Session 1: Introduction

Welcome to European Union Law and Politics!

For our first meeting on Monday, August 29, please read page v, from Preface of the Bermann et al. casebook, and the following extracts included below:

Robert Schuman, "The Schuman Declaration" (1950)
Margaret Thatcher, "A Family of Nations" (1988)
Jürgen Habermas, "Why Europe Needs a Constitution" (2001)

Recent Articles from The Economist– "Their Euro Crisis, Our Double Dip"; "Clean-air turbulence: Europe is right to include airlines in its emissions-trading scheme"; "Google and antitrust: The European Union is right to take a closer look at Google"

Schuman Declaration of 9 May 1950

This is the full text of the proposal, which was presented by the French foreign minister Robert Schuman and which led to the creation of what is now the European Union.

World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it.

The contribution which an organized and living Europe can bring to civilization is indispensable to the maintenance of peaceful relations. In taking upon herself for more than 20 years the role of champion of a united Europe, France has always had as her essential aim the service of peace. A united Europe was not achieved and we had war.

Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany. Any action taken must in the first place concern these two countries. With this aim in view, the French Government proposes that action be taken immediately on one limited but decisive point.

It proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe.

The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. The setting up of this powerful productive unit, open to all countries willing to take part and bound ultimately to provide all the member countries with the basic elements of industrial production on the same terms, will lay a true foundation for their economic unification.

This production will be offered to the world as a whole without distinction or exception, with the aim of contributing to raising living standards and to promoting peaceful achievements. [...]
In this way, there will be realized simply and speedily that fusion of interest which is indispensable to the establishment of a common economic system; it may be the leaven from which may grow a wider and deeper community between countries long opposed to one another by sanguinary divisions.

Margaret Thatcher
Speech to the College of Europe ("The Bruges Speech")

Below are extracts from a speech by British Conservative politician and Prime Minister Margaret Thatcher, delivered to the College of Europe on September 20, 1988

BRITAIN AND EUROPE

Mr. Chairman, you have invited me to speak on the subject of Britain and Europe. Perhaps I should congratulate you on your courage. If you believe some of the things said and written about my views on Europe, it must seem rather like inviting Genghis Khan to speak on the virtues of peaceful coexistence!

I want to start by disposing of some myths about my country, Britain, and its relationship with Europe and to do that, I must say something about the identity of Europe itself.

Europe is not the creation of the Treaty of Rome.

Nor is the European idea the property of any group or institution.

We British are as much heirs to the legacy of European culture as any other nation. Our links to the rest of Europe, the continent of Europe, have been the dominant factor in our history. The European Community is one manifestation of that European identity, but it is not the only one.

We must never forget that east of the Iron Curtain, people who once enjoyed a full share of European culture, freedom and identity have been cut off from their roots. We shall always look on Warsaw, Prague and Budapest as great European cities. Nor should we forget that European values have helped to make the United States of America into the valiant defender of freedom which she has become.

WILLING COOPERATION BETWEEN SOVEREIGN STATES

My first guiding principle is this: willing and active cooperation between independent sovereign states is the best way to build a successful European Community.

To try to suppress nationhood and concentrate power at the centre of a European conglomerate would be highly damaging and would jeopardise the objectives we seek to achieve.

Europe will be stronger precisely because it has France as France, Spain as Spain, Britain as Britain, each with its own customs, traditions and identity. It would be folly to try to fit them into some sort of identikit European personality.

Some of the founding fathers of the Community thought that the United States of America might be its model.

But the whole history of America is quite different from Europe.

People went there to get away from the intolerance and constraints of life in Europe. They sought liberty and opportunity; and their strong sense of purpose has, over two centuries, helped to create a new unity and pride in being American, just as our pride lies in being British or Belgian or Dutch or German.

I am the first to say that on many great issues the countries of Europe should try to speak with a single voice.

I want to see us work more closely on the things we can do better together than alone.

