 (1955).

of the Legal Service, debating with the Commission's top lawyers about how to formulate their brief in the foundational case of *Van Gend & Loos*.¹⁰ On his return to Michigan, Stein published the first casebook on the European Community.¹¹ Students from across the Atlantic flocked to the small town of Ann Arbor to learn about their own institutions, many returning to Europe to become prominent in academia, government, and private practice.

Eric Stein was not only first in engaging seriously with the European project. He was also transformative. Years after pioneering the field, Stein again broke new ground, this time by developing what is still the most enduring scholarly approach to European integration—the idea of understanding the European construct in constitutional terms. His famed 1981 *AJIL* article opened with lines that nearly every European lawyer knows by heart: “Tucked away in the fairyland Duchy of Luxembourg and blessed, until recently, with benign neglect by the powers that be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type structure in Europe.”¹² Legend has it that with this article, Eric Stein single-handedly banished the European Union from the subsequent pages of this *Journal*: it was a twist of irony befitting the dry wit of the author who sometimes referred to himself as a “canceled Czech.” Stein's case for understanding the relationship between the European Union and its member states in constitutional terms was so forceful that the editors of the *Journal* are said to have concluded that henceforth the internal workings of the European Community (and now Union) no longer belonged to the domain of “international” law. Stein's work on the European Union would now be published elsewhere.

One way or another, most of Stein's work was comparative. Perhaps inevitably, given his dual legal education, Stein always instinctively thought beyond the possibilities of a single jurisdiction. His work on the European Community, for example, was steadily informed by the American federal experience. But several projects made this comparative element more explicit, for example, his study of courts and free markets, the result of a conference at Bellagio, Italy, that brought together an illustrious group of American and European scholars on common themes.¹³ His work on comparative federalism more generally was an important foundation of the now-flourishing field of comparative constitutional law. Beyond the European Community, he studied the German law criminalizing denial of the Holocaust, delving into broader comparisons of European and U.S. notions of free speech.¹⁴ And his inquiry extended to the uses and misuses of the comparative method itself.¹⁵

It is fitting, then, that Eric Stein was honored by lifetime achievement awards in all three fields he touched. The American Society of International Law recognized his contribution to

¹⁰ Case 26/62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Nederlandse Administratie der Belastingen*, 9 ECR 1 (1963).

¹¹ *CASES AND MATERIALS ON THE LAW AND INSTITUTIONS OF THE ATLANTIC AREA* (Eric Stein & Peter Hay eds., 1963).

¹² Eric Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, 75 *AJIL* 1, 1 (1981).

¹³ *COURTS AND FREE MARKETS: PERSPECTIVES FROM THE UNITED STATES AND EUROPE* (Terrance Sandalow & Eric Stein eds., 1982).

¹⁴ Eric Stein, *History Against Free Speech: German Law in European and American Perspective*, in *VERFASSUNGSRECHT UND VÖLKERRECHT: GEDÄCHTNISSCHRIFT FÜR WILHELM KARL GECK 831* (Wilfried Friedler & Georg Röss eds., 1989); see also Eric Stein, *History Against Free Speech, The New German Law Against the “Auschwitz”—and Other—“Lies,”* 85 *MICH. L. REV.* 277 (1986).

¹⁵ Eric Stein, *Uses, Misuses—and Nonuses of Comparative Law*, 72 *NW. U. L. REV.* 198 (1977).

international law with its highest honor, the Manley O. Hudson Medal, in March 2011. The European Union Studies Association honored his work on European integration with its Lifetime Contribution Award in 2005. And the American Society of Comparative Law presented Stein with its Lifetime Achievement Award in 2004. Stein received numerous other honors and honorary degrees, including the Medal of Merit First Degree of the Czech Republic (which then-Czech president Václav Havel personally conferred) and honorary citizenship of the Czech town of his birth, Holic.

All those who had the privilege of knowing Eric Stein would insist on emphasizing that he was far more than an extraordinarily accomplished scholar. He displayed an uncommon sense of decency that never lost sight of the human element no matter what the endeavor. He was deeply cultured and broadly read, loved high opera and the darkest of modern expressionism, and liked to play with language to the point of being a quiet poet with more than a few publications to his name. Above all, he was endowed with an enviable personal kindness and a dry, often self-deprecating sense of humor that won him friends all over the world. And yet, underneath it all, one could sometimes sense the pain of a survivor who had lost most of his family in the Holocaust, and who longed for a world in which human catastrophes, as he had witnessed them in the twentieth century, would be forever avoided.

Eric Stein is survived by his indomitable and gracious wife, Virginia Stein. A highly educated Arkansan, her wide-open heart and razor-sharp mind were ever present in Eric's life, work, and friendships.