

The Transformation of EU Treaty Making

Treaty making is a site of struggle between those who claim the authority to speak and act on the international stage. The European Union (EU) is an important test case in this respect because the manner in which the EU and its member states make treaties has shifted significantly over the last six decades. Drawing insights from EU law, comparative constitutionalism and international relations, this book shows how and why parliaments, the people and courts have entered a domain once dominated by governments. It presents qualitative and quantitative evidence on the importance of public trust and political tactics in explaining this transformation of EU treaty making and challenges the idea that EU treaties are too rigid. Analysing legal developments in the EU and each of its member states, this will be essential reading for those who wish to understand the EU's controversial experiment in treaty making and its wider significance.

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The Transformation of EU Treaty Making

The Rise of Parliaments, Referendums
and Courts since 1950

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*For Emma, William and Hugh
and
Colin, Clodagh and Declan*

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Series Editors' Preface

National referendums, parliaments and indeed the courts have come to play an important part in the treaty-making process in the European Union. This applies not merely to the treaties by which the European Communities (there is still one, EURATOM), and now the European Union have been established and adapted, but also to treaties concluded between them and third countries. This study examines this process, noting rightly that treaty making is not merely a technocratic exercise. Indeed, as the various treaties establishing the Communities and the Union have created rights and obligations for legal and natural persons, not merely for the member states, which have become characterized as part of their legal heritage, it is unsurprising that there is more and more pressure for sub-state-level or even individual interest involvement in the treaty-making process. That may be inimical to a logical system of allocation of powers between states, sub-state actors, and international organisations that are created by treaties, but it has become very much a political and legal reality in the context of national pressures for regional involvement, or even popular involvement outside an election framework. People have begun to feel left out, and the perceived or real distance between the treaties and those who are affected by them is all too easily exploited for mischievous ends by populists and other purveyors of illusionary immaculate misconceptions. The need to involve and inform people, in securing the achievements of integration, while addressing their concerns, has never been more evident.

This work is a fascinating discussion of the problems and the requirements made in the legal systems of the member states, but it also offers eight positive suggestions for reforming EU treaty making. These suggestions deserve serious consideration; they should be of interest to lawyers and policymakers, as well as to policy-influencers, on the one hand, and

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to those involved in the academic debate, on the other hand, given that the discussion is conducted in the light of significant theoretical approaches and considerations.

In short, it is a pleasure for us to welcome this work as a most appropriate and stimulating addition to the *Cambridge Studies in European Law and Policy* series.

Laurence Gormley
Jo Shaw

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This book spans political and legal developments in the EU and twenty-eight states over a six-decade period. For this reason, we have been even more dependent than usual on the generosity and insights of academic colleagues. The series editor Jo Shaw deserves special thanks for her encouragement to take on this book and we thank Kim Hughes, Finola O’Sullivan, Gemma Smith and their colleagues at Cambridge University Press for their patience and professionalism. Yassar Arafat Abdunnasser, Stephanie Sakson and Robert Swanson ensured that the book went to print in record time. Legal scholars from all EU member states reviewed our manuscript and offered their advice and constructive criticism. Particular thanks go to Marko Baretic, Gavin Barrett, Martin Belov, Celine Braumann, Arnis Buka, Judge Eugène Buttigieg, Tamara Capeta, Bruno De Witte, Tomas Dumbrovsky, Thomas Evans, Kathrin Hamenstädt, H.G. Hoogers, Maria Kendrick, Sune Klinge, Rui Tavares Lanceiro, Peter Lysina, Elisabeth Margue, Marek Martyniszyn, Tamas Molnar, Joakim Nergelius, John O’Dowd, Anestis Papdopoulos, Marie Luce Paris, Philippe-Emmanuel Partsch, Janis Pleps, Lehte Roots, Janne Salminen, Ivan Sammut, Maria Esther Seijas Villadangos, Luca Siliquini-Cinelli, Nikos Skoutaris and Oana Stefan. Several legal academics and practitioners gave us helpful referrals as we searched for relevant expertise. We would like to thank Kenneth Armstrong, Marise Cremona, Miguel Sousa Ferro, Laurence Gormley, András Jakab, Ulla Neergaard, Brian O’Gorman, Philippe-Emmanuel Partsch, Jukka Snell and Christiane Wendehorst. Thanks to Michael Breen, Michele Cini, Richard Collins, Marie-Pierre Granger, Joseph McMahon, Mario Mendez, Simona Piattoni, Uwe Puetter and Kim Lane Scheppele, for commenting on specific chapters either bilaterally or through their role as discussants at conferences and workshops. Discussions with Bob Hancké and

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Abbreviations

CDU	Christian Democratic Union
CETA	Comprehensive Economic and Trade Agreement
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
ECB	European Central Bank
ECI	European Citizens' Initiative
ECOSOC	Economic and Social Council
ECSC	European Coal and Steel Community
EDC	European Defence Community
EEC	European Economic Community
EURATOM	European Atomic Energy Community
EMU	Economic and Monetary Union
EU	European Union
G20	Group of Twenty
ICBL	International Campaign to Ban Landmines
ICJ	International Court of Justice
IGC	Intergovernmental Conference
ILC	International Law Commission
IMF	International Monetary Fund
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
ÖVP	Austrian People's Party
SDP	Social Democratic Party
SPÖ	Social Democratic Party of Austria

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TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TTIP	Transatlantic Trade and Investment Partnership
UN	United Nations