Since the 1960s onwards, the nature and the future of the European Union have been defined in legal terms. Yet, we are still in need of an explanation as to how this entanglement between law and EU polity-building emerged and how it was maintained over time. While most of the literature offers a disembodied account of European legal integration, *Brokering Europe* reveals the multifaceted roles Euro-lawyers have played in EU polity, notably beyond the litigation arena. In particular, the book points at select transnational groups of multipositioned entrepreneurs that have elevated the role of law in all sorts of EU venues. In doing so, it draws from a new set of intellectual resources (field theory) and empirical strategies only very recently mobilized for the study of the EU. Grounded on an extensive historical investigation, *Brokering Europe* provides a revised narrative of the ‘constitutionalization of Europe’.

**Antoine Vauchez** is a research professor at the Centre européen de sociologie et de science politique, Université Paris 1-Sorbonne / CNRS.
Cambridge Studies in European Law and Policy

This series aims to produce original works which contain a critical analysis of the state of the law in particular areas of European law and set out different perspectives and suggestions for its future development. It also aims to encourage a range of work on law, legal institutions and legal phenomena in Europe, including ‘law in context’ approaches. The titles in the series will be of interest to academics; policy-makers; policy formers who are interested in European legal, commercial and political affairs; practising lawyers, including the judiciary; and advanced law students and researchers.

Joint Editors
Professor Dr Laurence Gormley
University of Groningen
Professor Jo Shaw
University of Edinburgh

Editorial advisory board
Professor Richard Bellamy, University College London
Professor Catherine Barnard, University of Cambridge
Professor Marise Cremona, European University Institute, Florence
Professor Alan Dashwood, University of Cambridge
Professor Dr Jacqueline Dutheil de la Rochère, Université de Paris II, Director of the Centre de Droit Européen, Paris
Dr Andrew Drzemczewski, Council of Europe, Strasbourg
Sir David Edward, KCMG, QC, former Judge, Court of Justice of the European Communities, Luxembourg
Professor Dr Walter Baron van Gerven, Emeritus Professor, Leuven and Maastricht, and former Advocate General, Court of Justice of the European Communities
Professor Daniel Halberstam, University of Michigan
Professor Dr Ingolf Pernice, Director of the Walter Hallstein Institut, Humboldt University
Michel Petite, Former Director-General of the Legal Service, Commission of the European Communities, Brussels
Professor Dr Sinisa Rodin, University of Zagreb
Professor Neil Walker, University of Edinburgh
Books in the series

*Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity*
Antoine Vauchez

*Referendums and the European Union: A Comparative Enquiry*
Fernando Mendez, Mario Mendez, Vasiliki Triga

*International Trade Disputes and EU Liability*
Anne Thies

*The Limits of Legal Reasoning and the European Court of Justice*
Gerard Conway

*New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy*
Mark Dawson

*The Lisbon Treaty: A Legal and Political Analysis*
Jean-Claude Piris

*The European Union's Fight Against Corruption: The Evolving Policy Towards Member States and Candidate Countries*
Patrycja Szarek-Mason

*The Ethos of Europe: Values, Law and Justice in the EU*
Andrew Williams

*State and Market in European Union Law*
Wolf Sauter and Harm Schepel

*The European Civil Code: The Way Forward*
Hugh Collins

*Ethical Dimensions of the Foreign Policy of the European Union: A Legal Appraisal*
Urfan Khaliq

*The Evolving European Union: Migration Law and Policy*
Dora Kostakopoulou

*Implementing EU Pollution Control: Law and Integration*
Bettina Lange

*The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*
Jo Shaw

*European Broadcasting Law and Policy*
Jackie Harrison and Lorna Woods
Brokering Europe
Euro-Lawyers and the Making of a Transnational Polity

