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INTEGRATION THROUGH LEGAL
EDUCATION.
THE ROLE OF EU LEGAL STUDIES IN
SHAPING THE EU

EDITED BY
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FOREWORD

The speed and depth with which the European Communities/European Union has evolved is breathtaking and has radically shaped the life of the continent. Ever since the beginning of this ambitious economic and political project, scholars around the world have tried to explain the underlying logic behind it and the mechanisms of its functioning. Thus, a plethora of studies developed alongside the evolution of the EU.

SENT (*Network of European Studies*) is an innovative and ambitious project which brought together about 100 partners from the EU member states, candidate and associated countries, and other parts of the world. It was a far reaching project aimed to overcome disciplinary and geographical-linguistic boundaries in order to assess the state of EU studies today, as well as the idea of Europe as transmitted by schools, national politicians, the media, etc.

SENT's main goal was to map European studies, in order to get a comprehensive picture of the evolution of European studies over the last decades in different disciplines and countries. This approach permitted to achieve a better understanding of the direction these studies are now taking. Five disciplines were identified where EU studies have particularly evolved: law, politics, economics, history, and social and cultural studies. The mapping of EU studies thus includes a review of the most studied issues in EU studies today, the main academic schools, the most influential journals and books published, but it also shows how local realities and national identities affect the study and teaching of Europe around the world. In addition, an important work was done in mapping and discussing teaching methodologies in relation to European studies with the aim of introducing and diffusing the most up-to-date techniques.

The project was structured in various working groups, corresponding to their respective disciplines. These networks worked closely together to ensure a discussion across geographic boundaries. At the same time, the SENT network brought together scholars around the world in a direct and multidisciplinary dialogue in a General Assembly held in Rome in July 2010 to reflect on the state of the EU disciplines and their future.

We are very proud to present the results of this ambitious project in a series of volumes. The following are being published with Il Mulino:

1. *European Integration Process Between History and New Challenges*, edited by Ariane Landuyt;
2. *Analyzing European Union Politics*, edited by Federiga Bindi and Kjell A. Eliassen;
3. *Integration Through Legal Education. The Role of EU Legal Studies in Shaping the EU*, edited by Valentino Cattelan;
4. *Questioning the European Identity/ies: Deconstructing Old Stereotypes and Envisioning New Models of Representation*, edited by Vita Fortunati and Francesco Cattani;
5. *Ideas of Europe in National Political Discourse*, edited by Cláudia T. Ramos;
6. *Communication, Mediation and Culture in the Making of Europe*, edited by Juliet Lodge and Katharine Sarrakakis.

Other two volumes are part of the SENT series and will be published elsewhere: *Mapping European Economic Integration*, edited by Amy Verdun and Alfred Tovias with Palgrave and *Teaching European Studies Curricula and Teaching Methods*, edited by Stefania Baroncelli, Roberto Farneti, Ioan Horga and Sophie Vanhoonacker with Springer.

The extensive work of this project was coordinated by Prof. Federiga Bindi, Director of the Jean Monnet European Centre of Excellence of the University of Rome Tor Vergata and her valuable team, and benefited from the generous support of the European Commission.

The scientific organisation was assured by a core

coordinating committee formed by: Federiga Bindi, Ariane Landuyt, Kjell A. Eliassen, Vita Fortunati, Stefania Baroncelli, Ioan Horga, Sophie Vanhoonacker, Cláudia Toriz Ramos, Juliet Lodge, Amy Verdun and Alfred Tovas.

It is fair to say that these volumes show how the EU has uniquely affected not only the daily life on the 'old continent', but also its scholarly work. We hope that this project opens the path for further extended debates about these transformations providing food for thought and research tools for young researchers, practitioners and scholars of European affairs alike.

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VALENTINO CATTELAN

VALENTINO CATTELAN

INTRODUCTION: EU LEGAL EDUCATION AS
A FACTOR OF POLITICAL INTEGRATION

1. *Integration through legal education? EU law, legal scholarship and teaching*

Tucked away in the fairyland of Duchy of Luxembourg and blessed until recently with benign neglect by the powers that be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type Europe [Stein 1981, 1].