Europe is stronger when we do so, whether it be in trade, in defence or in our relations with the rest of the world.
But working more closely together does not require power to be centralised in Brussels or decisions to be taken by an appointed bureaucracy.
Indeed, it is ironic that just when those countries such as the Soviet Union, which have tried to run everything from the centre, are learning that success depends on dispersing power and decisions away from the centre, there are some in the Community who seem to want to move in the opposite direction.
We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels.

ENCOURAGING CHANGE
My second guiding principle is this: Community policies must tackle present problems in a practical way, however difficult that may be.
For example, the task of reforming the Common Agricultural Policy is far from complete.
Certainly, Europe needs a stable and efficient farming industry.
But the CAP has become unwieldy, inefficient and grossly expensive. Production of unwanted surpluses safeguards neither the income nor the future of farmers themselves.

EUROPE OPEN TO ENTERPRISE
My third guiding principle is the need for Community policies which encourage enterprise.
If Europe is to flourish and create the jobs of the future, enterprise is the key.
The basic framework is there: the Treaty of Rome itself was intended as a Charter for Economic Liberty.
But that it is not how it has always been read, still less applied.
The lesson of the economic history of Europe in the 70's and 80's is that central planning and detailed control do not work and that personal endeavour and initiative do.
That a State-controlled economy is a recipe for low growth and that free enterprise within a framework of law brings better results.
The aim of a Europe open to enterprise is the moving force behind the creation of the Single European Market in 1992. By getting rid of barriers, by making it possible for companies to operate on a European scale, we can best compete with the United States, Japan and other new economic powers emerging in Asia and elsewhere.
And that means action to free markets, action to widen choice, action to reduce government intervention.
Our aim should not be more and more detailed regulation from the centre: it should be to deregulate and to remove the constraints on trade.
And before I leave the subject of a single market, may I say that we certainly do not need new regulations which raise the cost of employment and make Europe's labour market less flexible and less competitive with overseas suppliers.
If we are to have a European Company Statute, it should contain the minimum regulations.

And certainly we in Britain would fight attempts to introduce collectivism and corporatism at the European level—although what people wish to do in their own countries is a matter for them.

EUROPE OPEN TO THE WORLD

My fourth guiding principle is that Europe should not be protectionist.

The expansion of the world economy requires us to continue the process of removing barriers to trade, and to do so in the multilateral negotiations in the GATT.

It would be a betrayal if, while breaking down constraints on trade within Europe, the Community were to erect greater external protection.

We must ensure that our approach to world trade is consistent with the liberalisation we preach at home.

We have a responsibility to give a lead on this, a responsibility which is particularly directed towards the less developed countries.

They need not only aid; more than anything, they need improved trading opportunities if they are to gain the dignity of growing economic strength and independence.

EUROPE AND DEFENCE

My last guiding principle concerns the most fundamental issue—the European countries' role in defence.

Europe must continue to maintain a sure defence through NATO.

There can be no question of relaxing our efforts, even though it means taking difficult decisions and meeting heavy costs.

It is to NATO that we owe the peace that has been maintained over 40 years.

We must strive to maintain the United States' commitment to Europe's defence.

Jürgen Habermas

WHY EUROPE NEEDS A CONSTITUTION (extracts)

Below are extracts from an article by German sociologist and philosopher Jürgen Habermas, published in the New Left Review in September of 2001

There is a remarkable contrast between the expectations and demands of those who pushed for European unification immediately after World War II, and those who contemplate the continuation of this project today—at the very least, a striking difference in rhetoric and ostensible aim. While the first generation advocates of European integration did not hesitate to speak of the project they had in mind as a 'United States of Europe', evoking the example of the USA, current discussion has moved away from the model of a federal state, avoiding even the term 'federation'. Does this shift in climate reflect a sound realism, born of a learning-process of over four decades, or is it rather the sign of a mood of hesitancy, if not outright defeatism?