Antoine Vauchez
Contents

Series Editors’ preface page x
Acknowledgements xi

Introduction 1

Part I Unity through law: inventing Europe’s integration programme

1 Three Treaties, one Community: institution-building and legal strategies to unify Europe 19
 Claiming objectivity: the European Commission and the guardianship of the Treaties 22
    The constitutional doctrine of Professor Hallstein 24
    A ministry of law 28
Europe’s political laboratory: the European Parliament and the building of a collective expertise in institutional reform 35
    The politicians of the law 37
    Euro-parliamentarism and the institutional unity of Europe 42
A supreme court? The European Court and its constitutional doctrine 44
    The impossible Court of Justice 45
    A contested interpreter 49
    Judicializing the Court 51
A supranational market? Euro-lawyers and Europe’s economic constitution 56
    Brussels as a new marketplace 58
viii CONTENTS

Euro-lawyers as corporate brokers 63
Conclusion 70

2 The force of a weak field: the transnational field of European law and the formation of Europe’s polity 72
The genesis of a transnational legal field 73
State knowledge and European heresies 73
Academic and judicial endorsement 80
A field at the crossroads of Europe 91
A functional decoupling 92
Caesurae and censorings at the national level 95
Proximities and exchanges under the aegis of European law 99
Professionals of European interdependence 103
Legal cosmopolitans 104
National brokers of Europe 108

3 The ‘Van Gend en Loos moment’ 116
Between predictions and hindsight: the making of a landmark decision 118
Mobilizing for judicial fiat 119
A polysemous decision 122
Judicial ventriloquism: Van Gend en Loos and its legal entrepreneurs 124
Manufacturing content: Van Gend en Loos and its ‘implications’ 127
Debating the ‘logic’ of the European Treaties 129
Dramatizing the stakes 130
Politicizing the issue of the legal logic of the European Treaties 133
Europe’s integration programme 140
A new common sense 140
A Community of law 144

Part II Jurisprudence, code, constitution:
Europe’s building blocks in the making

4 ‘Jurisprudence’: transnational esprit de corps and the Court’s perpetual momentum 151
Perpetuating the founding fathers’ spirit 155
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A precarious setting</td>
<td>155</td>
</tr>
<tr>
<td>The commemorative undertaking</td>
<td>158</td>
</tr>
<tr>
<td>The making of jurisprudence: the Court’s invented tradition</td>
<td>161</td>
</tr>
<tr>
<td>Stratifying and profiling the Court</td>
<td>165</td>
</tr>
<tr>
<td>The founding fathers: the Court’s spokesmen and putative heirs</td>
<td>165</td>
</tr>
<tr>
<td>Paths of European judicial glory</td>
<td>168</td>
</tr>
<tr>
<td>5 ‘Code’: the formation of the acquis communautaire and the legal objectification in Europe</td>
<td>172</td>
</tr>
<tr>
<td>Calculating Europe</td>
<td>174</td>
</tr>
<tr>
<td>A legal artefact</td>
<td>175</td>
</tr>
<tr>
<td>Europe’s corpus juris</td>
<td>180</td>
</tr>
<tr>
<td>A common platform for Europe’s polity</td>
<td>185</td>
</tr>
<tr>
<td>Shaping jurisprudence</td>
<td>185</td>
</tr>
<tr>
<td>Monitoring implementation</td>
<td>188</td>
</tr>
<tr>
<td>Envisioning political unity</td>
<td>191</td>
</tr>
<tr>
<td>Representing Europe</td>
<td>194</td>
</tr>
<tr>
<td>6 ‘Constitution’: the fragmentation of the Treaties and Europe’s constitutional fetishism</td>
<td>198</td>
</tr>
<tr>
<td>The constitutionalist push</td>
<td>201</td>
</tr>
<tr>
<td>The academic aggiornamento and the ‘constitutionalization of Europe’</td>
<td>202</td>
</tr>
<tr>
<td>The rationalizing pressure of EU jurisconsults</td>
<td>206</td>
</tr>
<tr>
<td>The European Parliament’s constitutional strategy</td>
<td>213</td>
</tr>
<tr>
<td>A shared assumption? The ‘need’ for a European Constitution</td>
<td>217</td>
</tr>
<tr>
<td>A common constitutional ethos</td>
<td>217</td>
</tr>
<tr>
<td>Constitutionalizing Europe</td>
<td>221</td>
</tr>
<tr>
<td>Conclusion: constitutio non moritur!</td>
<td>230</td>
</tr>
<tr>
<td>Bibliography</td>
<td>232</td>
</tr>
<tr>
<td>Index</td>
<td>258</td>
</tr>
</tbody>
</table>
In this groundbreaking addition to the series *Studies in European Law and Policy*, Antoine Vauchez invites the reader to rethink the interconnection of law and the polity of Europe. How exactly, he asks, did Europe come to be defined in legal terms?

