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Between Sovereignty and Integration

*West Germany, European Integration, and the
Constitutionalization of European Law*

The European Economic Community is a remarkable legal phenomenon. It is a creation of law; it is a source of law; and it is a legal system.... Previous attempts to unify Europe depended on force or conquest.... The majesty of the law is to achieve what centuries of “blood and iron” could not.

Walter Hallstein, 1972¹

The establishment of the primacy and direct effectiveness of the law of the European Communities in the early 1960s over and against the law of the Member States is the most radical moment in the European integration project. The European Court of Justice's (ECJ's) now-famous *Van Gend*² and *Costa v. E.N.E.L.*³ decisions laid the foundations for the effective legal framework of the contemporary European Union. At the same time, they represented a massive inroad into the sovereign legal independence of the Member States and boldly positioned the Court as Europe's supreme judicial voice. In fact, in its *Internationale Handelsgesellschaft* ruling in the early 1970s, the ECJ went further still, declaring the primacy of European law unbound even by national constitutions.⁴ This “foundational” phase of integration ushered in the “constitutionalization” of European law,⁵ and for some contemporaries it seemed as if the ECJ had become Europe's “Super Constitutional Court.”⁶ These developments are especially intriguing to the historian of European integration because it was in this very same era that

¹ Walter Hallstein, *Europe in the Making* (London: Allen and Unwin, 1972), p 30.

² Case 26/62 *Van Gend vs. Nederlandse Administratie der Belastingen* [1963] European Court Report 1.

³ Case 06/64 *Costa vs. ENEL* [1964] European Court Report 585.

⁴ Case 11/70 *Internationale Handelsgesellschaft vs. Einfuhr- und Vorratsstelle für Getriebe und Futtermittel* [1970] European Court Report 1125.

⁵ Joseph Weiler, *The Constitution of Europe: “Do the New Clothes Have an Emperor?” and Other Essays on European Integration* (Cambridge; New York: Cambridge University Press, 1999).

⁶ This description (“*Superverfassungsgericht*”) appeared in an article of the *Frankfurter Allgemeine Zeitung*, a leading German broadsheet, on 8 October 1968.

the political atmosphere in the then-Communities became particularly sour and hostile. With the veto of British accession and the Gaullist boycott of the Council of Ministers institutions in the “Empty Chair Crisis,” the goal of uniting the states of Western Europe seemed to be under an existential threat. Moreover, if we consider the profound difficulties in agreeing to a constitutional document experienced by the contemporary European Union, we must ask ourselves, How then did the ECJ make this happen? Why, if the Member States of the period were prepared to go to the brink politically and to square up so resolutely against the supranational ambitions of the European Commission, was so little resistance manifest in reining in the ECJ’s expansive, constitutional interpretation of the Communities’ foundational documents?

The question as to why the ECJ appeared so successful in driving a federalizing agenda in the legal realm despite the seemingly recalcitrant political atmosphere of the mid-1960s and since, has become recurrent in political and legal sciences ever since. Legal theorists, particularly in the early analyses of the Court’s work, propagated the idea that the expansion of the ECJ’s power represented a wholly natural legal interpretation of the Treaties of Rome. Its articulation in the ECJ’s jurisprudence had saved the process of integration from its political opponents and the vagaries of economic cycles.⁷ Others highlighted how the ECJ’s activism had led the court too far astray from its original purpose, imagining a role for itself beyond any legal or political mandate.⁸ Merging the lines between legal theory and political science, scholars during the 1980s and 1990s frequently made mention of a “constitutionalization” paradigm,⁹ describing the functioning of EU and national law as akin to that of a federal constitutional order and explainable only through an understanding of the broader political context. Such models – usually grouped together under the heading of “Integration through Law” (ITL) theories¹⁰ – made assertions about the strategic nature of the ECJ’s choices,¹¹ or the influence of empowered

⁷ Eric Stein, “Lawyers, Judges and the Making of a Transnational Constitution,” *American Journal of International Law* 75.1 (1981); Pierre Pescatore, “Aspects of the the Court of Justice of the European Communities of Interest from the Point of View of International Law,” *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1972).

