



### Teaching Law in a European University Institute Does it make a difference?

In presenting the Department of Law in the Institute brochures, we usually describe it as being “European and international in its character, comparative in its approach and contextual in its methods. This may sound like a fancy (or perhaps not-so-fancy) marketing formula but, as a matter of fact, it captures the spirit of the Department rather well. We are definitely “European” through and through. Not necessarily and not always for biographical reasons: in fact, some of the most outstanding members of our Department in a recent past were non-European by birth. But even they were predominantly devoted to European problems and the European scholarly scene: after all, PHILIP ALSTON (Australian by birth) set up the European International Law Association, and FRANCIS SNYDER (an American) was the co-founder and is editor of the leading European legal periodical. And if one looks at all of our current work as well as the research projects of our doctoral students, the European focus is the most obvious common denominator.

Most, if not all, postgraduate and research legal institutes in Europe are very international in terms of the composition of the staff and the student body but none are probably as diverse as the Law Department of the EUI. No particular nationality dominates in numerical terms (and,

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I should perhaps add, in terms of the impact on shaping the dominant approach and problematic of the Department) so if there ever was a truly cosmopolitan centre of legal postgraduate education and research, it would be the Law Department at the EUI.

A small faculty of twelve, composed by professors of six nationalities; the administrative staff of six consists of persons from five

countries, and the student body has over a hundred researchers from no fewer than twenty-two countries: quite a diverse body indeed! A platitude that the diversity contributes to the quality of an intellectual interaction is fully confirmed by the experience of the courses, seminars and workshops. Here people bring with them the expertise, intellectual habits and expectations embedded in diverse legal and educational cultures and en-



Villa Schifanoia, San Domenico which houses the Law Department

rich us all in the process. It is not a Babel but a rich mosaic. (And talking of Babel: yes, we do take the multilingual character of the Institute very seriously and offer a number of bi-lingual courses, with languages other than English and French additionally represented in the Ph.D. theses produced here. By the way, it may sound eccentric to some, but even departmental meetings are held in two languages – no simultaneous translations necessary!)

As will become clear from the various articles in this issue of the EUI Review, we also take seriously the precept that legal scholarship is at its best when pursued in an interdisciplinary manner, in dialogue with, and using the tools borrowed from, other academic disciplines, thereby displaying sufficient sensitivity to the broader context – political, economic, cultural etc – in which legal phenomena take place.



Francis Snyder, Miguel Poiars Maduro and Cristian Joerges

If you are looking for legal scholars and researchers passionate about a strictly legal, positivistic, “black-letter” legal analysis only – you will not find them here. We do not apologize for this. As a matter of fact, we are rather proud of our interdisciplinarity.

What else are we proud of? Certainly, of our doctoral students – a real *crème de la crème* of the graduates of law schools in Europe who, after three or four years of intense work in Florence go on to achieve great things in European institutions (like MIGUEL POIARES MADURO, Advocate-General

at the European Court of Justice), in academia (like INGE GOVAERE, professor at the University of Ghent and in the College d’Europe in Bruges), in legal practice (like KOEN LEMMENS, a successful law-



Wojciech Sadurski

yer in Brussels), in national politics in their home countries (like NAVRAJ SINGH GHALEIGH, a Labor Party candidate in the recent UK national elections), or in so many other walks of life.

We are very proud of our extremely professional and efficient administrative staff who manage to take in good humor and with splendid efficiency a group of professors and researchers who certainly do not suffer from diminished egos! We are very proud of the quality of our visitors: some of the best legal scholars in the world come this way, and we hope are not only lured by the beauty of Florence and of Fiesole.

And of course, we are at times reasonably proud of what we, the professors of the EUI Law Depart-

ment, do. Do we have reasons to be proud of our work, both in terms of postgraduate teaching and of books and articles we write? Not for us to say: the reader will find some material for the answer inside this issue which was prepared by our colleague PIERRE-MARIE DUPUY.

