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Foreword by William E. Paterson



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For **Marc-Antoine** and **Aurore**

Foreword

The European Court of Justice has only gradually attracted the wider attention that has accompanied the Commission and the European Parliament since their inception. The Court was, of course, always of interest to lawyers, and its decisions were subject to exhaustive analysis by a new breed of Euro-lawyers which developed in parallel with the Court. From the beginning, the Court, like the Parliament and the Commission, had seen the value of positive scholarly commentary as flanking support for its own efforts to extend and develop its jurisdiction through interpretive judgments. In this effort, the Court was probably more successful than either the Commission or the Parliament, and a rich legal literature grew up around its jurisprudence and the implications of the creation of what was proclaimed as a new European legal order.

In this literature the scope of legal integration was contrasted very favourably with the economic and more especially the political dimensions where progress had been painfully slow, and a key role was allotted to the Court, which was held to have transformed the Treaty of Rome into a kind of constitution for the European Community. The regard in which the Court was held in the legal world was reinforced by the increasing recourse of national courts to Article 177, whereby they could seek its preliminary opinion on cases involving a European law dimension. The increased centrality of the European Court of Justice for lawyers, however, contrasted with its neglect by other students of the European Community who failed to read the legal commentaries and often felt excluded by the technicality of the judgments. The lack of consistent reporting of the Court by newspapers, contrasted to their coverage of other institutions – partly associated with its location in Luxembourg rather than Brussels – was also a handicap in this regard.

In this important study Renaud Dehousse succeeds brilliantly in making the European Court of Justice accessible to non-legal scholars, but he also does much more. His two central achievements are, first, to analyse the way in which the Court became subject to

marked political turbulence in the 1990s and how it has responded to this politicization; arguably, however, his most important and novel contribution is to analyse the role of the Court in the policy process. This analysis was long overdue and provides not only a much sharper lens with which to view the activities of the Court, but changes established views of the relative importance of all the other actors in the European policy process. No student of the European Union can afford to neglect Professor Dehousse's work.

University of Birmingham

WILLIAM E. PATERSON

Preface

This book is an attempt to make a balance sheet of the contribution of the European Court of Justice (ECJ) to the integration process. One easy way to describe it is to say that it is more a book about the law and its role in the integration process than a law book. As such, it has been greatly influenced by work undertaken jointly with colleagues from the European University Institute in Florence with whom I share the belief that legal issues can only be fully understood by reference to their broader societal context.

This book is an expanded version of my work *La Cour de Justice des Communautés européennes*, first published in 1994. With respect to the French version, the text has been expanded; it includes two additional chapters covering the juridification of the European policy process (Chapter 4) as well as the recent move away from the activist line of the first decades (Chapter 6). As a result, the text has almost doubled in length.

My gratitude goes first to Yves Mény, who convinced me that a book of this kind was needed at a time when academic debate on the ECJ was still non-existent. I am also grateful to Antonio Cassese, Carol Harlow, William Paterson, Peter Russell, Martin Shapiro, Mary Volcansek and Joseph Weiler for their comments on various parts of the manuscript. My long-standing intellectual partnership with Joseph Weiler has exerted more influence on this work than citations will ever tell. I also wish to thank Vincent Wright, who encouraged me to write an English-language version of my earlier book, and my publisher, Steven Kennedy, for his advice and patience.

Rewriting a book is a complex task. I could not have made it without the support of a number of people: Anny Bremner, Claire Kilpatrick and Eugene McNamee helped me to produce a book in a language which is not my own; Mimmo Monda and Ellen Vos provided first-class research assistance; and Annick Bulckaen and Evelyne Dourel went patiently through many versions of the manuscript. I am most grateful to all of them.

The reader might be puzzled by my insistence on referring to the European Community (EC), rather than to the European Union (EU), as is now almost universally done in English-language publications. There are two reasons for this seemingly old-fashioned choice. First, the book covers the role of the ECJ since its establishment in 1951, long before the creation of the EU by the Maastricht Treaty in 1993. Secondly, the drafters of that treaty conceived of the European Union as a complex structure based on three pillars: the European Communities, together with two intergovernmental pillars (the common foreign and security policy and justice and home affairs). In their wisdom, they chose to confine the jurisdiction of the ECJ to the first (Community) pillar – a decision to which we shall return in Chapter 6. As a result, the European Court is an institution of the European Community, not of the European Union, notwithstanding the minor changes introduced by the Treaty of Amsterdam in 1997. To reflect their choice, I have therefore decided to stick to the traditional usage of terms. Unless otherwise indicated, ‘the Treaty’ refers to the Treaty of Rome (EC Treaty) and the Treaty provisions that are cited are EC Treaty provisions.

A last-minute problem was caused by the signing of the Treaty of Amsterdam, which introduced a new numbering of the EC and EU Treaties. As the new numbering will come into force only with the ratification of the treaty, the pre-treaty Article numbers are given in the text throughout, with the new Article numbers following immediately in square brackets the first time each Article is cited in a paragraph or series of paragraphs. Tables of equivalence between old and new numbers appear in Appendices A and B. I hope this concern for legal correctness will not deter too many readers.

RENAUD DEHOUSSE