1 European Integration and the Treaty on European Union

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Further reading
1 INTRODUCTION

This chapter sets out the central features of the European integration process, which provides the historical and political context for EU law. It also introduces some of the central concepts, ideas and developments in EU law.

Section 2 explores how all EU law is centred around an interplay between two central themes. The first is the addressing of many contemporary problems through a new form of transnational law. The second is the development of the ideals of Europe and European union. These ideals bestow a distinctive quality to the EU legal system and lay the ground for many of its debates. The European ideal conceives of Europe as the central place of progress, learning and civilisation, placing faith in humanity and her capacity to improve. Its dark side is its arrogance and its dismissal of ‘un-European’ ways of life or thought as violating these virtues. The idea of European union sets up a political community in competition with the nation-state but one, nevertheless, through which government policy is carried out.

Section 3 considers the establishment of the three Communities, the European Economic Community (EEC), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM), by the Treaties of Paris and Rome. It sets out the central institutions: the Commission, the Parliament, the Council and the Court of Justice. It also considers the central policies established by these institutions, most notably the common market. This section also compares two developments of the 1960s that set out the two dominant models of political authority in EU law. In 1966, the Luxembourg Accords were agreed. This provided all national governments with a veto over the adoption of any law. The model was an intergovernmental one, with political authority and democracy vested in the nation-state. In 1963, in Van Gend en Loos, the Court of Justice declared that the EC Treaty constituted a new sovereign legal order for the benefit of its citizens. The model was a supranational one, in which authority is vested not in national institutions but the rights of European citizens.

Section 4 considers how, after a period of stagnation, European integration regained momentum with the adoption of the Single European Act (SEA) in 1986. This established the internal market: an area without internal frontiers in which there is free movement of goods, services, persons and capital. It also unlocked the decision-making processes by allowing for significant amounts of legislation to be adopted free from the national veto. The European Parliament was granted significant legislative powers for the first time.

Section 5 considers the Maastricht Treaty and the Treaty on European Union (TEU). The central mission of this treaty, signed in 1991, was to establish an economic and monetary union. However, it also established a three pillar structure. The first pillar, the EC Treaty, was dominated by supranational features, whilst the other two pillars, the Common Foreign and Security Policy and Justice and Home Affairs, were dominated by intergovernmental procedures. The TEU formalised a large number of new EU competences. It also significantly extended majority voting and the powers of the European Parliament.

Section 6 considers the Treaty of Amsterdam. Convened to deal with unfinished business from Maastricht, it was the first treaty to address increasingly popular antipathy against the European integration process. Its central policy was the establishment of the area of freedom, security and justice. The main features of this were the abolition of internal border controls between all Member States other than the United Kingdom and Ireland; the establishment of a common supranational immigration and asylum policy; and police cooperation and judicial cooperation in criminal policy. The Treaty made majority voting the dominant procedure. It also began to
introduce national safeguards, most notably limited rights for national parliaments and a detailed Protocol on the subsidiarity principle, the principle which governs when the Union, acting within its competences, is better equipped to legislate than the Member States. This principle provides that the European Union should only act when Member States cannot realise their objectives acting unilaterally and by reason of the nature or scale of the action, these objectives are better realised through Union action.

Section 7 considers the enlargement of the European Union. Initially agreed between six states, the Union had grown to fifteen Member States by the mid-1990s. Almost all were prosperous and almost all came from Western Europe. The 2004 and 2007 accessions brought the number of Member States to twenty-seven with most of the new states being from Central and East Europe and having a post-communist past. This has made the Union a genuinely pan-European organisation but it has made it much more heterogeneous, posing new preferences and challenges, and raising the question of whether it is possible to have a ‘one size fits all’ EU law.

Section 8 considers the processes that were tried to deal with the challenges of a lack of popular enthusiasm for the Union and of enlargement. In 2000, the Treaty of Nice was agreed. This agreed limited institutional reforms to deal with the anticipated enlargements. These were perceived as insufficient. A suggestion was made to debate a wide-ranging recasting of the institutional settlement in open session by a Convention made up not just of national governments and the Commission, but also MEPs and national parliamentarians. It was to be approved by referendums across a number of Member States. This process led to the Constitutional Treaty in 2004. This was, however, rejected by referendums in the Netherlands and France.