As broadly recognized by legal scholarship, the ECJ and EU law have been a driving force of integration, and, in particular, the Court itself has been considered as *the* champion of the integration process, especially during the period of euro-sclerosis in the '70s, as witnessed by Cassis de Dijon case and other famous rulings. Thus, besides the signing of the treaties, and lately the Lisbon Treaty, as sources of international law, it has been the new legal framework shaped by the ECJ, part international, part national, and crucially, part supranational, that has shaped a «new legal order for a new political order» [Hunt and Shaw 2009], using law as an *agent* of integration, and, more notably, as the mean to create a new model of *regional polity* [Dehousse and Weiler 1990]. As Hunt and Shaw remark, «indeed, for many lawyers, because of the focus of their disciplinary lenses, ... [law] is *the* agent par excellence, with the story of EU integration being explored as one of 'Integration through law'» [Hunt and Shaw 2009; Cappelletti, Secombe and Weiler 1985].

At any rate, while scholars' attention usually focalizes on primary (the treaties) and secondary (mainly, regulations, directives and decisions) sources of EU law, as well as on the principles drawn by the European Court of Justice, surprisingly little research has been produced till now

on the professions that partake in the process, namely the judges, jurists and lawyers, as well as on the students and the process of education on EU legal studies.

In fact, despite their fundamental role in fostering EU 'law in action'¹, pushing *de facto* EU (legal) integration, it seems that a certain subtle hesitation prevents EU legal scholars to put under investigation their own attitudes towards EU law, the way in which EU law is taught (as well as understood) and how much its teaching affects the future application of European legislation in national jurisdictions.

To sum up, a meta-discourse on EU legal studies appears to be distant from the interest of EU legal experts.

Should this be considered a signal of weakness of EU legal studies?

Actually, according to the epistemology of science it is natural attitude for any scientific community not to put under question its own 'pillars': in other words, any scientific community founds itself on the application and perpetuation of a *paradigm*, which is rarely questioned by its own adherents². From this stance, the under-consideration of issues of methodology, efficacy and efficiency of EU legal studies by the members of the same 'EU law community' should not be deemed surprising.

At any rate, the issue of the convergence (or divergence) of educational standards in Europe has been already raised in the context of sociology of law:

legal expertise is often seen as key in pushing policy agendas yet it is taken for granted rather than analysed. Yet, if EU law is so important in the history of European integration, a promising research agenda would be to take EU legal studies and EU

¹ As well-known, following the Austro-Hungarian scholar Eugen Erlich, the sociological approach to law theorizes the distinction drawn between 'law on the books' and 'law in action': «Roscoe Pound's essay on 'Law in Books and Law in Action' immediately followed Erlich's work and Max Weber stressed that formal law is often modified or subverted at the level of application» [Palmer 2005, 283].

² The reference here is to the concept of 'paradigm' as introduced in epistemology of science by philosopher Thomas S. Kuhn [Kuhn 1970].

lawyers as an object of study. How has the EU changed the teaching of law in member states' universities? What is its reach in the various sub-disciplines of the field? Is a European doctrine emerging? What is the trajectory of those that specialize in EU law? What is the ECJ judges' vision of the role of the law? [Guiraudon 2004, 1].

These questions immediately imply further reflection on the general nature of law in the context of EU studies.

In particular, two alternative positions may be suggested on the topic: on the one side, the interpretation of law as a cultural phenomenon ('law-as-culture'); on the other side, on a narrower scale, its understanding as a scientific discipline, in the context of social sciences ('law-as-science') [Schepel 2004, 2]. In fact,

one would see law as essentially tied to a particular society and a particular culture. Law, here, grows organically from a society's evolving norms and traditions. Two consequences flow from this immediately: first, differences across different legal systems are not just tolerable, they are inevitable. Second, imported or imposed law which doesn't reflect a particular society's culture will at best be dysfunctional and more likely lead to all sorts of legitimacy problems [Schepel 2004, 2].

Alternatively, law may be considered as a discipline, a science, an artefact,

a tool which can be sharpened by lawyers and legal experts, that can be improved and made more efficient by technical means. The 'best' solution is equally viable and desirable in different societies; indeed law, in this conception, can be transferred from one place to another without much trouble [Schepel 2004, 2].

