2014

Introduction

George A. Bermann
Columbia Law School, gbermann@law.columbia.edu

INTRODUCTION

George A. Bermann[*]

It is an honor to introduce this special issue of the *Columbia Journal of European Law* devoted to the legal method of the European Court of Justice (ECJ). That the issue consists of a single article should come as no surprise to anyone acquainted with Judge Koen Lenaerts, whose keen appreciation of the workings of the Court is quite simply unrivaled.

The article that follows is emblematic of Judge Lenaerts's scholarship, which is, by its nature, definitive of whatever subject it addresses: comprehensive, authoritative, and unfailingly insightful, yet eminently readable. That is why the *Journal* was so pleased and honored to have Judge Lenaerts as its Twentieth Anniversary Keynote Speaker, delivering the address from which this article grows.

Also emblematic is the article's particular co-authorship: throughout his career, Judge Lenaerts has perfected the art of mentorship, co-authoring extensively with younger scholars and practitioners, all of whom—without exception—have gone on to sterling careers in one sector or another of the legal or academic profession. The article that follows, co-authored with the Judge's law clerk, José A. Gutiérrez-Fons, follows that tradition. To write with Judge Lenaerts means to collaborate, and to collaborate with him is a rare and treasured opportunity. Over the past twenty years, the *Journal*'s editors and Judge Lenaerts's students at the Institute of European Law at the University of Leuven have enjoyed their own collaborative experience, growing out of Judge Lenaerts's inspired idea of having outstanding Institute students research and write the case notes that have enriched every single *Journal* issue from the *Journal*'s inception to this day.

There is another aspect of the article that warrants underscoring as paradigmatic of Judge Lenaerts's work. Judge Lenaerts has been a student of, and is a scholar of, American constitutional law, and his scholarship is suffused with an appreciation of comparative law in general and comparison with the United States law in particular. My first opportunity to work with Judge Lenaerts arose in precisely this context—a program at the University of Leuven on comparative American and European constitutional law, entitled appropriately, for the year 1987, "Two Hundred Years of U.S. Constitution and Thirty Years of EEC Treaty: Outlook for a Comparison."

[*] Jean Monnet Professor of EU Law, Walter Gellhorn Professor of Law; Director, Center for International Commercial and Investment Arbitration, Columbia Law School. Chair of the Executive Editorial Board, *The Columbia Journal of European Law*.

Judge Lenaerts's "outlook" is thus splendidly suited both for the audience at the Journal's twentieth anniversary celebration and for the readership of this *Journal*.

In the article that follows, the authors demonstrate that the work of the ECJ has from the start required what I call "careful navigation." It must, for example, "ensure that in the interpretation and application of the Treaties the law is observed," while at the same time respecting the prerogatives of the European Parliament and Council as legislators and policymakers, to the point of signaling to the political branches that if positive law is to be improved it is for them to accomplish that. The Court must also ensure that national courts receive adequate guidance in the interpretation of EU law without intruding on their authority for the application of EU law. Indeed the very divide between interpretation and application of EU law captures the subtlety of the matter.

One way in which the ECJ can afford the national courts guidance without dictating results is to impress those courts with the importance of observing the proper modes of interpretation and application of EU law. The authors rightly underscore the centrality of these guiding methodological principles to the functioning of the judicial structure comprising the courts of the EU and its Member States.

No introduction can do justice to the richness of the article that follows. But what it can do is underscore the general themes that emerge from the detailed doctrinal analysis that the article provides—themes that reflect the specificity of the EU and its political and legal system. The themes are many and far-ranging. They include:

- The EU's multilingualism and commitment to "linguistic equality"
- The value of creating "autonomous" concepts rather than borrowing national law
- The principle of "effectiveness" (*effet utile*) of EU law
- The utility of the "proportionality" principle
- The insights afforded by the EU's elaborate *travaux préparatoires*
- The aptness of teleological methods of interpretation
- The alignment of EU law with international law and especially the European Human Rights Convention
- The constitutional traditions of the Member States
- Reconciliation of unity and diversity

As this very enumeration suggests, interpretation of EU law entails elaborate and delicate exercises in combining, and navigating among, the values that undergird each of these considerations. Each one constitutes in itself—as each one has constituted over the past six decades—a subject of deep academic inquiry. Putting them together in such a way as to provide a coherent methodological account of EU legal interpretation is another matter. This is an endeavor of enormous intellectual ambition, and it has been carried off here not only on the basis of perfect knowledge of the institution, but with the utmost of skill and insight.