⁸ Hjalte Rasmussen, *On Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policymaking* (Dordrecht; Boston; Lancaster: Martinus Nijhoff Publishers, 1986).

⁹ JHH Weiler, *The Constitution of Europe – “Do the New Clothes Have an Emperor?” and Other Essays on European Integration* (Cambridge: Cambridge University Press, 1999).

¹⁰ Mauro Cappelletti, Monica Seccombe and Joseph Weiler, *Integration through Law: Europe and the American Federal Experience*, Series a, Law/European University Institute = Series a, Droit/Institut Universitaire Européen (Berlin; New York: W de Gruyter, 1985).

¹¹ Geoffrey Garrett, “The Politics of Legal Integration in the European Union,” *International Organisation* 49.1995 (1995); Geoffrey Garrett, Daniel R Keleman and Heiner Schulz, “The European Court of Justice, National Governments and Legal Integration in the European Union,” *International Organisation* 52.1 (1998); Andrew Moravcsik, *The Choice for Europe: Social Purpose and the State Power from Messina to Maastricht* (London: UCL Press, 1998).

subnational actors,¹² or the willingness on the part of Member States to accept less escape from their legal obligations in exchange for greater voice in the formation of those laws.¹³ Most scholars have seen legal integration as a self-propelled process, continually augmented by the compounding influence of the European judicial system.¹⁴ Others have viewed the Court's development as a necessary prerequisite for successful intergovernmental bargaining.¹⁵ While these models have provoked a huge amount of debate among scholars of the European Union, and indeed inspired this particular study, their insights have never been put under empirically grounded historical scrutiny. In other words, no matter how insightful and influential these models have been, until they stand against what really went on during the 1960s and 1970s in terms of legal integration, they will always remain at a level of unsatisfying abstraction.

Recently, there has been a turning point in how we study the European Court of Justice and the development of the European legal system. Not only has the concept of a constitutionalization paradigm come under question,¹⁶ but the ongoing release of primary sources from national archives has allowed for the initial testing of the Integration through Law theories.¹⁷ Historians are now beginning to come to grips

¹² Anne Marie Burley and Walter Mattli, "Europe before the Court: A Political Theory of Legal Integration," *International Organisation* 47 (1993); Walter Mattli and Anne-Marie Slaughter, "Revisiting the European Court of Justice," *International Organisation* 52.1 (1998); Walter Mattli and Anne-Marie Slaughter, "Law and Politics in the European Union: A Reply to Garrett," *International Organisation* 49.1 (1995); Walter Mattli and Anne-Marie Slaughter, "The Role of National Courts in the Process of European Integration: Accounting for Judicial Preferences and Constraints," *The European Courts and the National Courts – Doctrine and Jurisprudence: Legal Change in Its Social Context*, ed. Anne-Marie Slaughter, Alex Stone-Sweet and JHH Weiler (Oxford: Hart Publishing, 1998).

¹³ Weiler, *The Constitution of Europe: "Do the New Clothes Have an Emperor?" And Other Essays on European Integration*.

¹⁴ Alec Stone-Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000); Alec Stone-Sweet, "Path Dependence, Precedent and Judicial Power," *On Law, Politics, and Judicialization*, ed. Martin Shapiro and Alex Stone-Sweet (Oxford: Oxford University Press, 2002); Burley and Mattli, "Europe before the Court: A Political Theory of Legal Integration"; Garrett, Keleman and Schulz, "The European Court of Justice, National Governments and Legal Integration in the European Union."

¹⁵ Moravcsik, *The Choice for Europe: Social Purpose and the State Power from Messina to Maastricht*; Garrett, "The Politics of Legal Integration in the European Union"; Garrett, Keleman and Schulz, "The European Court of Justice, National Governments and Legal Integration in the European Union."

¹⁶ Morten Rasmussen, "Constructing and Deconstructing European 'Constitutional' European Law: Some Reflections on How to Study the History of European Law," *Europe: The New Legal Realism*, ed. Karsten Hagel-Sørensen, Henning Koch, Ulrich Haltern and Joseph Weiler (Aarhus: DJØF Publishing, 2010); Antoine Vauchez, "The Transnational Politics of Judicialization: Van Gend En Loos and the Making of EU Polity," *European Law Journal* 16.1 (2010).