Section 9 considers the Treaty of Lisbon, which was an attempt to rescue the process of institutional reform following the collapse of the Constitutional Treaty. The Lisbon Treaty recasts the Treaties around two treaties, the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU). Whilst special institutional arrangements are made for foreign and defence policy, all other policies are brought within a supranational framework. The Lisbon Treaty increases the powers of the Parliament and the Court of Justice and increases the areas subject to majority voting. It also introduces new safeguards to protect national autonomy. The competences of the Union are catalogued. The powers of national parliaments are increased. The subsidiarity principle is strengthened and a new principle of non-violation of national constitutional identities is established.

2 EUROPE AND THE EUROPEAN UNION

This book is about the European Union. The European Union is, amongst other things, a legal system established to deal with a series of contemporary problems and realise a set of goals that individual states felt unable to manage alone. That idea is conveyed by the word ‘Union’. However, one can have a union of many things and actors. The distinctive feature of the European Union is that it claims to be a union that is European. Its mission is to lay claim to the development of the European ideal and the European heritage. The opening words of the Preamble to the Treaty on European Union establishing the European Union state:

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law…
Laying claim to the ideals of Europe and the European heritage is, of course, contentious. Some may disagree with these ideals or to the European Union claiming ownership of them. Yet if one is to understand EU law, one has to realise that at its core is a constant interplay between two agendas: the development of these ideals and the government of the problems of contemporary Europe. Elements of both permeate all the chapters of this book. In some areas, there is a tension, imbalance or dysfunction between the two. In other areas, each is being revised in the light of concerns provoked by the other. However, the balance is never static. It is constantly changing as political beliefs change, the European Union’s institutional settlement evolves and the challenges of the outside world alter. However, each development is not considered anew. They are considered in the light of a long legacy: be this the history of the European ideal, the institutional settlement of the European Union or a policy whose inception and development goes back many years.

Different chapters of this book consider different legal problems and goals. Yet it is worth pausing at the beginning of the book to consider some of the central elements of this European inheritance, both to understand what it means to call something European and so that we know the sort of venture upon which the European Union is embarked. If discussion of the Ancient Greeks and Charlemagne seems rather removed from that of discussion of the single European market, it is, however, worth considering what broader vision of life that market is tapping into. Does it change anything by calling itself a European market and does it change anything that has emerged within a particular trajectory of European integration?

(i) The idea of Europe

There is nothing fixed about the meaning of the term ‘Europe’. It has been used for a variety of purposes, often as a form of self-justification. Its roots, like many things, are curious. The first references to ‘Europe’ depict it as a woman and the sun. The most famous early reference to Europe is that found in Greek mythology. Europa was a Phoenician woman seduced by the Greek god Zeus to come from Lebanon to Crete.\(^1\) Europa was also, however, a Phoenician word that referred to the setting sun. From this, Europe was associated in Ancient Greece with the idea of ‘the West’. Originally used to designate the lands to the west of Greece, usage shifted as the Ancient Greek territorial centre of gravity changed with incursions into modern Turkey and Iran. In his wars, Alexander the Great used it to denote non-Persians and it became associated with the lands in Greece and Asia Minor (today’s Turkish Mediterranean coastline). Following this, the term was to lie largely dormant for many centuries. The Roman Empire and Christianity dominated in the organisation of political life, and neither had much use for the term.

Europe re-emerged as an important political idea from the eighth century AD onwards. It was here that it began to acquire many of the associations that we currently make when we use the word ‘European’. In part, it became an expression of a siege mentality. The advance of Islam from the South and the East led to Europe being associated with resistance to the religion. An army of Franks, which fought against the Moors, was referred to as a ‘European army’.\(^2\) At this time Europe also became associated with the idea of Western Christianity. The Frankish Empire stretched across much of West Europe under the rule of Charlemagne in the ninth century AD. He styled himself the father of Europe and sought to impose a political


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system across the region, based on communication between a large number of political and administrative centres. Alongside this, common economic practices were developed: shared accounting standards, price controls and a currency. Finally, he also sought to build a common Christian culture, which fostered learning, Christian morality, the building of churches and the imposition of a single interpretation of Christianity.  

These elements are all associated with a European identity. However, it was only from the twelfth century onwards that Europe was used to refer to a place whose inhabitants enjoyed a shared way of life based on Christian humanism, revolving around images of God and Christ portrayed as human.  

