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Introduction to the Decennial Volume

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INTRODUCTION

*George A. Bermann**

Ten years ago, when the *Columbia Journal of European Law* began, the European Union was, as we tend to say, “in a different place” than it is today. The “internal market” or, as it was called, the “1992” program had very largely been achieved, validating the institutional changes wrought by the Single European Act and boosting incalculably the Community’s credibility as a regional economic entity and potential international political force. The Member States had just successfully orchestrated what may fairly be regarded as their most ambitious Intergovernmental Conference to date, culminating in the Treaty of Maastricht. While the referendum road was by no means a smooth one, it ended with a broadly positive sigh of relief.

The actual and symbolic significance of the Maastricht Treaty cannot be overestimated. The Treaty ushered in a new and, for Europe, unprecedentedly embracing political entity in the form of the European Union, encompassing the already familiar European Communities alongside a pair of ambitious, albeit intergovernmental, “pillars” representing foreign and security policy, on the one hand, and justice and home affairs, on the other. European citizenship began to have some real content, making a small but certain step in the direction of a sense of European *demos*. Inscribed in the Maastricht Treaty, too, was the blueprint for an exciting economic and monetary union, with its eventual common currency and European Central Bank.

At this time, the first steps were also being taken toward integration into the Union of a broad band of central and eastern European states that had emerged from a still fresh and “heady” liberation from Soviet dominance. No one imagined that the path to full membership just then coming into view would be a smooth or simple one, but the very prospects of eastern expansion added to the buoyancy of the moment. It simply was not imagined just how painful, and unproductive in many ways, would be the next two intergovernmental conferences - Amsterdam and Nice - at which the hard decisions stemming from this massive new enlargement would mostly be taken.

It is perhaps unfair to compare moments of exhilaration, born of new bold initiatives, with the inevitably long and sometimes agonizing processes that follow and that enable those initiatives to be realized. By its nature, achievement of the

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economic and monetary union was a staged and rather technical affair. So, too, of course, has been enlargement, with its periodic country-by-country assessments of progress toward meeting multitudinous accession criteria. Surely the Charter of Fundamental Rights could be, and was, looked upon as an inspired and inspiring development, both in its content and in the novel convention method through which it emerged. But even assessments of it were more often than not tempered by a recognition of its limitations, not least that the Charter was not to be fully integrated into the treaties and that it was declared, by its own terms, to be legally unenforceable. At the same time, treaty amendments - particularly the various special regimes and sweeping derogations ushered in by the Amsterdam Treaty - brought the complexity of the Union's architecture to an altogether new level.

At the present time, the full story of the Constitutional Treaty is not yet known. There was a good deal of anxiety in the run-up to the December 2003 IGC in Brussels as to its fate, and events proved that anxiety to be founded. The IGC found the states badly splintered over the perennial question of voting weights, along lines dangerously resembling those that recently splintered them over the war in Iraq and, closer to home, over continued enforcement of the Growth and Stability Pact that has until now anchored the economic and monetary union. Even among commentators on the constitutional text itself, as well as in both the popular and professional press, the draft had been given a wide range of different "spins." Anyone hearing Giuliano Amato, vice-president of the Convention (and former prime minister of Italy) when he spoke on "What's New in the New Constitution," at Columbia Law School at the *Journal's* celebration of its tenth anniversary in October 2003, would see how nuanced even an enthusiast's assessment of the draft constitutional treaty had to be. Over the course of the months ahead, leaders will be seeking acceptable exits from the impasse, with one such exit strategy reviving the notion of a "core" Europe led by France and Germany, which would advance at a more rapid integration pace than other states. Whatever the solution to emerge, presumably in the first half of 2004, it will not only face national ratification processes, but also complications stemming from the May 1, 2004 accession of 10 new member states. Throughout the period ahead, very different assessments of the Union's long-term health and soundness are bound to be felt and voiced. In a dense negotiating and diplomatic atmosphere, such as that in which the EU will continue to find itself, much is apt to change.

Perhaps all this shows is that polity-building is not, and never has been, a continuously exhilarating exercise. Nor should we expect it to be. The moments of bold strokes, such as those that marked the early 1990s, are emphatically not the only moments when the law matters. Law also makes possible "business as usual." And, in the European Union, business as usual means a lot of business indeed, as we can see from recent legislation on corporate takeovers, from the Commission's recent setbacks in the courts on competition law enforcement, from controversial state aid decisions, from fragmentary and tentative steps toward a common defense policy, and from action in countless other EU arenas.

The decade past thus reflects, alongside all else, aspects of maturation. The European Union is well beyond the point of no return insofar as law's importance is

concerned. As those who, for one reason or another, are affected by or hope to affect the course of EU policy plot their more or less grand designs or their more or less narrow courses of action, law will continue to be the instrument of choice, and European Union law will increasingly be that law's currency. The *Columbia Journal of European Law* - once a faculty-edited and now fully a student-edited review - will continue, I am confident, to contribute to a better understanding of that law and of the processes that shape its making and its implementation. In doing so, it will seek, as it has sought for its first decade, to enhance within this country an appreciation, in the fullest sense of the word, of European Union law.