More than two hundred years later, we are not merely heirs to a long established practice of constitution-making; in a sense, the constitutional question does not provide the key to the main problem we have to solve. For the challenge before us is not to invent anything but to conserve the great democratic achievements of the European nation-state, beyond its own limits. These achievements include not only formal guarantees of civil rights, but levels of social welfare, education and leisure that are the precondition of both an effective private autonomy and of democratic citizenship. The contemporary substantification' of law means that constitutional debates over the future of Europe are now increasingly the province of highly specialized discourses among economists, sociologists and political scientists, rather than the domain of constitutional lawyers and political philosophers.

On the other hand, we should not underestimate the symbolic weight of the sheer fact that a constitutional debate is now publicly under way. As a political collectivity, Europe cannot take hold in the consciousness of its citizens simply in the shape of a common currency. The intergovernmental arrangement at Maastricht lacks that power of symbolic crystallization which only a political act of foundation can give.

An ever-closer union?

Let us then start from the question: why should we pursue the project of an 'ever-closer Union' any further at all? Recent calls from Rau, Schroeder and Fischer—the German President, Chancellor and Foreign Minister—to move ahead with a European Constitution have met sceptical reactions in Great Britain, France and most of the other member-states. But even if we were to accept this as an urgent and desirable project, a second and more troubling question arises. Would the European Union in its present state meet the most fundamental preconditions for acquiring the constitutional shape of any

kind of federation—that is, a community of nation-states that itself assumes some qualities of a state? Why should we pursue the project of a constitution for Europe? Let me address this question from two angles: (i) immediate political goals, and (ii) dilemmas stemming from virtually irreversible decisions of the past.

If we consider the first, it is clear that while the original political aims of European integration have lost much of their relevance, they have since been replaced by an even more ambitious political agenda. The first generation of dedicated Euro-federalists set the process in train after World War II with two immediate purposes in mind: to put an end to the bloody history of warfare between European nations, and to contain the potentially threatening power of a recovering post-fascist Germany.

Of course, there was always a third strand in European integration—the straightforward economic argument that a unifi ed Europe was the surest path to growth and welfare. Since the Coal and Steel Community of 1951, and the subsequent formation of Euratom and the European Economic Community of 1958, more and more countries have become gradually integrated through the free exchange of people, goods, service and capital between them—a process now completed by the single market and single currency. The European Union frames an ever denser network of trade-relations, 'foreign' direct investment, financial transactions and so forth. Alongside the US and Japan, Europe has gained a rather strong position within the so-called Triad. Thus the rational expectation of mutual benefits within Europe and of differential competitive advantages on world markets could, to date, provide a legitimation 'through outcomes' for an ever-closer Union.

But even making allowances for the consciousness-raising impact of the Euro, which will soon become a unifying symbol in everyday life across the continent, it seems clear that henceforward economic achievements can at best stabilize the status quo. Economic expectations alone can hardly mobilize political support for the much riskier and more far-reaching project of a political union—one that deserved the name.

Beyond a 'mere market'

This further goal requires the legitimation of shared values. There is always a trade-off between the efficiency and legitimacy of an administration. But great political innovations, such as an unprecedented design for a state of nation-states, demand political mobilization for normative goals. Constitution-making has hitherto been a response to situations of crisis. Where is such a challenge, we might ask, in today's rather wealthy and peaceful societies of Western Europe? In Central and Eastern Europe, by contrast, transitional societies striving for inclusion and recognition within the Union do face a peculiar crisis of rapid modernization—but their response to it has been a pronounced return to the nation-state, without much enthusiasm for a transfer of parts of their recently regained national sovereignty to Brussels. The current lack of motivation for political union, in either zone, makes the insufficiency of bare economic calculations all the more obvious. Economic justifications must at the very least be combined with ideas of a different kind—let us say, an interest in and affective

attachment to a particular ethos: in other words, the attraction of a specific way of life.

The last wave of economic globalization did not stem from any inherent evolution of the system: it was the product in large measure of successive GATT rounds—that is, of conscious political action. Democratic governments should therefore also have the chance, at least in principle, to counter the undesired social consequences of globalization by complementary social and infrastructural policies.