Alongside particular religious beliefs, Europe also became associated with a particular form of political economy, namely that of rural trade. Increasingly, the rural town became the centre of the local economy. Trade relations between towns expanded across Europe, so that from the fifteenth century onwards, trade flourished between the Italian ports in the south and Flanders in the North, in which the role of the merchant was pivotal. The final feature of this European region was the persecution of non-Christians, be they pagans or followers of other faiths, such as Judaism or Islam. Those whose conduct offended the central values of Christianity were also maltreated, such as heretics and homosexuals, as were those perceived as socially unproductive, in particular, lepers.

Developments in the sixteenth and seventeenth centuries were to set out the dominant institutional context for the subsequent evolution of the European idea. The establishment of the modern nation-state consolidated power in centralised, impersonal bureaucracies and led to certain core policies, such as tax, law and order and foreign policy being the exclusive competence of these bureaucracies.  

This hegemony of the nation-state over political life led to Europe acquiring new associations in the eighteenth and nineteenth centuries. It became, increasingly, an ‘aesthetic category, romantic and nostalgic’, associated with utopian ideals. Authors such as Rousseau and Kant saw Europe as an expression of certain ideals: be it a social contract between nations or as a form of perpetual peace. Europe was also considered to represent a shared aesthetic tradition: be this a common form of high culture, institutionalised through the growth of elite tourism in Europe at that time, or that of a historical civilisation, distinguishing it from the New World and justifying its colonialism.

The final twist came in the twentieth century and derives from the United States’ involvement in Europe. The role of the United States in two World Wars, the Cold War and in the regeneration of Europe after the Second World War heavily influenced European identity.  

The idea of Europe as a historically entrenched community has been reinforced in other ways. The other association has been of Europe as the Eastern borderlands of the United States.

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3 The most extensive exposition is to be found in R. McKitterick, Charlemagne: The Formation of a European Identity (Cambridge, Cambridge University Press, 2008).


For those reverting to market democracy after forty-five years of communism, a ‘return to Europe’ means a turn to the West and to values that are associated, unashamedly, with the United States, namely those of free markets and constitutional democracy. In today’s Western Europe, Europe has acquired an alternate meaning, in that its values are similar but different to those of the United States. Although there is a shared commitment to markets and constitutional democracy, these take a different form from those in the United States. There is an emphasis on the social market and on supposedly ‘European’ values, such as opposition to the death penalty, which are not present in the United States.

J. Habermas and J. Derrida, ‘February 15, or, What Binds Europeans Together: Plea for a Common Foreign Policy Beginning in Core Europe’ in D. Levy et al., Old Europe, New Europe, Core Europe: Transatlantic Relations after the Iraq War (London, Verso, 2005) 5, 10–12

… the spread of the ideals of the French revolution throughout Europe explains, among other things, why politics in both of its forms – as organizing power and as a medium for the institutionalization of political liberty – has been welcomed in Europe. By contrast, the triumph of capitalism was bound up with sharp class conflicts, and this fact has hindered an equally positive appraisal of free markets. That differing evaluation of politics and markets may explain Europeans’ trust in the civilizing power of the state, and their expectations for it to correct market failures.

The party system that emerged from the French revolution has often been copied. But only in Europe does this system also serve an ideological competition that subjects the socio-pathological results of capitalist modernization to an ongoing political evaluation. This fosters the sensitivities of citizens to the paradoxes of progress. The contest between conservative, liberal and socialist agendas comes down to the weighing of two aspects: Do the benefits of a chimerical progress outweigh the losses that come with the disintegration of protective, traditional forms of life? Or do the benefits that today’s processes of ‘creative destruction’ promise for tomorrow outweigh the pain of modernity’s losers?

In Europe, those affected by class distinctions, and their enduring consequences, understood these burdens as a fate that can be averted only through collective action. In the context of workers’ movements and the Christian socialist traditions, an ethics of solidarity, the struggle for ‘more social justice’, with the goal of equal provision for all, asserted itself against the individualist ethos of market justice that accepts glaring social inequalities as part of the bargain. Contemporary Europe has been shaped by the experience of the totalitarian regimes of the twentieth century and by the Holocaust – the persecution and annihilation of European Jews in which the National Socialist regime made the societies of the conquered countries complicit as well. Self-critical controversies about the past remind us of the moral basis of politics. A heightened sensitivity to injuries to personal and bodily integrity reflects itself, among other ways, in the fact both the Council of Europe and the EU made the ban on capital punishment a condition for membership.