The dyad 'law-as-science'/'law-as-culture' has been recently applied by in a ground-breaking article challenging the 'natural' tendency of European legal scholars not to question their own paradigmatic assumptions [De Witte 2008]. More precisely, the article concentrates on a peculiar sub-field of legal education, namely academic writing

on European law, «constituted by what in French one would call *la doctrine*, in German *die Rechtslehre*, and in English perhaps *legal writing*» [2008, 1]. Notably, in questioning how much EU law scholars constitute a real ‘community’ (in the sense mentioned above), the article witnesses the lack of interest by EU legal writing in paradigmatic issues («The first thing to note is that legal scholars display a surprising lack of interest in legal scholarship, or at least they tend not to make it an object of their writing» [2008, 1]). Later on, it argues a ‘unity hypothesis’, i.e. the existence of a relatively unified academic discipline in EU legal studies, in opposition to the persistence of a ‘fragmentation’ due to the cultural boundaries of national jurisdictions.

Clearly, this dyad reflects the previous alternative between ‘law-as-science’ and ‘law-as-culture’: while a new society of scholars was brought into existence, since the very beginning of the European Communities, and «quickly assembled all the paraphernalia of a true sub-discipline» [2008, 2], «a theoretical basis for scepticism about the existence of a single European-wide scholarly community is provided by the ‘law-as-culture’ school in comparative law» [2008, 4] (see also Glenn 2000, 2004; Legrand 1999; Nelken 2007).

This fundamental incidence of local culture as *the* determining factor to assert the existence of a deep-rooted ‘community’, as well as to judge the ‘real’ application of (EU) common norms was metaphorically depicted about 30 years ago by Prof. Jolowicz in the following terms:

It is not to be expected that the insertion into different legal systems of a single text will produce identical or even similar results in all those systems any more than it is to be expected that the addition of a litre of green paint to four litres of yellow will give us the same colour as the addition of the same quantity of the same paint to four litres of red [Jolowicz 1978, 244].

Following this metaphor, EU legal education can be easily seen as the ‘canvas’ where all these paints are mixed.

It is the original (yellow or red) legal education within each EU member State that inevitably affects the reception of EU law (the green paint): consequently, the final tone of the whole EU legal community, will be darker or lighter at a national level according to ‘national native colours’.

Of course, although local features of legal education cannot be altered (or, *a fortiori*, eliminated), a common framework for EU legal education contributes progressively to reduce these ‘chromatic’ differences.

In other words, promoting a common educational legal framework in the EU, despite the persistent divergences in national legal cultures, means speeding up the process of an integration which is not only legal, but, in the end, also cultural and political [Vauchez 2008].

This is exactly the fundamental assumption of this book: the more member States invest in common standards of EU legal education, the more the EU strengthens itself as a polity.

In other words, EU legal education is *per se* a powerful factor of political integration.

Taking this stance, the contributions collected in this volume are directed to study the relationship between EU law and legal education, arguing the complementary relationship, for a sound political integration in the EU, of the substantial legal framework (here conceptualized as a ‘first-level integration’) with the educational curriculum of EU legal studies (as a ‘second-level integration’).

2. *EU legal education: fostering second-level integration for a ‘greener’ canvas*

As already seen, despite the persistence of different tonalities of green in the ‘canvas’ of the EU legal community, a certain unity in the ‘law-as-science’ (i.e. a homogeneous community of EU legal scholars) has been asserted in legal writing, in opposition to the maintenance of strong cultural divergences at the level of ‘law-as-culture’ [De Witte 2008; Glenn 2004].

The subsistence of a common paradigmatic/scientific community on EU law have been claimed in relation to a variety of factors, namely

- the creation since the '70s of a number of institutes dedicated to innovative research on law and other social matters, such as the European University Institute, located in Fiesole (Florence)³, or the College of Europe, in Bruges;

- the success of the Jean Monnet programme, and the establishment of a lively network of educational activities, related to JM modules, chairs and student exchange;

- a number of leading European law journals, such as *Cahiers de Droit Européen* (CDE), *Common Market Law Review* (CMLR), *Diritto dell'Unione Europea* (DUE), *European Law Review* (ELR), *Europarecht*, *Revue du Droit de l'Union Européenne* (RDUE), *Revista Española de Derecho Europeo* (REDE) and *Revue trimestrielle de Droit Européen* (RTDE);

- the existence in all law schools and faculty in Europe of obligatory courses on EU law (both on general and more specific subject-matters), seminars and research projects.