Such policies have to cope with the needs of two different groups. Their purpose must be to bridge the time-gap for short-run losers by investments in human capital and temporal transfers, and to offer permanent compensation to long-run losers in—for example—the form of a basic income scheme or negative income tax. Since neither group is any longer in a strong veto position, the implementation of such designs is a difficult task. For the decision on whether or not to maintain an appropriate level of general social welfare largely depends on the degree of support for notions of distributive justice. But normative orientations move majorities of voters only to the extent that they can make a straightforward appeal to 'strong' traditions inscribed in established political cultures.

In Western Europe, or at any rate its continental nations, this assumption is not quite unfounded. Here the political tradition of the workers' movement, the salience of Christian social doctrines and even a certain normative core of social liberalism still provide a formative background for social solidarity. In their public self-representations, Social and Christian Democratic parties in particular support inclusive systems of social security and a substantive conception of citizenship, which stresses what John Rawls calls 'the fair value' of equally distributed rights. In terms of a comparative cultural analysis, we might speak of the unique European combination of public collectivisms and private individualism. As Göran Therborn remarks: 'the European road to and through modernity has also left a certain legacy of social norms, refl ecting European experiences of class and gender . . . Collective bargaining, trade unions, public social services, the rights of women and children are all held more legitimate in Europe than in the rest of the contemporary world. They are expressed in social documents of the EU and of the Council of Europe'.

But if we grant this assumption, there remains the question of why national governments should not be in a better position to pursue countervailing policies more effectively than a heavy-handed EU bureaucracy. At issue here is the extent to which intensified global competition affects the scope of action of national governments.

National governments, whatever their internal profiles, are increasingly entangled in transnational networks, and thereby become ever more dependent on asymmetrically negotiated outcomes. Whatever social policies they choose, they must adapt to constraints imposed by deregulated markets—in particular global financial markets. That means lower taxes and fiscal limits which compel them to accept increasing inequalities in the distribution of the gross national product. The question

therefore is: can any of our small or medium, entangled and accommodating nation states preserve a separate capacity to escape enforced assimilation to the social model now imposed by the predominant global economic regime?

Below are three recent articles from The Economist. I have included them to give a sense of how European regulations influence American citizens and firms, as well as the rest of the world.

Aircraft and emissions

Clean-air turbulence

Europe is right to include airlines in its emissions-trading scheme

Jul 7th 2011 | from the print edition of the Economist

FASTEN your seatbelts. From next January, if the European Commission gets its way, carbon dioxide produced by flights into and out of Europe, as well as within it, will come under the European Union's Emissions Trading Scheme (ETS).

As this will turn a cost now imposed on the environment into a cost on airlines, a lot of those airlines are keen for the commission not to get its way. On July 5th some of them took the matter to the European Court of Justice, saying that in bringing flights from elsewhere into its cap-and-trade scheme, thus requiring that airlines pay for some of their emissions, the EU has gone too far. Some non-European governments, supporting their local airlines, have talked about retaliation, perhaps in the form of a boycott of Europe's Airbus airliners, for which orders have recently poured in thanks partly to their superior fuel efficiency (see article).

Sit back and relax

Putting a price on carbon emissions is a good way to discourage them. A carbon tax would make the most sense, but trading emissions in a market such as the ETS allows carbon-cutting to be done in a cost-efficient way. Most of Europe's big emitters, such as power generators and heavy industry, are included in the ETS, which means that they are allocated emissions permits which they can buy and sell. Up to now, airlines have got off scot-free because the ETS is European and airlines are, by their nature, transnational. But that has become increasingly contentious because airlines are responsible for 2-3% of the world's emissions, and their share is growing fast.

A global carbon market would be better than a European one, but there is no prospect of one starting up any time soon. Nor is the airline industry about to volunteer to pay for the pollution it causes. After more than a decade of negotiations within the International Civil Aviation Organisation (ICAO), which sets the rules for air travel, the Europeans have concluded that the ICAO is not going to set up a global scheme. Hence the commission's decision to include airlines in the ETS.