¹⁷ See, for instance, the special edition of the *Journal of European Integration* 2008, vol. 14, number 2; some of the contributions to Wolfram Kaiser, Brigitte Leucht and Morten Rasmussen, *The History of the European Union: Origins of a Trans- and Supranational Polity 1950–72*, Routledge/UACES

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with the origins of the ECJ in the Rome Treaties¹⁸ and how its early personnel¹⁹ and interinstitutional and transnational relationships²⁰ were instrumental in prompting the Court's activism. These historical accounts, as well as this one, refer to the “constitutional practice of European law,”²¹ rather than the “constitutionalization,” to reflect the complicated and ongoing dispute about the nature of European law. Peter Lindseth has recently completed a provocative cross-disciplinary work with strong historical foundations, which locates the European integration in longer-term trends of delegation of authority,²² which ultimately is at the expense of parliamentary control.²³ Contemporary complaints about the lack of democratic control over the institutions of the European Union have their origin in this movement away from the locus of popular sovereignty, and the ECJ's massive expansionism serves to exacerbate and be symptomatic of this problem still further. Ultimately, however, the enigma of the ECJ's expansion can only be explained by looking at how the Member States “received” the ECJ's decisions, not only within the courtroom, but, much more crucially, among the public and academia and within the government machinery itself. Such “reception studies” are now beginning to be undertaken.²⁴ It is in these three interconnected realms of public life that the debates that would make or break the ECJ took place.

At the center of the concept of a reception study is the idea that each Member State represents a distinctive set of contextual, cultural, and legal circumstances that

Contemporary European Studies Series 7 (New York: Routledge, 2009); and a new edition of the *Contemporary European History* journal, forthcoming in 2012.

¹⁸ Anne Boerger, “La Cour de Justice dans les Négociations du Traité de Paris Instituant La Ceca,” *Journal of European Integration History* 14.2 (2008).

¹⁹ Cohen and Antonin, *Scarlet Robes, Dark Suits: The Social Recruitment of the European Court of Justice* (Florence: European University Institute [EUI], Robert Schuman Centre of Advanced Studies [RSCAS], 2008).

²⁰ Rasmussen, “Constructing and Deconstructing European ‘Constitutional’ European Law: Some Reflections on How to Study the History of European Law”; Morten Rasmussen, “Exploring the Secret History of the Legal Service of the European Executives, 1952–1967,” *Contemporary European History*, forthcoming in 2011.

²¹ *Contemporary European History Journal*, forthcoming in 2012.

²² Peter L. Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford; New York: Oxford University Press, 2010).

²³ For an account of the deliberate sidelining of the West German Bundestag by the executive branch, see Deniz Alkan, “Der Duldsame Souverän: Zur Haltung des Deutschen Bundestags Gegenüber der Rechtlichen Integration Europas durch die Rechtsprechung des Europäischen Gerichtshofs 1963–1978,” dissertation, Heinrich-Heine-Universität 2011.

²⁴ Bill Davies, “Constitutionalising the European Community: West Germany between Legal Sovereignty and European Integration, 1949–1975,” dissertation, King's College London, 2007; Bill Davies, “Meek Acceptance? The West German Ministries' Reaction to the *Van Gend En Loos* and *Costa Decisions*,” *Journal of European Integration History* 14.2 (2008). See also “Reception Studies” on France by Julie Bailleux (University of Panthéon Sorbonne, forthcoming), on the Netherlands by Jieskje Hollander (University of Groningen), and on the United Kingdom by this author.

determine the willingness and the conditions under which a particular Member State's government and judiciary will submit to the primacy of European law. These factors include elite perceptions of national interest, varying domestic institutional constellations, and oscillating streams of public and intellectual opinion toward the ECJ and European integration. This latter point – the importance of public and intellectual discourse beyond the courtroom – is of particular importance. Even when there have been explicit calls to look “beyond the law” when examining the ECJ and its reception, these have been limited to examining “social and economic data,” such as trade figures, preliminary ruling references to the ECJ, and Member State population size.²⁵ There is, however, a rich vein of media and academic material that not only relates specifically to the attempt to constitutionalize European law, but also was instrumental in determining the judicial reception in the Member States.²⁶ Indeed, this reception study historiography reveals a more nuanced reality than can be readily incorporated into any generalizing model and, most decisively, that the reception process has mattered in the formation of the European legal system. Indeed, this book will chart an important change in the judicial governance of the European Union as a direct and immediate response to concerns expressed in Member States beyond the simple intracourt dialogue highlighted elsewhere.²⁷

