

**THE ROLE OF LAW IN EUROPEAN INTEGRATION:  
BRIDGING THE GAP BETWEEN INTERNATIONAL RELATIONS  
AND LEGAL THEORY**

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## 1. INTRODUCTION

"Nous ne coalisons pas des Etats, nous unissons des hommes,"<sup>1</sup> were the historic words uttered by Jean Monnet, founding father of the European Communities and first President of the High Authority of the ECSC. His vision of Europe was not merely one of an interstate organization, a confederation of European states, but of a novel and different form of arranging relations between the states of Western Europe. The European Communities would not be simply another static organization, but a dynamic, growing creature, a step in the progress toward new organizational forms in the international system.

The process of European integration implies an entirely new conception of the international system and of international relations, moving beyond the nation-state as the principal actor and the basic unit of analysis within the system. Consequently, international law is no longer a sufficient tool to regulate relations among states undergoing integration. International law, whose role is to define and maintain the separation of sovereign states, can neither comprehend the new structures, institutions and processes of the European Community, nor provide a motor or dynamism to promote further integration. Community law was intended to fulfill the roles that neither international law nor national law were adequate to assume, reflecting the hybrid nature of the Community.

Community law has effectively replaced international law in governing the relations between the Member States, in such a way as to introduce dynamism and to promote an integrative effect of law, as opposed to maintaining the *status quo*, which is the purpose of traditional international

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<sup>1</sup> "We are not forming coalitions between States, but union among people." Jean Monnet, *Mémoires* (Paris, Fayard, 1976).

law. The structure of the EC and of its legal order today is, in effect, fundamentally different from that originally established by the founding Treaties. Gradually, the European Court has worked, through judicial interpretation, to fill in the lacunae of the Treaties to create a veritable Community legal order, and a quasi-federal structure to the EC. This thesis argues that, in essence, the role of the law in European integration has been to constitutionalize the Treaties and the *acquis communautaire*, thus causing fundamental changes at the structural level in the system of the European Community. The result is such that even a treaty concluded according to traditional international law, such as the Treaty on European Union signed at Maastricht, becomes part of a European constitution rather than remaining an international agreement.

A notable gap exists between international relations theory and legal theory, as most political scientists have ignored the legal developments and the role of law, other than as an instrument of policy-making by political organs, in the integration of the European Community. This gap has also affected the role of law and integration in the Community. At a second level, then, this thesis intends to integrate the two schools of theory and apply a theory of international relations to legal developments. Indeed, it is one of the assumptions of this thesis that the role of law is essential to European integration. Since legal theory, as discussed later, lacks explanatory power and remains fundamentally detached from political theory, international relations theory, and especially systems transformation, is more suited to provide an explanation of the process of legal change and to allow for generalization.

After providing a brief historical overview of the European Community, this study will present, in the *Theoretical Framework*, the various concepts and definitions necessary to understand the scope of the problem, and the underlying

theories of sovereignty, integration, international law, and Community law. This section shall also show the cleavage between legal and integration theory, and the difficulty in theorizing integration in general. A closer examination of the Community institutions and sources of law shall provide the elements necessary for the subsequent analysis. An analysis of several of the most important cases of the European Court of Justice shall follow, to illustrate the transformation of the EC legal system and the constitutionalization of the founding Treaties, within the framework of international relations theory. Next, this thesis shall show how the subsequent treaties, the Single European Act and the Treaty on European Union, fit into the framework constructed by the ECJ and what modifications they bring about. The last section shall examine the implications of the preceding analysis on the future of the Community and on theoretical aspects of integration, before proceeding to some generalizations on the nature of the European Community and its implications for international relations.

## 2. THE E.C.: A BRIEF HISTORY

On May 9, 1950, Robert Schuman, then French Foreign Minister, issued a declaration with Jean Monnet presenting their plan to place France and Germany's coal and steel industries under a common authority, with the belief that political union could be achieved through economic integration. Their dream of an organized and revitalized Europe, its states working together to reconstruct their war-ravaged economies, provided the impetus for the movement toward European cooperation and integration. Eleven months later, in 1951, the heads of government of six European states, France, West Germany, Belgium, Luxembourg, Italy, and the Netherlands, met in Paris, and, on April 18, signed a treaty founding the European Coal and Steel Community (ECSC). Thus began a movement that would expand and grow, increasing in momentum and strength, at times ebbing or stagnating during a crisis, then proceeding in leaps and bounds toward new horizons. Four years later, in June 1955, the Foreign Ministers of the ECSC members met in Messina to discuss proposals for further economic integration, and resolved to initiate a new phase in the construction of Europe, including an expansion of joint institutions. They formed a committee under the chairmanship of Belgian Foreign Minister Paul-Henri Spaak, resulting in the Spaak Report of April 1956, which introduced the concept of a common market, and which was used as the basis for further negotiations. On March 25, 1957, the same six states signed the Treaties of Rome founding the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