To the commission's opponents, its actions look like imperious overreach. The Americans, the Chinese and many others question the EU's right to tax flights that start in San Francisco or Shanghai. The airlines say that including them in the ETS will raise the

costs of flights significantly. According to a study by Standard & Poor's, inclusion in the ETS could cost the industry €1.1 billion ($1.6 billion) in the first year, and (depending on the distance flown and the carbon price) put up to €40 on the price of a ticket. Airlines argue that they already pay lots of taxes, which governments justify on green grounds.

The airlines have a point when they complain that Europe could impose its rules in a discriminatory manner. The ETS requirements can be waived on flights from nations that have what the EU sees as "equivalent measures" in place—and Brussels will decide what counts as equivalent. The plan would be fairer if such disputes were referred to a neutral forum in which "equivalent measures" could be defined. And it would be more palatable if governments cut the taxes that they currently justify in the name of greenery.

But although the Europeans have got some details wrong, they have got the big picture right. Airlines, and the consumers who use them, need to pay the costs of the pollution they produce. And if carbon pricing starts spreading from Europe around the globe, so much the better.

Euro-zone crisis

Their euro crisis, our double-dip

Jun 17th 2011, 18:21 from The Economist, Democracy in America Blog

GIVEN that Greece makes up just 3% of the euro zone's economy, it's nutty enough that the fate of the euro now hinges in large measure on the outcome of the political maelstrom in Athens. (Though that's not all it hinges on. It could hinge on nationalists in Helsinki, centre-leftists in The Hague, or the personal relationship of Nicholas Sarkozy and Angela Merkel. Basically there are a lot of hinges.) But it's even nuttier that the fate of America's recovery partly hinges on Athens, Brussels and Frankfurt too. If the balloon goes up at the European Central Bank, things in America are likely to start looking very double-dippy. Kevin Drum's summary:

Within the EU, it's the politicians vs. the central bankers. The politicians want to force the banks that own Greek bonds to share the pain of a Greek semi-default, but the ECB is absolutely, completely dead set against it. The reasons for the ECB's hard line on this are a little obscure, and theories range from the fairly ordinary (the ECB believes it would cause chaos and bank failures) to the outre (the ECB wants a crisis in order to force European governments into closer fiscal union).

For what it's worth, I spent yesterday morning talking to a member of the ECB's board of directors and I really think the main explanation is the ordinary one. The ECB doesn't believe it's possible to make private holders of Greek debt "share the pain" without precipitating a Greek default. They think if you pressure banks to roll over Greek debt, that debt will become untradeable, which is the same as "worthless"; the ratings agencies will deem the failure to pay at maturity to be a technical default, which may trigger credit default swaps; the Greek banking system will become insolvent, meaning nobody in Greece will have any money anymore; recapitalising those Greek banks will have to be done by governments that actually have money, ie the northern European ones; and ultimately the costs will all fall on the northern European taxpayer anyway. Meanwhile northern Europe's pension funds will be hit by the credit panic, which again will hurt the average citizen. The ECB folks sincerely think there's no way around having taxpayers pick up the bill for saving Greece and the euro. That said, they also seem to think that if the crisis forces Europe towards fiscal unity, that wouldn't be a bad thing either.

Whether they're right or not is a different question. My colleague cites a new letter by the San Francisco Fed's Fernanda Nechio with a chart showing that while ECB monetary policy has been more or less right for the euro zone "core" countries (Germany, France etc.), it's always wrong for the "periphery" countries (Greece, Portugal, etc). But Paul Krugman argues that even this is too generous:

[T]he letter uses a Taylor rule based on the unemployment gap, not the output gap (which is what Taylor originally used). Either one is OK — but if you’re going to do Europe-US comparisons, you need to recognize that there are big differences in labor market institutions, so that comparable-depth recessions produce a much

larger rise in unemployment in the US. It is not true, as the report says, that the European recovery has been notably faster than the US recovery — in terms of output gaps, we're similar. And if you're going to use unemployment gaps, I'd argue that you really don't want to use the same coefficients on the two sides of the Atlantic. So here's the thing: if you use the output gap Taylor rule that, for the US, corresponds to the unemployment version of the rule used in the SF Fed letter, it surely implies a negative interest rate. In short, the ECB has no business raising rates.