As mentioned, anyway, this academic unity does not imply any common 'cultural' approach to EU law, to the extent that EU law is constantly reinterpreted and re-contextualized in each domestic jurisdiction, becoming a sort of 'legal hybrid' [Walker 2005]. More precisely,

The domestic interpretation and application of EU law

³ See <http://www.eui.eu>: «The European University Institute (EUI) was set up in 1972 by the six founding Member States of the European Communities to provide advanced academic training to doctoral researchers and to promote research at the highest level. It opened its doors to the first researchers in 1976. It carries out research in a European perspective in Economics, Law, History and Civilization, and the Political and Social Sciences. Its full-time teaching staff, fellows and researchers are recruited from all over Europe and beyond. The EUI welcomes researchers who wish to study for the Institute's doctorate (Ph.D. four years), or for the one-year Masters programme (LL.M.) in Law. The EUI offers fellowships for doctoral applicants (Jean Monnet and Max Weber fellowships) as well as for distinguished scholars (Fernand Braudel fellowships). As a host institution, the EUI welcomes Marie Curie Fellows and European Research Council grantees».

does not involve the interpretation and application of a norm belonging to a foreign legal system (as is the case in comparative law scholarship and in the practice of legal transplants), but it still concerns a norm from another legal system than one's own – and this otherness is faced by academics as well by judges and practitioners, since EU law is another legal system than the one in which they were trained and whose culture they have absorbed during that training process. The EU law that is studied in each country is therefore a 'legal hybrid', a European law which is contextualized and transformed by the national legal order in which it is articulated [De Witte 2008, 4-5].

Indeed, it is the national legal education which crucially affects the perception of legal phenomena, and consequently leads to non-equivalent shapes of EU law in local jurisdictions, preventing a uniform 'law-as-culture' in the EU polity. Universities and professional legal trainings, in fact, irremediably affect legal educations in different ways, with a consequent and unavoidable fragmentation:

to the extent that university teachers are themselves steeped in their national legal traditions, and use the EU law literature written in their own language, the legal education system will tend to perpetuate the national-coloured outlook on EU law for the next generation of students [De Witte 2008, 5].

Thus, while a German, French or Italian student will tend to perceive law (and EU law as well) as an expression of an abstract discipline, based on systematic coherence and logical consistency, a UK legal trainee will basically reason according to a factual case approach, typically Anglo-Saxon [see, for instance, Craig and de Búrca 2007]. This factual approach opposes to the 'continental style of legal education' [Barsotti and Varano 2010], where

Law School is not considered a professional training school but a cultural institution where law is taught as a science... [thus] legal education is concerned not with the techniques of problem solving but with the inculcation of fundamental concepts and principles [...] The learning is passive [...] the student is not trained to handle a concrete case [...] legal education gives him a

strong orientation toward doctrine, as opposed to precedent, and toward the orthodox dogmatic approach of the academic establishment [Cappelletti, Merryman and Perillo 1967, 89-91].

The permanence of distinct styles in legal education, which not only scientifically, but also culturally and consequently politically affects the spectrum of implementation of EU law, should represent one of the main issue to be faced by European policy-makers in the next future, for at least two reasons.

Firstly, the level of incidence of EU law over national jurisdictions has constantly grown and will continuously increase in the future (the spectrum of our canvas is becoming greener and greener). As a result, the Europeanization of legal education will be a natural consequence of the Europeanization of the law:

... national and EU law are becoming so intertwined that, in the near future, all litigation will increasingly raise both national and EU law arguments. These developments must be reflected in the teaching of the law. It will not be sufficient, however, to increase the importance attached to EU law in the curricula of European law schools. A first step will be to 'Europeanise' the teaching of the other legal subjects [Poiaras Maduro 2010, 5].

The impact of EU law on national jurisdictions has become so pervasive that it has already permeated all areas of litigation. Indeed, no subject matter can be said autonomous today from EU law: besides the core areas of internal market, competition and trade, in fact, we find contracts, consumer law, company law, but even environmental law and labour law, to the growing opening of national constitutional law studies towards the 'federal' process of the EU.

