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UNITING IN PEACE: THE ROLE OF LAW IN THE EUROPEAN UNION

Jean Monnet Lecture
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President, cher Yves Mény

Ladies and gentlemen,

Let me start by saying what an honour it is to be invited to give the Jean Monnet Lecture, 30 years after the European University Institute first opened its doors to students.

My celebrated predecessor, Walter Hallstein, championed the idea of a European University as far back as the 1950s. Despite resistance and long delays, he lived to see his dream come true, albeit in a more modest form than his early ambitions. Modest in conception, maybe, but not in achievements. You can be proud of the major contribution this Institute has made, and is continuing to make, to the European project.

Let me say that giving today's Jean Monnet lecture has a very special meaning for me. More than 25 years ago, in 1980, I attended a Summer School on European Comparative Law here at the Institute. I would never have dreamt that one day I would return here to deliver this lecture. But you will certainly agree with me that future European

leaders should spend some time here at the Institute.

I have already paid tribute to Walter Hallstein. He is also famous for insisting on the centrality of law to the very concept of Europe. This should come as no surprise: as the first President of the new-born European Commission, he took his institution's responsibilities as guardian of the Treaties very seriously. And a guardian of the Treaties is a guardian of European law.

In his book *Europe in the Making*, Hallstein described the European Community as a '*remarkable legal phenomenon*', a manifestation of law on three different levels.

Firstly, the Community is a creation of law. It is this, at the end of the day, which has allowed the successful and peaceful unification of our continent, when all previous attempts to unite Europe by force have failed.

Secondly, the Community is a source of law. This is the spark of fire which brings life and dynamism

to what would otherwise be just another association of states. The Commission, with its largely exclusive right of initiation, has a central role to play here. It is the motor of Europe's law-making engine.

Finally, the Community is a legal system, a coherent order based on treaties and legislation. Unlike international organisations, it is neither a talking shop nor a technical operation set up simply to ensure that single market rules are correctly applied, for example. Like all true legal systems, the Community guarantees the legitimacy of action by its institutions, and offers legal protection to those affected by those actions.

So when people speak of 'European Community law', they are speaking about a substantive part of what the EU is all about. In fact, it is the Community law, its role and its effect that distinguishes the EU from a mere intergovernmental organisation.

Assuring the coherence of the project is only possible through the rule of law. The alternative is

not difficult to imagine. Whatever label we put on it, it would essentially mean reducing Europe to a power game. Between big and small. Between east and west. Between the centre and the periphery. It would not be sustainable.

That is why I take issue with a criticism that has become rather commonplace these days – namely the criticism that, whenever the Commission in response to a problem refers to the need to assess and to solve it on the basis of Community law, qualifies such references as “technocratic” and “bureaucratic”, and calls for a “political” answer to the problem.

Let me be clear: the EU is of course a political project, and has political goals. But whilst we need political voluntarism to define our objectives, our Union is not one based on the spirit of methodical voluntarism. In a Union of many Member States, there will more often than not be a multiplicity of voluntarisms, on any given issue, at any given moment. For these voluntarisms to be brought to a fruitful synthesis, rather than remaining in a thesis and antithesis stage, we need rules, i.e. the law.

The essence of our Union is cooperation on the basis of rules.

And it is the Commission that under the Treaties acts as the guardian of the rules.

That is why the role of the Commission is so important and deserves to be upheld. Not as part of some turf battle between institutions, but because as the defender of European law, it defends the essence of the European project.

It also explains why the Commission has a unique and historic mission to be more than just a civil service. It is there to speak up for European ideals and values, to take action to support those values, and to defend the European interest more generally.

This is the reason why in the current debate over so-called 'economic nationalism' for example, my Commission's insistence on the need for the Member States to respect both the letter and the spirit of Community law is not only fundamentally important from a legal point of view, but also from

a political point of view. In fact, the insistence on the need to respect Community law is the most convincing and effective political answer there is.

Because it is the Community law that gives us the legitimacy and the grounds to speak out and explain why economic nationalism is wrong. To explain that defending national champions in the short-term, usually ends up relegating them to the second division in the long-term, and to generally create unrest between Member States. To explain that a pan-European market needs pan-European champions. To explain that slipping backwards into 25 mini-markets would be the highest folly, not just because of increasing global competition, but because it would mean the beginning of the end of the European project itself.

In fact, the internal market, this common endeavour based on four fundamental freedoms, is much more than an instrument of convenience and efficiency. It is where our political objectives – from forging an ever closer Union to sustaining growth for jobs – meet with our legal methods – a set of rules to achieve these objectives. Ultimately,

the internal market, its political objectives and legal rules, is an expression of our values, of the European idea of freedom and responsibility under the rule of law.