Since the eighth century, the idea of Europe has thus been that it is a place where there are multiple political communities with a shared way of life. This way of life is based on a commitment to progress, civilisation, learning and culture. It is based on a belief in the value of humanity and humankind’s capacity to better itself and to resolve any problems. The hubristic nature of this indicates its dark sides. Europe historically posited itself as the centre of the world for all these things. It has been its job to civilise others, to spread progress or human values. There is also an intolerance of things ‘non-European’. For if they are not European, there is a chance
that they do not represent the good things Europe represents. At its worst, this arrogance and intolerance has led to racism and colonialism, yet it is also present in the European integration process. Time and again, the *sui generis* nature or specialness of the process is emphasised as a form of particularly enlightened cooperation between nations. There is an assumption about the desirability of the policies, as otherwise why would so many states agree to them? There is also a concern, as we shall see, that the policies should always be the very best. Opponents of integration can, thus, often be dismissed as unreasonable or nationalistic (e.g. un-European). It may be, however, that they simply disagree with the policy or the procedure, or that they believe there exist other forms of value or life beyond the European ideal.

(ii) The idea of ‘European union’

Whilst related, the idea of European union has different associations from that of Europe. After all, many self-avowed Europeans oppose European union! Independent proposals for a ‘united Europe’ first emerged at the end of the seventeenth century. However, they were still firmly confederal in nature. Ultimate authority was vested in the state, with pan-European structures acting as little more than a fetter upon the autonomy of the states. In 1693, the English Quaker William Penn wrote *An Essay Towards the Present and Future Peace of Europe*. Penn suggested that a European Parliament should be established, consisting of representatives of the Member States. The primary purposes of this Parliament would be to prevent wars breaking out between states and to promote justice. A more far-reaching proposal was put forward by John Bellers in 1710. Bellers proposed a cantonal system based upon the Swiss model whereby Europe would be divided into 100 cantons, each of which would be required to contribute to a European army and send representatives to a European Senate.

The first proposal suggesting a Europe in which the state system was to be replaced by a system within which there was a sovereign central body came from the Frenchman Saint-Simon. This proposal was published in a pamphlet in 1814, entitled *Plan for the Reorganisation of the European Society*. Saint-Simon considered that all European states should be governed by national parliaments, but that a European Parliament should be created to decide on common interests. This Parliament would consist of a House of Commons peopled by representatives of local associations and a House of Lords consisting of peers appointed by a European monarch. Saint-Simon’s views enjoyed considerable attention during the first part of the nineteenth century. Mazzini, the *éminence grise* of Italian nationalism, allied himself with Proudhon and Victor Hugo in declaring himself in favour of a United Europe. Yet, the nineteenth century represented the age of the nation-state and the relationship between that structure and that of a united Europe was never fully explored.

The balance was altered by the First World War, which acted as a stimulus for those who saw European union as the only means both to prevent war breaking out again between the nation-states and as a means of responding to increased competition from the United States, Argentina and Japan. Most prominent was the pan-European movement set up in the 1920s by the Czech Count Coudenhove-Kalergi. This movement not only enjoyed considerable support amongst many of Europe’s intellectuals and some politicians, but was genuinely transnational,

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having ‘Economic Councils’ both in Berlin and in Paris. During the 1920s, the idea of European unity received governmental support in the shape of the 1929 Briand Memorandum. This Memorandum, submitted by the French Foreign Minister to twenty-six other European states, considered the League of Nations to be too weak a body to regulate international relations, and proposed a European Federal Union, which would better police states, whilst not ‘in any way affect the sovereign rights of the States which are members of such an association’. This proposal, despite being strongly confederal in that it acknowledged the authority of the nation-states, was still regarded as too radical and received only a lukewarm response from the other states.