But whatever the answer is, one thing is clear: there is no room for complacency and self-satisfaction. The postgraduate legal-education scene in Europe is more crowded and more competitive than ever: very good doctoral programs are mushrooming, and we have noted with concern a decline of applications from some countries. We continue to admit some of the best graduates from all over Europe but we cannot rest on our laurels. And we do not intend to do so. We have various plans and strategies but for now I can make one happy announcement. As from the beginning of 2006 we will benefit from the fact that a top scholar in EU law will join our faculty: Professor MARISE CREMONA from London.

WOJCIECH SADURSKI  
Head of Department of Law

# The Changing Profile of Law Researchers

## The rise and rise of the Law Department

Many features of the overall profile of EUI researchers have changed since the Institute first opened its doors in 1976, but one theme remains constant - the Law Department recruits more than any of the others. Over the first five years of the Institute, 27% of all researchers were recruited to Law. If we look at the comparable figures today (Academic Session 2004-5), an analysis of the numbers of researchers in years One to Four across all four departments reveals that 28% are based in the Law Department (Table One).

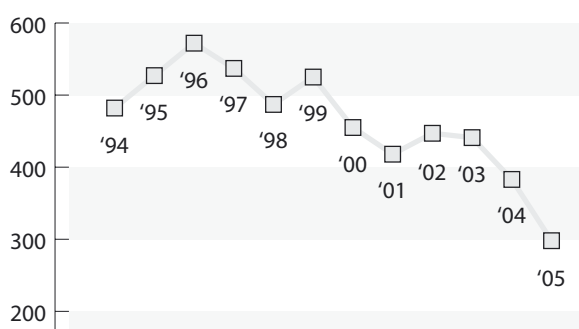
Percentage of current law researchers (years One to Four) compared to other Departments (Table One)

Department	No. of researchers	Percentage
ECO	85	18%
HEC	126	27%
Law	134	28%
SPS	130	27%
Total	475	100%

In some respects it is surprising that the Law Department remains slightly ahead of the pack. Certainly, in recent years the number of applicants has dropped significantly (Table Two). In fact, Law has now fallen well behind SPS in this regard, although there are indications in the first years of the new century that all departments are feeling the effect of greater competition from other doctoral programmes in Europe and beyond, even if this has not (yet at least) affected numbers or quality across the Institute as a whole. One significant reason for the Law Department's resiliently healthy performance is the existence of the LLM degree as an alternative to the PhD. Introduced in 1984, the LLM is in effect a 'mini PhD'. LLM candidates have substantially similar first year coursework require-

ments to PhD candidates, but rather than developing a 3-4 year research project they must complete a research dissertation (of around 30000 words) within a 12 month period. The LLM was introduced in response to concerns that in some of the Member States potential applications were being discouraged by the length of the PhD. In countries such as Germany and Britain, local job market conditions were such that for many a shorter degree - and so a briefer absence from the domestic job market - was the more attractive option in career terms. This remains the case today, and if we

Candidates to the Law Department from 1994 to 2005 (Table Two)



examine the figures in Table Three, -we can see that over the past 11 years on average 30% of new recruits have been to the LLM programme, as compared to 63% to the PhD programme (although, clearly, as they stay much longer, PhD researchers have a much larger presence in the Law Department than these figures indicate, and continue to account for a much larger part of the average Professor's supervision load).

Another interesting statistic to emerge from Table Three is the rise in Exchange Students - those U.S.-based researchers who are selected to spend a substan-

Academic program distribution of entering law researchers from 1994 to 2004 (Table Three)

Year	Doctoral Program		LLM		Exchange Students		Total Number per Year
	No.	%	No.	%	No.	%	
1994	27	69%	12	31%	0	0	39
1995	24	63%	14	37%	0	0	38
1996	24	73%	9	27%	0	0	33
1997	22	52%	20	48%	0	0	42
1998	27	60%	18	40%	0	0	45
1999	24	57%	18	43%	0	0	42
2000	37	67%	10	18%	8	15%	55
2001	33	60%	16	29%	6	11%	55
2002	30	64%	12	23%	6	13%	48
2003	31	65%	7	15%	10	20%	48
2004	25	61%	9	22%	7	17%	41
Average of %		63%		30%		7%	

tial part of an academic year in Florence. Two important points emerge from this trend. First, it indicates the attraction of the EUI and its Law Department not just to Europeans, but also as viewed from the other side of the Atlantic. Secondly, it offers one subsidiary reason why the EUI remains so attractive to our own researchers – as under the relevant Exchange Programmes they may benefit in return from the opportunity to pursue their research for a limited period at a top U.S. Law School.