So the central importance of European law, and of the Commission as the defender of that law, is very clear. Why then, as I pointed out earlier, are both coming under increasing attack?

Open certain European newspapers today and the chances are high that you will read an article criticising European legislation. Unlike attacks on national legislation, these frequently seem less upset by the content of the legislation than by the fact that the legislation exists at all. In other words, the criticism is all too often one of principle not circumstance. It is not a given piece of Community law that is criticised, but the system of Community law as such. European institutions are depicted as interfering, intrusive, out of control. These attacks go beyond the necessary criticism that is normal in a democratic system and vital for its good functioning. They give in to populist temptations,

from the left and from the right. They fall prey to the “terribles simplificateurs”.

Let’s look at some of these criticisms.

The Commission is criticised for the volume of legislation – the *acquis communautaire* takes up 80-90,000 pages of the Official Journal, depending on your choice of language. This certainly sounds like an awfully high number.

But in fact, less than 25,000 European legal acts are currently in force, far less than at national level. And of these, less than 6,000 are truly independent, binding European laws. The rest are effectively executive provisions or decrees, international agreements, or updates of existing legislation, for example.

Nor should we forget that many of these European legal acts sweep away the need for 25 national laws in the same areas. Far from swamping Europe in unwanted legislation, legislating at European level is often by definition an exercise in simplification and clarification.

The Commission is criticised for meddling in national affairs, disrespecting the principles of proportionality and subsidiarity, and dreaming up ever more fantastical subjects on which to legislate. But is this really true?

Let us leave aside, reluctantly, the more entertaining scare stories on subjects like the harmonisation of taxi colours. Entertaining they may be, but they are also entirely made up.

The more troubling misconception behind claims of meddling is that European legal acts are somehow entirely unwanted and unasked for impositions from Brussels – the products of would-be philosopher kings living in an ivory tower. Nothing could be further from the truth.

Yes, the Commission has the exclusive right of legislative initiative. But it doesn't exercise this right in a vacuum.

The Commission drafts its proposals on the basis of specific requests from the Member States, other

European institutions, economic operators and civil society. In fact, it is often under intense pressure from others to legislate. The number of times it has refused a formal request for a European law coming from a Presidency, the Council or the European Parliament can literally be counted on the fingers of one hand. Perhaps that is part of the problem ...

So the proposal on the composition of chocolate, much mocked in the British press, was drafted at the request of northern European Member States, in particular...the United Kingdom. The proposal on health rules applicable to the manufacture of soft cheeses, much attacked in the French street, was drafted at the request of...French producers, who wanted to take full advantage of the single market. I could go on.

The Commission is criticised for producing over-complex and unwieldy legislation. But when the Commission proposes a new legal act, it is generally measured, simple, with a bare minimum of content. The Member States or implementing instruments are left to define the details.

As the original proposal works its way through the Council and Parliament, it quickly starts to transform. Provisions become more complicated as national experts demand derogations or guarantees. Content multiplies as the Parliament uses its opportunity to influence legislative matters. Compromises between the two sometimes obscure the clarity of the original proposal. When national authorities are responsible for defining the detail, 'gold-plating' often sets in, making demands on citizens and businesses that go far beyond the requirements of the original proposal.

The Commission is not the only pillar of European law to come in for criticism. The European Courts are criticised for being out of touch, and enforcing a 'government of judges' from Luxembourg. And yet the Court of Justice is in a permanent dialogue with national jurisdictions. Most Court of Justice decisions can be traced back to preliminary questions raised by national judges, often at first instance level.

This judicial cooperation is at the heart of many important judgments, in which – incidentally - the Commission brought its contribution as *amicus curiae*: the Commission intervenes systematically in all affairs referred to the Court by a Member State jurisdiction.

As a political body and guardian of the Treaties, the Commission is constantly forced in this way to create a balance between legal imperatives and political action, between legality and legitimacy. Political reality may remain the watchword, but legal persuasion must remain the cornerstone of our work.

This is not to say that there are no tensions between the political will and the case law. But these difficulties do not lie in the Court judgments. Let me give an example. The case law on taxation deserves comment here because it is frequently criticised by some Member States for having budgetary implications.

What the Court has done for direct taxation, is to apply the same logic in tax matters as it does in

other areas of law, in order to protect the right of businesses and individuals to pursue economic activities throughout the Community with as few restrictions as possible. It annuls the discriminatory provisions in national tax law.