It is the aim of this book to engage with and supplement the preexisting models that have explained European legal integration. To do so, it will incorporate an unseen and comprehensive set of new materials documenting government archives,

²⁵ Alec Stone-Sweet and Thomas L. Brunell, “The European Court and the National Courts: A Statistical Analysis of Preliminary References 1961–1995,” *Journal of European Public Policy* 5 (1998); Alec Stone-Sweet and Thomas L. Brunell, “The European Court, National Judges, and Legal Integration: A Researcher's Guide to the Data Set on Preliminary References in Ec Law 1958–98,” *European Law Journal* 6.2 (2000).

²⁶ This approach to the formation of the European legal arena works on the presumption that judicial decision making stands in dialectical correlation with broader social discourse, simultaneously mirroring and informing debates in wider society, and that legitimate judgment requires a delicate reconciliation of legal rationale with the reason of popular will. Paul W. Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago: University of Chicago Press, 1999). In essence, neither the judge nor the courtroom, be it national or supranational, exists in a vacuum, immune to broader historic and political forces and public and intellectual opinion. This is not to make the questionable assertion that judges of the highest courts across Europe pander to public opinion in their decision making, but rather that as participants in as well as keen, well-educated observers of public and academic discourse on legal matters, judges are fully aware of varying trends and groundswells of support or resistance to certain ideas and standards. If there are long-standing and well-articulated concerns in society about a certain legal issue, it is hardly realistic to think that judges neither are aware of them nor include them in some way in that decision-making rationale.

²⁷ Alec Stone-Sweet, “Constitutional Dialogue in the European Community,” *The European Courts and National Courts – Doctrine and Jurisprudence: Legal Change in Its Social Context*, ed. Anne-Marie Slaughter, Alex Stone-Sweet and JHH Weiler (Oxford: Hart Publishing, 1998); Karen Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*, Oxford Studies in European Law (Oxford; New York: Oxford University Press, 2001).

public opinion, academic discourse, and courtroom argument surrounding the reception of European legal primacy in the Federal Republic of Germany (FRG). This is a particularly interesting choice of study as the courts in the FRG were both the first to accept the doctrine of primacy and to place conditions on it and thereby question the legitimacy of the ECJ, all in the space of seven years (1967–74). This conditional acceptance offered by the West German judiciary on the issue of European legal primacy was not just a grab for power, a question of who was to have the final say on the law, as has been suggested elsewhere.²⁸ Instead, it was reflective of a broader unease with the path taken toward a European constitutional system in West German society, which could not, nor wanted to, be articulated by the FRG's political elites. As such, the judiciary, and particularly its highest echelons, became the means of expressing resistance to the process. Because of the claims to objective legal interpretation, the judiciary was less open to criticisms of being nationalist or anti-European.

This book will argue two points, namely, that broader social discourse beyond the courtroom was crucial in framing West German judicial resistance to the ECJ and that this resistance truly mattered and was instrumental in reshaping governance by the European institutions. To be more precise, the first contention will demonstrate that the debates in legal academia from the 1950s onward were crucial in defining the intellectual parameters and terminology for the resistance to the constitutional practice. Second, the articulated public grievances with the same process provided West German judges with the mandate to try to impose their will on the European system. The specific characteristics of the FCC's adjudication – a heavy reliance on legal academic opinion, a well-identified “delay tactic” used to allow legal academic debates to reach an equilibrium, and the unusual predominance of academics as judges – as well as awareness and even participation in public media debates on the issue of European law by the FCC judges suggest strongly that these broader discourses beyond the law played some role in the deliberations of the Court – even if the justices would never admit to this. Moreover, in the face of a passive and broadly prointegration government, the FCC knew that it was the one institution capable of articulating the broadly held concerns in the academy and the media. It chose to pick a fight with the government and with Europe despite the difficulties this would raise. In this, they were successful. Concerns resulting from the acceptance of European legal primacy, particularly about fundamental rights protection, were institutionalized not just legally, but *politically* too,