## Changing Trends

What are the most significant changes in the composition of the researcher population in the Law department since 1976? First, and most obviously, there is the matter of numbers. Over the first five years, the average intake was 13, and some years it dropped to as low as 10. Today, as we have seen (Table Three), the average intake (excluding Exchange students) is around 40.

Just as striking is the change in the gender composition of our researchers. During the first five years of the Institute, 63% of all new law researchers (i.e. 41) were male, and only 37% (i.e. 24) female (Table Four).

Gender distribution of entering law researchers from 1976 to 1980 (Table Four)

Year	Female Res.		Male Res.		Total per Year
	No.	%	No.	%	
1976	5	23%	17	77%	22
1977	5	38%	8	62%	13
1978	1	1%	9	90%	10
1979	5	50%	5	50%	10
1980	8	80%	2	20%	10

that the trend is most pronounced in Law. This says much about changing patterns of tertiary education across Europe as a whole, as well as about a deeper transformation in the gendered distribution of life-chances. Whether and to what extent this shift will in time be reflected in the allocation of the elite academic and professional positions to which EUI Law alumni aspire remains a moot point, and one which demands closer examination.

The other major change revealed by the data concerns the national composition of our researchers. Here the trends are more predictable, but still noteworthy. As the European Union has expanded, so too has the

Gender distribution of entering law researchers from 1994 to 2004 (Table Five)

Year	Female Researchers		Male Researchers		Total Number per Year
	No.	%	No.	%	
1994	21	54%	18	46%	39
1995	14	37%	24	63%	38
1996	13	40%	20	60%	33
1997	25	60%	17	40%	42
1998	26	58%	19	42%	45
1999	24	57%	18	43%	42
2000	32	58%	23	42%	55 (47+8 exchange students)
2001	29	53%	26	47%	55 (49+6 exchange students)
2002	32	67%	16	33%	48 (42+6 exchange students)
2003	32	67%	16	33%	48 (38+10 exchange students)
2004	25	61%	16	39%	41 (34+7 exchange students)
Average of percentage		55.6%		44.4%	

Nationality distribution of entering law researchers from 1976 to 1980 (Table Six)

Year	Belgium	Germany	France	Netherlands	United Kingdom	Ireland	Italy	Israel	Luxembourg	Switzerland	USA	TOTAL
1976	3	5	2	1	4	0	4	0	0	1	2	22
1977	1	2	3	2	2	0	3	0	0	0	0	13
1978	0	1	1	2	1	1	1	1	1	0	1	10
1979	1	0	2	2	3	0	2	0	0	0	0	10
1980	0	2	3	2	0	0	3	0	0	0	0	10

Over the last decade, by contrast, women have gained the ascendancy, accounting for 55.6% of all researchers in the eleven new cohorts since 1994. (Table Five). Similar trends can be seen across the Institute as a whole, although on the available evidence it seems

range of nationalities and cultures present at the EUI in general and the Law Department in particular. Over the first five years of the Institute, six countries – Belgium, Germany, France, Netherlands, Britain and Italy – accounted for almost 90% (i.e. 58 out of 65) of all

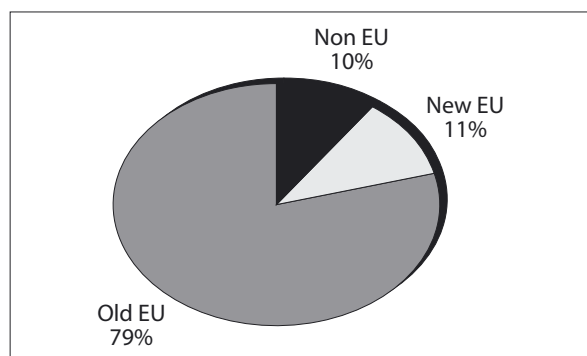


Neil Walker

researchers (Table Six). Today, the founding members of the EU remain prominently represented at the EUI, as do other large Member States from Western Europe (i.e., Britain, and since the late 1980s, Spain).