Secondly, as a corollary, the inevitable increase of inter-state litigation among EU member States will necessarily ask future legal practitioners the capability to manage issues of different national jurisdictions under the umbrella of EU law. This implies a

challenge arising from the increased multi-national character of the cases in which lawyers are called in to assist. In part, this is a consequence of the mutual recognition of national judicial decisions and other legal acts imposed by certain EU rules. This creates a context where judges and lawyers must learn to operate in a complex web of rules arising from their own legal order but also from other national legal orders and the EU legal order. In other part, this is a natural consequence of increased economic integration and its legal implications [...]. As a consequence, a growing number of legal actors (in courts as outside courts and even in the legislative process) needs to operate in multiple jurisdictions and be comfortable 'travelling' between different legal orders, so as to avoid the perils of some form of legal jet-lag [Poiares Maduro 2010, 5-6].

It is worth noting that this Europeanization of legal studies, necessary to guarantee a sound evolution of the EU polity, corresponds to a broader process of globalisation and trans-nationalization of law [Chesterman 2009; Zumbansen 2008]. Therefore, the convergence of EU legal education represents today a core need for Europe also to 'compete' with other international actors in the current globalisation of legal affairs, where trans-nationalization is leading to a complete restructuring of legal education itself.

3. About this book: studying EU legal education for a more effective EU polity

Given these preliminary remarks, which is the aim of this book?

The volume does not support the need for a common EU law-as-culture *per se*: on the contrary, it recognises how the deep-rooted legal traditions of each member State represent a richness for the EU, whose artificial uniformity by academic intervention (and, *a fortiori*, by a hypothetical legislative action) would be not only ineffective, but even detrimental. While the influence of EU law over national jurisdictions will increase at a major level, this will never cancel the original tones of red or yellow of national legal culture. These ones will be finally harmonized to a certain

extent, but at the same time they will contribute autonomously to the evolution of the EU according to their peculiarities, in a complementary interaction between the national and EU levels.

Leaving aside any project of cultural uniformity (historically untenable and politically unsustainable), the contributions collected in this book aim at providing the reader with the most updated state-of-the-art of EU legal education in selected European countries, in form of reports on available courses, major publications and current evolutions.

The countries involved in the search (the Benelux, Spain, Latvia, Slovak Republic, Germany, Poland and Romania) represent a comprehensive gathering of different 'EU legal experiences', combining a descriptive and a normative approaches, as well as quantitative and qualitative methods of social research.

Firstly, Ch. 1 (by Mariolina Eliantonio and Thekla Hillebrecht, University of Maastricht) offers an overview of the educational programmes available in the Benelux. According to a chronological order of accession to the EU, the book later collects contributions on Spain (Ch. 2, by István Szilágyi, University of Pécs), Latvia (Ch. 3, by Valdis Bluzma, School of Business Administration Turība, Riga, and Eugene Eteris, Riga Stradins University) and Slovak Republic (Ch. 4, by Elena Júdova, University of Matej Bel in Banská Bystrica, Lucia Mokrá, Comenius University in Bratislava, and Vlasta Kunová, Comenius University in Bratislava). All these contributions are similar in outlining EU legal education according to a descriptive approach.

In Ch. 5 and Ch. 6, on the contrary, the investigation embraces an empirical approach.

More precisely, in Ch. 5 Urszula Jaremba (Erasmus University, Rotterdam) and Tobias Nowak (University of Groningen) present an empirical study on the role of EU law education and training in the functioning of Polish and German civil judiciary as decentralized EU courts. The Authors show the discrepancy between the level of knowledge (and application) by national judges of EU law in Poland,

in comparison to Germany. Interestingly, the findings underline how the principle of primacy of EU law faces a failure at the level of law-in-action in the practices of both national judiciaries.

Finally, in Ch. 6, Brindusa Camelia Gorea ('Dimitrie Cantemir' University of Targu-Mures) and Mugurel Minodor Gorea (Institute for Culture and Political Culture, Targu-Mures) focus on the reception of the *acquis communautaire* in a brand new member State, Romania, both in terms of governmental commitment and academic responsibility. The contribution highlights how the successful reception of EU law in Romania will be affected in next years by the capability by both national government and academic institutions to enhance EU legal education as a factor of political integration.

Finally, the volume will reflect on the challenge of a unique EU law curriculum as an instrument for further political integration. As we will see, this unique curriculum will not be a tool of standardization of EU legal cultures, but of harmonization of legal education. A harmonization that has to be improved both for the benefit of freedom of circulation of legal practitioners and for a stronger competitiveness of the EU educational system at a global stage.

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