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Fifty Years of European Community Law

Roger J. Goebel*

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Roger J. Goebel

Abstract

Thus, it is highly appropriate for the Fordham Center on European Union Law and the Fordham International Law Journal ("ILJ") to join efforts to celebrate the achievements of the European Community, with particular recognition of the role and influence of the EC Court of Justice. Our conference, Fifty Years of European Community Law, held on February 29 and March 1, 2008, assembled thirty leading European and American experts in EU law fields, together with five former Court of Justice members and national court judges, for an impressive program reviewing different fields. This issue of the ILJ is the first of three issues publishing papers, either longer articles or shorter essays, authored by speakers at the conference. Initially providing a historical perspective of the creation of the EC, George Mason University Professor Desmond Dinan has contributed *Fifty Years of European Integration: A Remarkable Achievement*. Professor Dinan's recent history of the EC and EU, *Europe Recast*, is an invaluable survey of the political, social, economic and cultural evolution of the EC.

FIFTY YEARS OF EUROPEAN COMMUNITY LAW

INTRODUCTION

*Roger J. Goebel**

One of the most remarkable events in European history is the story of the evolution of the European Community ("EC") from 1958 to the present. Created by the Treaty of Rome as the European Economic Community ("EEC"), when launched on January 1, 1958 even the successful creation of a common market for the six founding nations was certainly visionary. Its founding fathers, the political leaders of the day, could certainly never have foreseen the European Community of today, comprised of twenty-seven nations and active in fields as diverse as agriculture, monetary union, international trade, and even (in a coordinative role) education, culture, health and tourism.

Somewhat ironically, the fiftieth anniversary of the launch of the European Community has not been greatly celebrated, nor its achievements properly feted. Attention has rather been focused on the efforts of Europe's political leaders to set a new way forward for the European Union ("EU") after the unfortunate collapse of the efforts to ratify the Treaty establishing a Constitution for Europe. The successful drafting of the Treaty of Lisbon under the leadership of Chancellor Merkel and the German Presidency, and the consequent ratification process, has largely absorbed the attention of the media and the public at large.

The failure to celebrate the fiftieth anniversary of the European Community contrasts with the widespread acclamation of the EC's achievements in 1983 on its twenty-fifth anniversary, even though at the time further progress seemed apt to be relatively modest, during a period popularly known as "Europessimism." During the 1960s, especially under the vigorous leadership of Walter Hallstein, the first Commission President, the EC successfully established the Common Agricultural Policy and the basics of Competition Policy, launched the harmonization of

* Alpin J. Cameron Professor of Law and Director of the Center on European Law, Fordham University School of Law.

laws program, set the initial Common Customs Policy, commenced its role as negotiator in General Agreement on Tariffs and Trade ("GATT") negotiations, and removed many national barriers to trade within the common market. In the 1970s, thanks in large measure to the energetic support for the EC from great national leaders, such as Presidents Georges Pompidou and Valéry Giscard d'Estaing of France and Chancellors Willy Brandt and Helmut Schmidt of Germany, the EC expanded dramatically its fields of action to include Social Policy, Environmental Protection and Consumer Rights, commencing the adoption of harmonized rules in each field.

Moreover, the 1970s began the successive waves of enlargement when the EC successfully incorporated Denmark, Ireland and the United Kingdom as Member States, bringing them in on the basis of the *acquis communautaire*, the fundamental policy which has enabled every later accession. The magnet of joining the EC's common market undoubtedly contributed greatly to the re-democratization of Greece, Spain and Portugal as a precondition to their accession in the 1980s.

One can properly speak of a virtual re-launch of the EC through the extraordinary leadership of Commission President Jacques Delors in his three successive presidencies, 1985-94, supported crucially by President François Mitterrand of France and Chancellor Helmut Kohl of Germany. The Commission's June 1985 White Paper on Completing the Internal Market revitalized the market integration program, notably in the fields of services and capital. This program could not have been achieved without the enthusiastic support of national political leaders, the media and the business community, and, not least, the European Parliament, steadily growing in political influence since its initial direct election in 1979. Although appearing at the time to be relatively modest in character, the adoption of the Single European Act in 1987 solidified the internal market goal and enabled efficient, more democratic legislation through qualified majority voting in the Council and the cooperation procedure with the Parliament.