However, if we look at researchers presently in the first four years of study, while the “old” EU countries (i.e. The 15 prior to last year’s Eastern Enlargement) still account for 79% of all researchers, the “new” Enlargement countries now account for 11%, with the remaining 10% presently lying outside the EU (but including a number of researchers from new candidate countries) (Table Seven). These gross figures, however, reveal neither the significant changes in the internal composition of the representatives of “old” Europe which have taken place nor the precise profile of the “new.” (Table Eight) As regards the former, the six “old” members who in the early years accounted for 90% of all researchers now account for precisely half that proportion (i.e. 45%, or 60 out of 134). As regards the latter, one country has almost single-handedly raised the banner of the “new.” Poland presently accounts for three-quarters (i.e. 11 out of 15) of all researchers from the new Enlargement countries, and so ranks just behind Spain, Italy, France and the UK, and ahead of such significant long-term Institute members and supporters as Germany, The Netherlands, Portugal and Ireland in terms of current national representation. What is more, an analysis of figures across the Institute as a whole would reveal a similar trend. It is both a source of much satisfaction that a country as significant to the new Europe as Poland has endorsed the Institute cause so wholeheartedly, and a matter of some concern that progress has been more modest in relation to the other new members.

Distribution of law researchers by group of countries 2004/2005 (Table Seven)



Distribution of law researchers by nationality in 2004/2005 (Table Eight)

Nationality	No. of Res.	Percentage
United Kingdom	16	11.9%
France	13	9.7%
Italy	13	9.7%
Spain	13	9.7%
Poland	11	8.2%
Germany	7	5.2%
Netherlands	7	5.2%
Portugal	7	5.2%
Ireland	6	4.5%
Sweden	5	3.7%
Belgium	4	3.0%
Finland	4	3.0%
Greece	4	3.0%
Austria	3	2.2%
Denmark	3	2.2%
Hungary	3	2.2%
Romania	3	2.2%
Serbia and Montenegro	2	1.5%
Algeria	1	0.7%
Bulgaria	1	0.7%
Iran	1	0.7%
Latvia	1	0.7%
Luxembourg	1	0.7%
Norway	1	0.7%
Switzerland	1	0.7%
Tunisia	1	0.7%
Turkey	1	0.7%
USA	1	0.7%

There are signs, however, that this is changing, and that the demographic profile of the Institute will in short order again reflect closely that of the EU as a whole.

For the present, we may simply note that the ever-changing and ever-expanding national profile of the Law department adds greatly to the richness of our cultural and academic mix. Unfortunately, none of us professors are here for more than a brief sojourn, but even in the short time granted to us at the Institute, we can observe fascinating changes in the social and intellectual composition of our researcher population. It may seem trite to say that the most valuable asset of the Institute is the researchers themselves, and the opportunities they provide each other to have their horizons expanded by different ideas, cultures, languages and traditions, but it remains an important truth all the same. In this respect as indeed in all others, the continuing diversification of the national profile of the Law Department, and indeed the Institute as a whole, can only be a good thing.

NEIL WALKER  
Dean of Studies (2003-05)

Many thanks to FATMA SAYED for preparing the statistics on which this article is based

## The Context and the Law

When I first visited the European University Institute for my interview I didn't know much about the academic and research profile of the institution. In fact, having recently finished a law degree in a country where the study of law was highly uniform, I didn't even know that there were other academic and research profiles...