Each of the three Communities thus established possessed four principal institutions: an appointed Commission (called the High Authority for the ECSC) and a Council of Ministers which were separate for each of the Communities,

and a parliamentary Assembly and Court of Justice which were common to all three. The *Merger Treaty* of 1965, which came into force in 1967, established a single Council of Ministers for the three, and merged the ECSC High Authority and the two Commissions of the EEC and Euratom into one European Commission. In the summer of 1965, however, occurred the greatest political crisis of the European Communities, when the Commission attempted to link the next stage of development of the Common Agricultural Policy to a dramatic increase in integration.<sup>2</sup> The basis of Community income would be changed from national contributions to its own resources, and greater powers granted to the European Parliament over those resources. Consequently, French President Charles de Gaulle, opposed to the strengthening of supranational powers, ordered a French boycott of the EEC, thus initiating the "Empty Chair Crisis", from July 1965 to January 1966. Finally, in January 1966, the French government agreed to attend a special Council meeting in Luxembourg, which resulted in the Luxembourg Compromise. The Compromise established, albeit unofficially, that any state has the right of veto on questions that affect its vital national interests, and reinforced the preference for unanimity in votes and decision-making.

With de Gaulle's resignation in 1969, the road was free for further integration. The *Treaty amending Certain Budgetary Provisions of the Treaties* (1970) and the *Treaty amending Certain Financial Provisions of the Treaties* (1975) accorded more powers to the Communities and especially to the Parliament, by laying out a budgetary procedure, allocating budgetary powers between the Community institutions, and establishing a Court of Auditors.<sup>3</sup> The

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<sup>2</sup> John T.S. Keeler, "De Gaulle and Europe's Common Agricultural Policy: The Logic and Legacies of Nationalistic Integration," in *French Society and Politics* (from Kratochwil bulkpack, P.Sci.498, Spring 1992), pp.67-68.

<sup>3</sup> Neill Nugent, *The Government and Politics of the European Community*, 2nd ed. (Durham, NC, Duke University Press, 1991), pp.47-48.

first *Treaties of Accession* were also signed, allowing for the admission of new members: Denmark, Ireland, and the United Kingdom (signed in 1972 and taking effect on January 1, 1973), Greece (signed in 1979 and taking effect on January 1, 1981), and Spain and Portugal (signed in 1985 and taking effect on January 1, 1986). In 1976, the Member States (now the Nine) signed the *Act concerning the election of the representatives of the Assembly by direct universal suffrage*.

After the Empty Chair Crisis, however, and throughout the 1970s with its economic crises, a period of "Euro-sclerosis" set in, as the Communities entered a pessimistic phase, marked by institutional ineffectiveness and a tendency to avoid the official channels of the formal Community structures. An increasing use of informal channels of intergovernmental interaction appeared, resulting in a new impetus toward integration ("responsive formal integration"<sup>4</sup>) by the end of the 1970s, with the creation of the European Monetary System in 1979 and the ECU (European Currency Unit).

Jacques Delors' accession to the Presidency of the Commission in January 1985, and the accession of two new states, Spain and Portugal, signaled a new wave of European construction and idealism, and a regaining of momentum for integration. A new series of committees and reports followed at each other's heels in the early 1980s. Finally, in June 1985, at the Milan Summit, UK Commissioner Lord Cockfield, working with the Delors Commission, proposed his White Paper, published on June 14, 1985, on the completion of the internal market, and including 280 law changes. The White Paper gave birth to the Single European Act (SEA), drafted in 1985, signed in 1986, and coming into force in

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<sup>4</sup> William Wallace, *The Transformation of Western Europe* (New York, The Royal Institute of International Affairs, 1990), pp.54-55. Wallace distinguishes between proactive and responsive formal integration. Proactive refers to integrative measures with a deliberate and explicit political aim. Responsive integration is mainly a reaction to economic and social changes by adjusting rules and regulations.