²⁸ JHH Weiler and Ulrich Haltern, “Constitutional or International? The Foundations of the Community Legal Order and the Question of Judicial Kompetenz-Kompetenz,” *The European Courts and National Courts – Doctrine and Jurisprudence: Legal Change in Its Social Context*, ed. Anne-Marie Slaughter, Alex Stone-Sweet and JHH Weiler (Oxford: Hart Publishing, 1998).

into a new mode of European governance.²⁹ This resulted not only in the modification of ECJ jurisprudence in the *Hauer* decision of 1979,³⁰ but most importantly in the binding of the Community's political institutions to the European Convention of Human Rights (ECHR) in 1977.³¹ The documentation of resistance and “push back” at the national level and a clear and direct response by the European institutions in reaching a workable compromise recasts our understanding of the dynamics of European legal integration. Resistance and response to legal integration have therefore led to a nonlinear acceptance of the ECJ's jurisprudence by national actors across time and across geography.³² What exists across Europe is a patchwork, contingent judicial settlement, in which different Member States impose differing conditions on the acceptance of legal primacy, dependent on the broader reception of the ECJ, European integration, and European law at that given time. Legal integration is only partially self-propelling, and what the historical approach reveals is a much more timid set of European institutions than we have come to expect, afraid of, in this particular case, West German recalcitrance and willing to reach important compromises in order to save face and garner support. Here for the first time was a national judiciary “pushing back” against the ECJ – and making a real, institutionalized difference in doing so. We can no longer think of the European legal order as a creation of the ECJ. We now have documented evidence to show the judicial and political impact made by the resistance of national judiciaries to the constitutional practice.

BETWEEN SOVEREIGNTY AND INTEGRATION: WEST GERMANY AND EUROPE

As the most populous and economically muscular Member State, the FRG is essential to the functioning and financing of the European integration project. In reverse, European integration has been of equal necessity to the Federal Republic. Emerging from the horrors of the 1940s, the battered, occupied, and divided German state was

²⁹ This offers a differing account from standard narrative, in which the *Solange* decision is responded to by the ECJ only through its *Hauer* decision. Frank Schimmelfennig, “Competition and Community: Constitutional Courts, Rhetorical Action, and the Institutionalization of Human Rights in the European Union,” *Journal of European Public Policy* 13.8 (2006).

³⁰ Case 44/79 *Hauer vs. Land Rheinland Pfalz* [1979] European Court Report 321.

³¹ *Joint Declaration by the European Parliament, the Council and the Commission*, in *Official Journal of the European Communities* (OJEC). 27 April 1977, No C 103, p 1.

³² For a review of the judicial reception of the primacy doctrine, see among others Stephen Weatherill, *Law and Integration in the European Union*, Clarendon Law Series (Oxford; New York: Clarendon Press; Oxford University Press, 1995); Stephen Weatherill and PR Beaumont, *EU Law*, 3rd ed. (London: Penguin, 1999); Paul Craig and Grainne De Burca, *EU Law: Text, Cases and Materials*, 4th ed. (Oxford: Oxford University Press, 2007).

neither existentially nor economically secure. Two increasingly hostile blocs divided and occupied the territory of the former Third Reich, leaving the idea of a single, unified postwar German state uncertain. As the cold war developed, the division of the country between the two camps consolidated as Germany became an early battleground between the cold war antagonists. The solidification of the country's division, particularly during the Berlin blockade in 1948, saw the merging of the areas under Western occupation into a new state, which mirrored the political and economic preferences of the Allies. Yet what to do with this new Federal Republic – the German Question – remained the most pressing matter of the late 1940s. The new political elite of the western half was forced into a balancing act between the desire for a return to sovereignty and stable government and the need to reassure Germany's neighbors of its peaceful intentions. Economically, the industrial and social displacement caused by the war left a longing for increased economic stability and prosperity, made all the more urgent by the need to accommodate and integrate the millions of Germans expelled from Eastern Europe. There were a number of possible solutions to the German Question, not least likely of which was the prospect of a nonaligned, disarmed German state in central Europe. European integration, as another option, held the promise of access to markets for West German industry, in turn bolstering economic prosperity and thus allaying the perceived threat of the Communist movement. It would also reassure West Germany's neighbors of its reliability and ideally provide West Germany with an equal footing with those countries who shared its desire for integration. Through peaceful and cosmopolitan cooperation, the West Germans could also seek to assimilate themselves into the international community and secure for themselves a "position of strength"³³ vis-à-vis their eastern counterparts.