The European Community took on added dimension in the 1990s with the entry into force in 1993 of the Treaty of Maastricht, creating the European Union as an overarching structure, but, even more important, revitalizing the EC itself. Probably the most important innovation was the EC's new Economic and

Monetary Union, finally effective in 1999, with the political and economic centerpiece of the Euro as a common, and more global-level currency. Decisive for further democratization and efficiency were the EC Treaty amendments enabling essentially equal roles for the Council and Parliament in the codecision process, the augmented influence of the Parliament over the Commission and the enhanced power of the Commission President.

Further enlargement has steadily widened the European Union and concomitantly the European Community. The easy absorption of Austria, Finland and Sweden in 1995, followed by the far more difficult negotiations with the ten new democracies of Central Europe, together with Cyprus and Malta, has led to the twenty-seven nation EC and EU of today. The strongly perceived need for more efficient structures has, of course, led first to the unsuccessful effort to achieve a Constitution, and now to the hopeful adoption of the Treaty of Lisbon, including its annexed Charter of Rights.

This brief historical perspective presented above focused on political evolution. Undeniably, however, the success of the European Community is heavily based upon the contributions of the EC Court of Justice ("ECJ"). It is quite likely that the drafters of the EC Treaty envisioned the Court as essentially an administrative tribunal, but the Court immediately perceived in the 1960s its mission to be both a supreme court and a constitutional court. It is impossible to conceive of the level of market integration for goods, services, people and capital which has been attained in the EC without the cutting-edge jurisprudence of the Court of Justice. The Court has always been activist in the best sense in the promotion of the goals of the Treaty. Its fundamental judicial doctrines of direct effect, Treaty primacy and the protection of basic rights have profoundly shaped the constitutional nature of the EC, and formed crucial elements of the *acquis communautaire*. Time and again the Court case law has opened new dimensions for legislative action, while the Court has creatively interpreted Community legislation to promote Treaty goals.

Thus, it is highly appropriate for the Fordham Center on European Union Law and the *Fordham International Law Journal* ("ILJ") to join efforts to celebrate the achievements of the European Community, with particular recognition of the role and influence of the EC Court of Justice. Our conference, Fifty Years

of European Community Law, held on February 29 and March 1, 2008, assembled thirty leading European and American experts in EU law fields, together with five former Court of Justice members and national court judges, for an impressive program reviewing different fields.

This issue of the *ILJ* is the first of three issues publishing papers, either longer articles or shorter essays, authored by speakers at the conference. Initially providing a historical perspective of the creation of the EC, George Mason University Professor Desmond Dinan has contributed *Fifty Years of European Integration: A Remarkable Achievement*.¹ Professor Dinan's recent history of the EC and EU, *Europe Recast*,² is an invaluable survey of the political, social, economic and cultural evolution of the EC.

An able commentator on the Court of Justice, Professor Anthony Arnall from the University of Birmingham, has provided an excellent study, *Me and My Shadow: The European Court of Justice and the Disintegration of European Union Law*,³ discussing the cooperation coupled with inevitable tensions between the Court of Justice and national courts in the elaboration of Court doctrines. Judge Richard Lauwaars from the Dutch Supreme Administrative Court has set out in *The Application of Community Law by National Courts Ex Officio*⁴ the intricate interplay between national courts and the ECJ in the enforcement of EC rules in proceedings where the relevant parties have not raised the issue. Dr. John Temple Lang, now a Brussels lawyer and formerly a senior Commission official, has returned to one of its fields of published scholarship with *The Development by the Court of Justice of the Duties of Cooperation of National Authorities and Community Institutions Under Article 10 EC*,⁵ a study of the crucial importance of EC Treaty Article 10's duty of loyalty imposed on Member States to the goals and objectives of the EC.

1. Desmond Dinan, *Fifty Years of European Integration: A Remarkable Achievement*, 31 *FORDHAM INT'L L.J.* 1118 (2008).

2. DESMOND DINAN, *EUROPE RECAST: A HISTORY OF EUROPEAN UNION* (2004).

3. Anthony Arnall, *Me and My Shadow: The European Court of Justice and the Disintegration of European Union Law*, 31 *FORDHAM INT'L L.J.* 1174 (2008).

4. Richard H. Lauwaars, *The Application of Community Law by National Courts Ex Officio*, 31 *FORDHAM INT'L L.J.* 1161 (2008).

5. Dr. John Temple Lang, *The Development by the Court of Justice of the Duties of Cooperation of National Authorities and Community Institutions Under Article 10 EC*, 31 *FORDHAM INT'L L.J.* 1483 (2008).