It was context that led me to Florence but not law in context. It was the perspective of studying in an international environment and of living in Florence. It was also the chance to study under the direction of an international faculty of the highest standards. My experience at the EUI ended up, however, being dominated by another kind of context: the context of law. The study of law in its social, economic, political and cultural context. It was this methodological challenge that made me progress as a lawyer. But it was also the fact of being immersed in a community of research, where you gain as much from professors as you gain from permanent discussions with your colleagues. The EUI is a permanent laboratory of ideas which are tested in the seminar rooms as well as in the cafeteria

As a lawyer one needs information, analytical tools and creativity. This requires us to be both technical experts and to have critical minds. To fully dominate the dogmatics of law is not enough. One needs to understand the normative theories and conflicts that guide the (re)construction of the dogmatics of law. So even if one wants to operate within the legal system (as judges for example) one needs to also look from outside the system. That is the first function of law in context: to make us better lawyers by teaching us how to understand and operate better in the legal system. Law in context is not law and context (law and culture or law and politics). Law in context is also not law as seen from its context (a sociological

or political approach to law). Neither is it about the impact of law in its context (the sociological or economic impact of legal rules). Law in context must be about the dogmatic reconstruction of the law in light



of its deeper normative questions, that only an approach that looks at rules in their context can uncover. For this one needs to know both the rules and the context. One does not know what rules effectively mean or how they will be applied if one does not look at their context. One does not know how to suggest normative alternatives if we do not know what those alternatives effectively entail. Only the study of law in its context can give us that. But it is still of law that we are talking. Ultimately, the teachings of law in context must be translated into the usual language of the legal system. Context will teach us how to better use that language and to steer it in the direction of certain normative preferences but context cannot replace the language of the law. As I now move from the academic discourse to the discourse of the practice of the law I understand better how much one can gain from the insights of law in context. You must still know the classic grammar and vocabulary of the language very well but, even so, the knowledge of context gives you a much better command of it.

It is this approach to law that has had the greater impact on me as a lawyer. It has shaped my understanding

of the law since I left Florence. I still remain, in many respects, the classic lawyer who likes to "play around" with legal concepts. But I have, hopefully, also become a lawyer that knows better how to play the game and what the game is about.

After leaving Florence I went to the United States and then back home to Portugal. I took a position as Professor at the Universidade Nova de Lisboa while, at the same time, trying to remain involved in the broader European and international legal community by both teaching and participating in different research projects. One of the great things about the EUI is that it makes you part of a much broader scientific community. This is particularly important when, as in my case, you are part of a small national academic legal community.

After some years, I was appointed to the European Court of Justice in Luxembourg. From commentator to actor... The experience has been extraordinary so far. As in Florence, it is tremendously rewarding from the intellectual point of view.

Socially, however, Florence is an experience that cannot be repeated. I wanted to end with a note on that. Whenever I go back to Florence there is so much that appeals to my memories and so many things which recall great moments. But there is also a melancholic sense about those days that I will never live again. A city and a place are in great part made of the people that inhabit them. Most of the inhabitants of my 'Florence life' have now left and this always permeates me with a strong sense of *saudade*. However, the beautiful places are still there. So are many of the ideas and the same enthusiasm. Others will build great lives and memories at the EUI

MIGUEL POIARES MADURO  
Advocate General  
European Court of Justice.

# Teaching the “Common Law” of Europe:

## The contribution of the EUI

One would expect that, in a Law department based at a European University Institute, European Union law would occupy a central position. This is indeed the case. Already in the early years of the EUI (at a time when other departments were only remotely interested in what was going on in ‘Brussels’), the Law department took a close interest in legal developments in what was still the ‘Little Europe of the Nine’. European law has remained part of the Law department’s ‘core business’ ever since. Today, three chairs of the department are devoted primarily to the study of EU law, but, what is perhaps even more important, all the other professors of the Law department engage, often deeply, with EU law in their work. This makes the EUI Law department very different indeed from the law departments of national universities, in which most of the members of staff can still safely afford to ignore EU law developments and leave them to those of their colleagues who are labelled EU law specialists.