Member States are not prevented from exercising their competences to raise revenue by collecting taxes. But what they cannot do is hinder and discriminate against individuals and firms who seek to exercise the freedoms granted to them by the Treaties.

Far from being abstract or out of touch, the judgments are of direct benefit to European citizens, and ensure the observance of Community law.

Ladies and gentlemen,

Is it then fair to say that it would appear that criticism of the Commission as the originator of Community law, or of the European Courts as interpreters of that law, is totally unfair, or simply reflects a problem of perception?

In spite of all what I have said this would in my view be too easy an answer. Not only is a problem of perception still a problem. Europe will not survive without the support of its citizens. And given the central importance of Community law to the peaceful integration of our continent, it is incumbent on all of us to constantly ask ourselves if improvements can be made.

In other words, in order to defend the system of Community law, we must do all that we can to improve the specific legal acts that are produced under the system. To achieve doing so, we must – at all levels – distinguish more clearly, and more carefully, between criticism of the system, and criticism of specific legal acts.

Those who criticize must avoid turning each and every critique of a specific legal act into a systemic critique. And those who defend must avoid labelling each and every critique of a specific legal act as a systemic critique. I have said it before, and I say it again: constructive criticism is vital for democratic societies to work well. Whilst

something shouldn't be criticised just because it comes from Europe, something should also not be immune from criticism just because it comes from Europe.

Our common focus must therefore be on improving the quality of the specific legal acts. In this sense, a vigorous and critical debate is more than welcome – this is the heart of the “Better Regulation” initiative put forward by my Commission.

It is based on a realization that is not new, but unfortunately too often neglected in the legislative process – the realization that unnecessary or overcomplex regulation can be a costly burden for citizens and businesses, and have a negative impact on freedom and competitiveness. Let me recall Montesquieu, who already centuries ago told us that “Les lois inutiles affaiblissent les lois nécessaires”.

My Commission has therefore stepped up our efforts to ensure high quality legislation. A clear, efficient, high quality and accessible regulatory

environment is a precondition for respecting subsidiarity and proportionality; for improving governance and citizens' perception of the EU; and for achieving the Lisbon objectives of sustainable growth and jobs.

It is not necessarily about doing less, it's really about doing better. It's about ensuring that the necessary legislation is brought to effect, and that the unnecessary legislation doesn't stand in their way.

What does our initiative mean in practice?

Firstly, we have made greater efforts to assess the impact of our legislative proposals. All policy initiatives in the Commission's annual Work Programme are now subject to impact assessment, and increasingly other major legislation is being assessed as well. Their impact is considered across the whole social, economic and environmental spectrum. I would in particular like to emphasize that my Commission has made sure that full-fledged scrutiny against the Charter of Fundamental Rights is now also an essential

component of this process. Crucially, the Council and Parliament have also agreed to carry out impact assessments on any substantive amendments they make to Commission proposals.

Secondly, my Commission has screened all pending legislative proposals adopted by the Commission before 2004 for their impact on competitiveness and for their general relevance. This went beyond the regular Commission exercises to withdraw pending proposals that are no longer topical. Of some 185 pending proposals dating from before 2004, 67 were earmarked for withdrawal.

Finally, we have launched an ambitious, rolling programme for the simplification of existing EU law. This programme, based on input from the Member States and stakeholders, lists some 220 basic legislative acts to be reviewed over the next three years.

The Commission has already started delivering on this. But our performance is only half the story if these efforts are to succeed. Other institutions

must also adopt simpler legislation, and Member States need to transpose and apply EU legislation correctly.

And let me add one crucial truth: our efforts will remain incomplete if “better regulation” is seen as a problem just for “Brussels”. The reality is that the Member States face exactly the same problems when it comes to national legislation than the ones we are confronted with regard to Community law.

This is why we intend the “better regulation” effort to become a common effort not only of the European institutions, but also of the Community and the Member States. A mutual learning process in which we compare experiences and regulate better on all levels.

Ladies and gentlemen,

It is easy to criticise Europe, to focus on its weaknesses, on the occasional setback and row. But I think if Walter Hallstein, or even Jean Monnet himself, were alive today, they would be

astonished at how far we have come and how much we have achieved.

European law is not some alien imposition forced on unwilling nations; it is the key which has unlocked 50 years of peace and prosperity for the peoples of Europe. And I think that is something to be proud of and to celebrate.

The fact that we strive to improve it only underscores this. Because it is the things we cherish that we aim to perfect.

Thank you.