In other words, Mr Krugman says, ECB monetary policy isn't right for "core" countries; it's only right for Germany.

This concludes this episode of "Americans nervously ridiculing Europeans who may profoundly influence their economic fortunes." One thing I do want to note is how the euro-zone crisis has changed the flavour of much American "oh, those silly Europeans" criticism—not so much Mr Drum's, my colleague's or Mr Krugman's, but the kind of stuff you encounter in conversation. The standard critique used to be: "Oh, those silly Europeans, when will they overcome their separate working cultures, labour markets and fiscal policies and come together in one big monetary and economic union like we have in America?" Now, the critique has shifted to: "Oh, those silly Europeans, how could they have thought they would ever be able to overcome their separate working cultures, labour markets and fiscal policies and come together in one big monetary and economic union like we have in America?" Countries will obviously never stop finding ways to make fun of each other, but it's interesting from an intellectual-history point of view to watch how the ridicule can shift polarity over time.

Google and antitrust

Engine trouble

The European Union is right to take a closer look at Google

Dec 2nd 2010 | from the print edition of the Economist

THIS year is turning into an annus horribilis for Google. First the search giant attracted almost universal opprobrium and a tonne of legal headaches when it accidentally recorded personal data from unprotected wireless networks in various countries. Then some much-hyped new services flopped, in particular Google Wave (see article). Now it faces a formal investigation by the European Union into allegations that it has broken antitrust rules by abusing its dominant position in the online-search business to stifle competition.

The European Commission, which announced the investigation on November 30th, says it will look into several issues. One is whether Google has manipulated the algorithms that underpin its search engine in order to penalise links to competitors in search rankings. Another is whether it has tried to impose agreements on websites that prevent them from running ads that compete with those delivered by Google.

News of the investigation predictably sparked complaints in America that Europe was once again out to bash a wildly successful American firm. Yet such gripes overlook the fact that Ciao, one of several companies that have complained to the EU about Google's behaviour, is owned by America's Microsoft, which also has links to another complainant. They also ignore the fact that the gravity of the allegations merits a close look by regulators.

Google is confident that the investigation will conclude it has done nothing wrong. It acknowledges that an element of judgment is involved in deciding what results its search engine should prioritise; without this, the information that it serves up would be less relevant to users and riddled with spam. But it insists that it has never tinkered with the results of searches to give its businesses an unfair advantage. And it says that the notion that it has a dominant market position in European markets is wrong, as the competition is just a click away.

Perhaps, but Google has been able to turn itself into a verb precisely because the company has become a default option for so many folk combing the web. Indeed, its stickiness is such that its share of online searches in many European countries is even higher than in America, where it accounts for two-thirds. Google also dominates the market for search-related online ads. And its strong position does not come as a surprise. Because of scale economies and network effects, the information-technology business tends to spawn networks that swiftly become dominant—think of Facebook in social networking.

Can you dominate and not be evil?

This leaves firms open to accusations of abuse unless their pricing and rules of

engagement are crystal clear. Google argues that it is more open than most and offers firms plenty of tips about how to get stellar rankings in the form of blogs, a webmaster site and other formats. Yet it has been found wanting. Earlier this year, antitrust officials in France concluded that Google had abused its dominant position there when it barred Navx, a company that provides location data, from advertising on its AdWords service. And they called on Google to be clearer about the rules governing AdWords, which experts liken to a “black box”.

Given all this, the EU is justified in shining a light on Google’s activities. The search firm may not like this, but because of its clout it should not be surprised at being the subject of intense scrutiny. Google has been able to grow so fast on the web by insisting that others be as open as possible with their information. It can hardly object when the tables are turned.