Turning from constitutional topics to the ever-increasingly important field of basic rights protection, this issue includes two valuable studies. Professor Jacqueline Dutheil de la Rochère, former President of the University of Paris I, examines the background, role and legal status of the Nice Charter of Fundamental Rights,⁶ which will hopefully soon achieve binding legal value through the Treaty of Lisbon. Seton Hall School of Law Professor Elizabeth Defeis, long a scholar in international human rights, provides an extremely valuable historical review of EC Court doctrines on basic rights in *Human Rights and the European Court of Justice: An Appraisal*.⁷

Since 1983, Fordham's annual conferences on international anti-trust law have featured top-flight reviews of evolving EC competition rules. The *Fordham International Law Journal* is pleased to publish in this issue the presentation by Neelie Kroes, currently the EC Commissioner responsible for competition policy, at the September 2007 conference, entitled *Improving Competition in European Energy Markets Through Effective Unbundling*.⁸ A senior Commission merger policy official, Carles Esteva Mosso, also provides an invaluable study with *Non-Horizontal Mergers: A European Perspective*,⁹ a topic of growing practical importance in which EC views represent a decided contrast to those prevailing in the U.S. Department of Justice. Long-standing American EC antitrust expert, Professor David Gerber from the Chicago-Kent Law School, has contributed *Two Forms of Modernization in European Competition Law*,¹⁰ a scholarly analysis of the nature, implications and impact of the competition policy restructuring in the last decade.

Turning to studies of sectors of EC law, Dean John Usher of the University of Exeter Law Faculty, a well-known expert in financial law and the law of money, has contributed a detailed

6. See Jacqueline Dutheil de la Rochère, *The Lisbon Compromise: A Synthesis Between Community Method and Union Acquis*, 31 FORDHAM INT'L L.J. 1143 (2008).

7. Elizabeth F. Defeis, *Human Rights and the European Court of Justice: An Appraisal*, 31 FORDHAM INT'L L.J. 1104 (2008).

8. Neelie Kroes, *Improving Competition in European Energy Markets Through Effective Unbundling*, 31 FORDHAM INT'L L.J. 1387 (2008).

9. Carles Esteva Mosso, *Non-Horizontal Mergers: A European Perspective*, 31 FORDHAM INT'L L.J. 1442 (2008).

10. David J. Gerber, *Two Forms of Modernization in European Competition Law*, 31 FORDHAM INT'L L.J. 1235 (2008).

analytical study, *The Evolution of the Free Movement of Capital*.¹¹ For his part, Professor Jan Jans from the University of Groningen, one of Europe's leading environmental law scholars, has produced a fascinating study, *Environmental Spill-Overs Into General Community Law*,¹² demonstrating how principles first enunciated in an environmental law context have spread to other areas of Community law.

The paper of Caroline Bradley, professor at the University of Miami Law School, *Consumers of Financial Services and Multi-Level Regulation in the European Union*,¹³ is another fascinating study concerning the influence of consumer rights groups on the development of regulatory measures in EC financial law. Finally, my own contribution to the symposium, *Economic Governance in the European Union: Should Fiscal Stability Outweigh Economic Growth in the Stability and Growth Pact?*,¹⁴ represents an analysis of the Stability and Growth Pact, a crucial part of the economic and fiscal stabilization efforts in the Economic and Monetary Union, attempting to demonstrate that economic growth and employment concerns should properly balance final stability concerns.

The next and final issue of Volume XXXI of the *ILJ* will continue to present articles and essays on EC law developments presented initially at the Fifty Years conference. A notable feature will be the publication of the transcript of a panel of present and former EC and national judges discussing candidly a variety of issues concerning the Court of Justice and its relations with national courts, as well as the European Court of Human Rights.

Next fall, the customary *ILJ* annual issue devoted to EU law will also include a half-dozen articles and essays developing topics addressed in the conference. Altogether, the *ILJ* and the

11. John A. Usher, *The Evolution of the Free Movement of Capital*, 31 *FORDHAM INT'L L.J.* 1533 (2008).

12. Prof. Dr. Jan H. Jans et al., *Environmental Spill-Overs Into General Community Law*, 31 *FORDHAM INT'L L.J.* 1360 (2008).

13. Caroline Bradley, *Consumers of Financial Services and Multi-Level Regulation in the European Union*, 31 *FORDHAM INT'L L.J.* 1212 (2008).

14. Roger J. Goebel, *Economic Governance in the European Union: Should Fiscal Stability Outweigh Economic Growth in the Stability and Growth Pact?*, 31 *FORDHAM INT'L L.J.* 1097 (2008).

Center on European Union Law expect to provide an appropriate celebration of the EC's achievements on its fiftieth anniversary.