A further shock, in the form of the Second World War, was needed to arouse greater governmental interest in the idea of a united Europe. The coming into being and development of first, the European Communities, followed by the European Union, are explored in greater depth in the rest of this chapter. It is useful to consider for a moment how the creation of this political organisation with law-making powers, with the idea of Europe as its justification and its purpose, changed the geo-political context in which the idea of Europe was formulated. On the one hand, the European Union has become an independent centre in its own right for the generation of understandings about Europe and European values and symbols. The European Union has, therefore, tried to replicate the symbols and tools of nationhood at a pan-European level, be it through the (re)discovery of European flags, anthems, Cities of Culture or common passports.9 This understanding of Europe, as a competing alternative to the nation-state, has been replicated by ‘Euro-sceptic’ groups, who see Europe as a centralised, monolithic entity which crushes local communities and self-government.10 On the other hand, the idea of European union has become a justification for national government policy, as the Union becomes a vehicle through which national governments pursue and articulate their understanding of the national interest. On such a view, Europe does not act as a competitor to the nation-state but, rather, as a vehicle through which nation-states articulate their understandings of themselves and their place in the world through asking themselves how European they are or how they relate to Europe.

The extract below considers the case of Finland, in which the authors argue that by placing itself within the European Union many Finns were able to resolve a prior dichotomy about whether Finland was more ‘Western’ or more Russian.


Finland’s national history has been characterized by a strong awareness of being either on the brink of Europe or on the margins of Russia or somewhere in between … Meinander traces two basic conceptions of Finnish national identity: the Fennoman that stresses the indigenous features of Finnish culture and sees Finland as a cooperative borderland between the West and Russia, and the liberal that

10 A flavour is provided in M. Holmes (ed.), The Eurosceptical Reader (Basingstoke, Macmillan, 1996).
11 For an extremely scholarly account of this see J. Diez Medrano, Framing Europe: Attitudes to European Integration in Germany, Spain and the United Kingdom (Princeton, NJ, Princeton University Press, 2003).
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The idea of European union has thus come to carry three associations. First, it is associated with the establishment of a political community or tier of government in competition with that of the nation-state. Any Union policy, procedure or institution is thus always evaluated for its effects on the autonomy of national administrations. Secondly, it is associated with government policies that could not be secured by the nation-state alone (e.g. environment or trade liberalisation). They are, however, policies of the governments of the day and, inevitably, they will benefit some constituencies and disadvantage others.

Opposition to European union is often therefore opposition to the government of the day or a dominant policy process. The third association is that European union provides a context for debates about the nature of the state and national identity. It acts as a point of comparison; but also, by joining the European Union, a state commits itself to a particular vision of political community. This vision of ‘what we are’ is always likely to be contentious.

EARLY DEVELOPMENT OF THE EUROPEAN COMMUNITIES

(i) From the Treaty of Paris to the Treaty of Rome

The origins of the current European Union lie in a crisis provoked by the establishment of the Federal Republic of Germany. In 1949, the Ruhr, then under the administration of the International High Commission, was due to be handed back to the Federal Republic, along with the Saar. French fears of emerging German industrial might were compounded by Germany’s increasing share of European steel production. The French response was a plan drafted by the

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French civil servant, Jean Monnet, which was known as the Schuman Plan, after the French Finance Minister, Robert Schuman.\(^{14}\)

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**Robert Schuman, Declaration of 9 May 1950\(^{15}\)**

Europe will not be made all at once or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany. Any action which must be taken in the first place must concern these two countries. With this aim in view, the French Government proposes that action be taken immediately on one limited but decisive point. It proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organisation open to the participation of the other countries of Europe.

The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. The setting up of this powerful productive unit, open to all countries willing to take part and bound ultimately to provide all the member countries with the basic elements of industrial production on the same terms, will lay a true foundation for their economic unification.

This Plan formed the basis of the Treaty of Paris in 1951, which established the ECSC.\(^{16}\) This Treaty entered into force on 23 July 1952 and ran for fifty years.\(^{17}\) It set up a common market in coal and steel, which was supervised by the High Authority, a body independent from the Member States and composed of international civil servants, which had considerable powers to determine the conditions of production and prices for coal and steel.\(^{18}\) The High Authority was, in turn, supervised by a Council, which consisted of Member State representatives. The Treaty of Paris was signed by only six states: the BENELUX States (Netherlands, Belgium and Luxembourg), Italy, France and Germany. The United Kingdom had been invited to the negotiations, but refused to participate, as it opposed both the idea of the High Authority and the remit of its powers.\(^{19}\)

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