Book Reviews

Beckedorf, Ingo. *Das Untersuchungsrecht des Europäischen Parlaments*. Berlin: Duncker und Humblot, 1995.

When Max Weber made the suggestion in 1918 to do away to some extent with the majority principle and to introduce a disposition into the new Weimar Constitution of Germany which would make the vote of one quarter of the members of Parliament sufficient to set up a temporary Committee of Inquiry, he most likely did not imagine that a similar provision might surface at some point in the future in a European constitutional order, a provision that would empower a body called the European Parliament (EP).

The 1992 Maastricht Treaty, Article 138C of the EC Treaty — which bears a striking resemblance to Max Weber's Weimar proposal and the current German provision — empowers the European Parliament to set up temporary Committees of Inquiry to investigate alleged instances of maladministration on the part of the other institutions or bodies established under the Treaties. The establishment of such committees requires the vote of one quarter of the members of Parliament.

Ingo Beckedorf's *Das Untersuchungsrecht des Europäischen Parlaments* is a 400-page doctoral dissertation on the inquiry powers of the EP. The first part of the book gives a detailed description of the legal situation of the 15 Member States in relation to Committees of Inquiry. The following chapters explore the current means of control attributed to the EP outside Article 138C ECT. A description of the legal situation pre-Maastricht is followed by a detailed narrative of the respective practice. Finally, the author turns to Article 138C ECT.

The principal merit of the book lies in its detailed description of the relevant constitutional law of the Member States and of the Committees of Inquiry set up until 1993. However, in the final score the reader is left with a feeling of dissatisfaction. To begin with, the comparative overview of the Member States' rules in this regard is somewhat lacking in depth. This is a problem of both size and approach. Doubtless, an in-depth study of 15 legal orders is an immense task for one researcher. It is not without sound reason that this kind of analysis is usually undertaken by a team of researchers from the different legal orders examined. In a sense, it is inevitable that one single author will focus on certain specific aspects, neglecting others. Here, the author has compiled a considerable amount of information and sources which will be useful for future work on the subject. This part of the book makes a juxtaposition of the rules in the different legal orders of the Member States, suggesting institutional parallels among the various constitutional orders and suggesting a transposition of those concepts to the European level. What gets lost along the way is a sense for the specifics of the respective power games that underlie all of those parliamentary inquiry mechanisms. We are not told to what extent existing control mechanisms really work and what their decisive elements of success or failure are.

The interesting parallel between the different constitutional orders is probably not so much on the level of the mere existence of committees of inquiry. Beyond that, it is the question of how effectively the control of power is established. In this perspective, Committees of Inquiry may have a very different function within a constitutional order depending on how separation of powers and the issue of control of power is dealt with in the specific constitutional order. The important question is against whom is the investigative power of the respective committees of inquiry directed. In Germany, for example, it

is the answer to this question that explains why the establishment of a 'minority inquiry' (cf. Max Weber's suggestion) empowering the opposition to set up a committee of inquiry against the will of the majority was crucial to the success of the whole system: the political majority considered to be 'the government' is in fact both the executive branch *and* its supporting majority in parliament. The line between powers to be separated is not only drawn between legislative and executive branch, but also between minority in parliament and majority in parliament. Thus, in order to establish some kind of control over 'the government', a constitutional minority right to set up committees of inquiry has to be vested in the minority/opposition in parliament. By doing away with the sacred majority principle (and attributing prosecutor's powers to the committees of inquiry), control becomes effective and successful. In France, to take another example, there is a different situation. There, the parliament as a whole is in a kind of minority situation relative to the strong executive branch. Thus, the provisions on investigative powers of parliamentary committees will have a different shape.

The author's focus on formal aspects of the Member States' constitutional orders probably explains why the chapters on the European level also remain mainly descriptive. The principal result of the comparative analysis is that parliamentary inquiry exists in the Member States. Therefore, some kind of parliamentary inquiry device on the European level would appear to be logical. The author notes, though, that the European practice to date does not really seem convincing in terms of effective control. Most committees of inquiry so far have mainly been concerned with the preparation of legislation. At this point, the book does not really offer an explanation or remedy.

One could have taken the analysis one step further by asking against whom the investigative power of committees of inquiry would typically be directed at the EU level, and how this power could be enforced. One answer could have been to view the European Parliament as a structural minority when compared to other stronger players at the European level, such as the Commission or the Council, which would make the question of enforcement crucial.

A general point is that the European constitutional order simply does not resemble traditional constitutional orders. Thus, as the author himself acknowledges, the European Parliament does not resemble traditional parliaments, which probably explains why traditional concepts of control may not work for it. One would have hoped to find some new ideas at this point, such as the possibility of joint Member State parliaments/European Parliament committees of inquiry. In sum, the book will provide a useful starting point for further research on an interesting subject that is bound to remain on the agenda.

Walter Hallstein-Institute *Franz C. Mayer*
for European Constitutional Law,
Berlin

Kahin, Brian, and Charles Nesson (eds). ***Borders in Cyberspace***. Cambridge, Massachusetts and London: The MIT Press, 1997. Pp. xi, 374. Index. $25.

The assertion that the Internet defies limitations of physical space and time, erasing national borders, is commonplace in the burgeoning literature on cyberspace. This useful collection of essays explores the implications of that assertion, emphasizing the challenges which the Global Information Infrastructure (GII) poses for national and international regulatory schemes and institutions. The first half of the book focuses on issues inherent in the nature of cyberspace, including globalization, erosion of national control, and arbitrage, as well as associated procedural issues of jurisdiction, enforcement, harmonization and alternative dispute resolution. The second half of the book offers analyses of transnational problems in six substantive areas: intellectual property, censorship, privacy, encryption, government information and consumer protection.

The volume as a whole establishes that, contrary to its popular image as an unregulated zone, the GII is policed under many