As such, for the incumbent political leadership, European integration provided a means to achieve both its economic and its political goals. Although contended strongly by some, including the Social Democrats, that the policy of *Westbindung* made reunification less likely, the FRG had found a means of both developing its war-ravaged industrial base and restoring its credibility with the occupying Allied powers.³⁴ Under the strong direction of the first chancellor, Konrad Adenauer, the FRG sought to bind itself to its Western neighbors, particularly as tensions between the occupying powers continued to rise in Korea and beyond. The division of

³³ Lothar Kettenacker, *Germany since 1945* (Oxford: Oxford University Press, 1997), p 60.

³⁴ The differing political concepts for the postwar period between (and within) the governing Christian Democratic Union (CDU) and the opposition parties, the Social Democratic Party (SPD) and Free Democratic Party (FDP), are discussed at length in Chapter 4. An excellent resource for this is found in Wolfram Kaiser, "Institutionelle Ordnung und Strategische Interessen: Die Christdemokraten und 'Europa' Nach 1945," *Das Europäische Projekt zu Beginn des 21. Jahrhunderts*, ed. Wilfried Loth (Opladen: Leske & Budrich, 2001).

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Europe and Konrad Adenauer's long tenure as chancellor ensured that this process was oriented decidedly toward the West,³⁵ with the FRG's ties to the United States of America, the North Atlantic Treaty Organization (NATO), and its most important western neighbor, France, becoming ever closer as the 1950s progressed. Locked into this western orientation by the overwhelming and continued domestic success of Adenauer and the predilections of the Allies, the FRG was inherently willing to consider forms of integrated European governance. Creating a united Europe through a surrendering of sovereignty that it did not yet fully exercise anyway, and picking up some of the bills for integration thereafter would be a small "sacrifice" in redeeming itself for its historical indiscretions.³⁶

The newly minted Basic Law, the FRG's provisional³⁷ constitution ratified in May 1949, contained clauses that left the state intrinsically open to modes of international cooperation (Article 25) and transference of sovereignty (Article 24), which, of course, as an occupied state, the FRG did not yet fully enjoy. It was therefore no surprise that Adenauer, who listed European integration as one of the key goals of the new state, jumped at the chance of cooperation with the French through the Schuman Declaration of 1950. By pooling sovereignty over its war-enabling coal and steel industries, and subsequently its entire economy through the Treaties of Rome, Germany through European integration began the process of reconciliation with its immediate neighbors and became an integral part of the Western alliance. Of course, this process was not without setbacks. A long struggle in the Bundestag to pass a West German contribution to the suggested Pleven Plan, which would have created a European Defence Community,³⁸ failed when the French rejected the plan in 1954. This served

³⁵ Among others: Adrian Hyde-Price, *Germany and European Order: Enlarging Nato and the EU* (Manchester: Manchester University Press, 2000), pp 78–9; Peter Pulzer, *German Politics 1945–1995* (Oxford: Oxford University Press, 1995), pp 14–17; Kurt Sontheimer and Wilhelm Bleek, *Grundzüge des Politischen Systems der Bundesrepublik Deutschland* (Bonn: Bundeszentrale für politische Bildung, 2000), p 44; Dennis L. Bark and David R. Gress, *West Germany: From Shadow to Substance 1945–1963* (London: Blackwell Publishing, 1989), pp 274–7; AJ Nicholls, *The Bonn Republic: West Germany Democracy 1945–1990* (London: Longman, 1995), p 117; Wolfram F. Hanrieder, *Germany, America, Europe: Forty Years of German Foreign Policy* (New Haven, Conn.; London: Yale University Press, 1989), pp 2243–6.