Vauchez argues that the shift away from a set of treaties which simply provided technocrats and politicians with the technical expertise in comparative law needed to bring about an alignment of economic interests through common economic laws towards a set of arrangements comprising various sources of law (treaties, legislation, case law, etc.) which can be seen as an overarching constitutional settlement requiring the crucial agency of humans: Euro-lawyers. But this is not a book as such about those personalities and personages, better or worse known, but rather about the power of law itself which displays a brokering capacity helping to hold together Europe’s rather disorganized and disjointed polity.

Thus, in contradistinction to political science narratives which have identified various (essentially) external factors, which contribute to law’s power, Vauchez’s is an internal analysis, underpinned by legal and social theory. Empirically, this is fleshed out by a uniquely wide-ranging set of sources about law, legal activities and lawyers, including biographical details, archival information from the European institutions and legal scholarly outputs. This, therefore, is a theoretically informed book, but not a book about theory. We commend it warmly as an important edition to our series.

Jo Shaw
Laurence Gormley
Acknowledgements

Before turning into its present form, this book has had many lives that span over almost a decade. Its origins can be traced back to many heated discussions over Europe’s polity and transnational fields within a small group of friends (Antonin Cohen, Mikael Madsen, Guillaume Sacriste) and, later, within a more formal research network named Polilexes (‘Politics of Legal Expertise in European Societies’) and financed by the French Agence nationale de la recherche. Throughout its development, the critical input that I received from Yves Dezalay and his tireless passion for transnational research have been widely inspirational. All these exchanges grew into an individual project parallel to the collective and collaborative one, on which I started working during my stay at the European University Institute in Florence as a Marie Curie fellow. There, I greatly benefited from the critical mass of EU scholarship and the interdisciplinary atmosphere that is so particular to that place. Many discussions and debates with wonderful scholars such as Bruno de Witte, Yves Mény, Christian Joerges, Karen Alter, Kiran Patel and Heike Schweitzer have helped me a lot. Eventually, the project was turned into an Habilitation à diriger des recherches that I presented at the Université Paris 1-Sorbonne in March 2010, with the support of Bastien François. Along the way, some early parts of this overall research were published in a variety of disciplinary fields including law (the European Law Journal and Law and Social Inquiry), sociology (the American Journal of Sociology and International Political Sociology) and political science (European Political Science Research, Revue française de science politique, etc.), and I am therefore indebted to my co-authors and co-editors (Bruno de Witte, Antonin Cohen, Didier Georgakakis, Mikael Madsen, Stephanie Mudge and Cécile Robert) as much as to various referees for pushing me forward. I turned most of the Habilitation into a book entitled L’Union par le droit. L’invention
d’un programme institutionnel pour l’Europe published in 2013 in a series co-directed by Patrick Le Gales at the Presses de Sciences Po. As the present book was progressively taking shape, I had countless opportunities to present sections of the manuscript in many venues. In particular, I benefited from early book talks at Sciences Po-Lille, Lyon, Strasbourg and Paris, the American Bar Foundation in Chicago, the London School of Economics, Siena University, the Central European University, and Berlin’s Wissenschaft Zentrum. It was, however, during the academic year 2013–14 that I completed the English-language version of this manuscript (Meg Morley was the main translator of the text, and I wish to thank her here), as I benefited from invitations from Columbia University Law School (as an Alliance visiting professor during the Fall semester) and from New York University Law School (as a Senior Emile Noël fellow during the spring semester). That year spent in New York proved instrumental to my completing this project, and again I benefited immensely from feedback after talks given at New York University, Columbia, Cornell, Princeton and the American University in Washington, and discussions with scholars and experts of the EU such as Grainne de Búrca, Daniel Kelemen and Peter Lindseth. Of course, all these years spent in the academic trenches have a special fil rouge, Stéphanie Hennette-Vauchez, with whom I have loved to share this intellectual and personal journey.