

## FOREWORD

For decades Americans have been asking, "Why isn't there a United States of Europe?" Generally, in posing this question, the questioner has ingenuously disregarded the existence of time-honored barriers to unification, such as the rise in nationalism and differences in language, governmental institutions, economic system and development, culture, religion, and historical tradition. Since the days of Rome, it has been apparent to many Europeans that substantial advantages might inhere in union; but the lure of these possible gains has not sufficed to induce Europe to surmount the ancient obstacles to unification. Indeed, when Napoleon and later Hitler attempted forcibly to impose a form of unity, the attempt was fiercely resisted. By reason of the intensified national hatreds left in the backwash of the two World Wars, the prospects for a United States of Europe seemed especially dim a few years ago. Although the Soviet threat created an urgent need for Western Europe to investigate whatever strength there might be in union, it seemed that this same threat might induce a despondency which could paralyze the initiative of European leaders. Also, it was clear that the Communists and several other groups would seek to sow such discord in the West that a united Europe would be impossible.

The gloomy postwar prognosis has proved misleading; today there is a realization that since the inception of the Marshall Plan—and to a considerable extent as a product of that Plan—Europe has made giant strides towards political, economic, and juridical union.<sup>1</sup> The American awareness of this recent progress has been demonstrated in many ways: by a flow of investment into Europe; by governmental action to cooperate with newly created European institutions; by recent books and articles about doing business in the Common Market and the problems that this customs union may create for American exports; and by the picture on the cover of a widely circulated American magazine of Jean Monnet, an outstanding proponent of European unity.<sup>2</sup>

If a United States of Europe ultimately does result, the creation of the three European Regional Communities—the Coal and Steel Community (E.C.S.C.), the Atomic Energy Community (Euratom), and the Economic Community, or Common Market (E.E.C.)—will constitute a major milestone on the road to union. These Communities embody a spectacularly successful political, economic, and legal experiment. Among the evidences of their success are: the prosperity and economic growth experienced in recent years by the six Member States; the establishment of the perhaps short-lived European Free Trade Area (E.F.T.A.)—which may be considered, in some respects, one of those imitations constituting the sincerest form of flattery and which was intended to provide seven Western European countries outside the Communities with some of the economic and commercial benefits enjoyed by the Six; the efforts to create customs unions like the E.E.C. in other parts of the world—notably Latin America; and the discussions undertaken between

<sup>1</sup> Although the reference here is to Western Europe, the Soviet Union has also enforced some integration of its satellites.

<sup>2</sup> Time, Oct. 6, 1961.

the Common Market, on the one hand, and Greece, Turkey, and Great Britain, on the other, with a view to some form of membership or association for those countries. Indeed, the willingness of the English to consider abandoning their traditional insularity—and possibly even their Commonwealth ties—is a striking testimonial to the benefits of Community living. Another testimonial is afforded by the remarkable rapprochement between the French and the Germans, who were adversaries in three wars during the last hundred years.

The significance today of the three Communities and of the movement towards European unity which they represent made them a suitable subject for a symposium in *Law and Contemporary Problems*. Indeed, a study of these Communities and their institutions suggests any number of interesting questions. For example, how feasible are the new concepts of federalism and supranationalism utilized in the treaties establishing the three Regional Communities? Has a satisfactory system been created for parliamentary control of action by the E.C.S.C. High Authority and the Commissions of Euratom and the E.E.C.?<sup>3</sup> To what extent should a responsibility be imposed on official bodies to compensate persons whose interests are injured by their action?<sup>4</sup> What institutional framework, if any, should be provided for participation by labor groups in governmental activities and in the management of business enterprises?<sup>5</sup> To what extent should there be a duty for governments to facilitate and finance the "readaptation" of workers who are the victims of sociological or technological change; and, if there is such a duty, how can its performance be assured and be financed? What is the proper sphere for judicial activity?<sup>6</sup> Can the exercise of national veto rights feasibly be subjected to judicial review?<sup>7</sup>

In preparing a symposium which would treat some of the contemporary problems pertinent to the Communities, the editors have been confronted by a formidable task. Obviously, the contributors of articles should be persons—in most instances Europeans—who were familiar with the operations of the Communities; moreover, it was desired to obtain a balanced presentation of viewpoints. To select the most suitable writers, correspond with them, and ultimately to persuade them to provide articles proved difficult. Frequently delays occurred—especially in obtaining satisfactory translations of articles submitted in languages other than English and in obtaining approval of editorial changes. Documentation of citations was also sometimes a problem. These burdens had been foreseen from the outset; and in some ways, the very difficulty involved in publishing this symposium convinced us that its value would be great. *Ad astra per aspera*.

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<sup>3</sup> Cf. E.C.S.C. Treaty art. 24; Euratom Treaty art. 114; E.E.C. Treaty art. 144. See also Heidelberg, *Parliamentary Control and Political Groups in the Three European Regional Communities*, *infra*, p. 431.

<sup>4</sup> Cf. E.C.S.C. Treaty arts. 34, 40; Euratom Treaty arts. 151, 188; E.E.C. Treaty arts. 178, 215.

<sup>5</sup> See Bernstein, *Labor and the European Communities*, *infra*, p. 572.

<sup>6</sup> The Court of Justice, under certain circumstances, has a consensual jurisdiction. E.C.S.C. Treaty art. 42; Euratom Treaty art. 153; E.E.C. Treaty art. 181. It may arbitrate certain disputes between Member States. E.C.S.C. Treaty art. 89. And on certain occasions it may rule on fundamental modifications proposed jointly by the High Authority and the Council for Assembly approval. E.C.S.C. Treaty art. 95. Certain issues must be certified to it by national tribunals for decision. E.C.S.C. Treaty art. 41; Euratom Treaty art. 150; E.E.C. Treaty art. 177. The Court's scope of review is not easy to define. Cf. E.C.S.C. Treaty arts. 31, 33, 37, 38, 66(5); Euratom Treaty art. 146; E.E.C. Treaty art. 173.

<sup>7</sup> Cf. E.C.S.C. Treaty art. 10.