³⁶ This idea of "sacrifice" will become a leitmotif throughout West German society's dealings with the European legal system – until a certain point. For analysis of the idea of "sacrifice" in postwar West Germany, see Robert G. Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany* (London: University of California Press, 2003).

³⁷ The Basic Law was meant to be a temporary document, governing the western half of Germany until unification could be achieved. See, among others, Dieter Hesselberger, *Das Grundgesetz: Kommentar für die Politische Bildung* (Bonn: Bundeszentrale für Politische Bildung, 2001), pp 28–9.

³⁸ For an excellent discussion of the creation, specifics, and ultimate failure of the European Defence and Political Communities, see Richard T. Griffiths, *Europe's First Constitution: The European Political Community 1952–1954* (London: Federal Trust, 2000).

only to dampen, not quell West German ambitions for an ever closer European union. More importantly, the FRG, as Europe's biggest export economy, had been instinctively supportive of economic and political integration, because the increased economic exchange that integration undoubtedly furthered fueled its prosperity and underlined its postwar identity as Europe's "Economic Wonder."³⁹ Germany has been the biggest contributor to the European purse from the outset and one of the most open supporters of a federal European government, which it was felt would help secure the new democratic order in the FRG.⁴⁰ Politically, too, Adenauer's formula of regaining sovereignty, rearmament, and regaining control of West German industry through closer integration in the West was unarguably successful. The promise of a pacified and united Europe, as a precursor for the reunification of Germany, proved a remarkably popular idea among the West German populace.⁴¹

Yet at the same time, there was a constitutional paradox in the policy of western integration. Submission to European legal primacy, vital as it was according to the ECJ to the functioning of the European integration project, threatened another crucial aspect of the FRG's self-definition, namely, the rigorous constancy of its new democratic constitutional system. The Basic Law was designed to provide the western half of Germany with a new progressive and peaceful identity and not only contained clauses allowing integration, but also rejected militaristic modes of diplomacy (Article 26) and contained a preamble espousing the virtues of world peace. Most importantly of all, though, the "spectre"⁴² of the Weimar Republic led many to reflect continually on whether long-standing trends in German culture were compatible with democracy at all.⁴³ In response, essential parts of the document

³⁹ Germany's role as the so-called *Wirtschaftswunder* in postwar Europe is a central narrative in most of the most influential histories of the period. Werner Abelshauser, *Deutsche Wirtschaftsgeschichte seit 1945* (Munich: CH Beck Verlag, 2004), pp 15–19; Nicholls, *The Bonn Republic: West Germany Democracy 1945–1990*, pp 95–8; Pulzer, *German Politics 1945–1995*, pp 62–5; Manfred Kortemeyer, *Kleine Geschichte der Bundesrepublik Deutschland* (Munich: CH Beck Verlag, 2005), pp 45–61; Kettenacker, *Germany since 1945*, pp 80–105.

⁴⁰ Simon Bulmer and Paterson William, *The Federal Republic of Germany and the European Community* (London: Allen and Unwin, 1987).

⁴¹ For extensive opinion poll data expressing the general support of European integration in West Germany throughout the selected period of research, see Chapter 3.

⁴² Peter Merkl, "The German Response to the Challenge of Extremist Parties 1949–1994," *The Postwar Transformation of Germany: Democracy, Prosperity and Nationhood*, ed. John S Brady, Beverly Crawford and Sarah Elise Wiliarty (Ann Arbor: University of Michigan Press, 1999).

⁴³ Friedrich Meinecke, *Die Deutsche Katastrophe; Betrachtungen und Erinnerungen* (Zürich: Aero-verlag, 1946); Gerhard Ritter, *Europa und die Deutsche Frage; Betrachtungen über die Geschichtliche Eigenart des Deutschen Staatsdenkens* (München: Münchner Verlag, 1948); Fritz Fischer, *Griff Nach der Weltmacht; Die Kriegszielpolitik des Kaiserlichen Deutschland 1914/18* (Düsseldorf: Droste, 1961); Fritz Fischer, *Bündnis der Eliten: Zur Kontinuität Der Machtstrukturen in Deutschland 1871–1945* (Düsseldorf: Droste, 1979).