However, that fact that the EUI spends relatively more of its time and energy on EU law, compared to other legal disciplines, is fairly obvious and hardly interesting. Beyond this quantitative element, one may wonder whether there is also a qualitative difference between the way European law is studied in Florence and elsewhere. I do not mean, by this, that European law is studied better in Florence than elsewhere, but it may be studied in a different way. In the following, I propose three general characteristics of the way in which European law has been studied and taught at the EUI in the past twenty years, beyond the inevitable diversity of personalities, national backgrounds and fashion trends. None of these three characteristics, taken apart, is specific to the EUI, but the combination of the three characteristics

make up a rather original mixture. The first characteristic is that European law has never been studied in splendid isolation, but as part of a



Bruno De Witte

broader interest for what is known as the ‘Europeanisation of law’. In fact, when FRANCIS SNYDER edited, a few years ago, a collective volume with contributions of (then) present and former professors of law at the EUI, he chose as the overall title of the volume: *The Europeanisation of Law: The Legal Effects of European Integration*. The very first volume of the EUI’s publications series contained the contributions to a conference organised by MAURO CAPPELLETTI on *New Perspectives*



Professors Cassese, Dehousse, Teubner, Bercusson, Snyder and Kravaritou in 1993

for a *Common Law of Europe*. This volume, which was published in 1978, examined the stirrings of a new ‘common law of Europe’ (a

subject which has since become very fashionable!), and deliberately put the development of EEC law in a broader context of international and comparative law. In that same vein, many EUI professors whose chairs were not primarily defined as being about European law, have contributed to our understanding of the Europeanization of law, by examining how EU law has shaped domestic law, and was absorbed or distorted by it: for instance, the work of SCHWARZE, DIEZ PICAZO and now ZILLER on the Europeanization of public law, or the work of BERCUSSON, SCIARRA and now MOREAU on the Europeanization of labour law, to name just these two fields.

A second characteristic of EUI-based research and teaching in the field of European law, is a widely shared interest for understanding positive European law in its broader political, social and normative context. When FRANCIS SNYDER and CHRISTIAN JOERGES launched the Florence-based *European Law Journal* in 1995, they chose as the sub-title of this new journal: “Review of European Law in Context”. This has become a kind of leitmotif for an otherwise very diverse range

of contributions by people such as WEILER, DEHOUSSE, JOERGES, LA TORRE, DE BURCA and WALKER.

# Teaching the “Common Law” of Europe



Jürgen Schwarze

A third feature of EUI-style European law practice is its contribution to the reform agenda of the European Union. By offering a mixture of critical reflection and practical ideas, members of the EUI legal community have often sought to advance the agenda of institutional reform in the EU. One



Victor Louis

striking area is that of the protection of human rights. In 1990, a first large project was conducted by WEILER and CASSESE, on the development of a human rights policy for the European Communities. The Commission, that had sponsored the project, took on board only few of the suggestions that were made then. However, the same subject was considered

again, in a new political context, towards the end of the 1990's in a new Commission-sponsored and Florence-based project, this time led by ALSTON. The volume on EU and Human Rights, to which many members and former members of the Law department contributed, proposed the elements of a more coherent EU human rights policy, which made slow headway in the practice of the EU institutions in the following years. Further intellectual impetus was provided by the writings of GRAINNE DE BÚRCA on the development of fundamental rights, through the adoption of the Charter in 2000 and the constitutional Convention of 2003. The way in which that Convention approached the broader problem of constitutional reform in the EU was, in turn, influenced by earlier work undertaken at the EUI. From



Joseph H.H. Weiler

the mid-1990's onwards, EUI members such as BIEBER, EHLERMANN, MÉNY, AMATO, LOUIS, and many others with them, had reflected on the feasibility of re-organising the complex set of Treaty texts into a more coherent whole. That work facilitated the Convention's approach to the constitutionalization of the European treaties, although the authors of the European Con-

stitution did not follow (rightly or wrongly) all the recipes for change proposed in Florence...



Claus-Dieter Ehlermann

In what precedes, I have dropped many names in order to convey a sense of the richness and continuity in the EUI's contributions in this field. In dropping those names of former and current professors, I may have done injustice to the many researchers and postdoctoral



Giuliano Amato

fellows who left their imprint on our department and then went on to develop splendid academic or other careers in European law, and often did so in an EUI-distinct way, that is, a way which was influenced by the features that I mentioned before. Thanks to this coming-and-going to and from Florence, the EUI has itself been an actor in the process of the 'denationalization of legal scholarship' (as CHRISTIAN JOERGES once put it).

BRUNO DE WITTE  
(Dean of Studies and Co-Director  
of the Academy of European Law)



Renaud Dehousse, Philip Alston and Silvana Sciarra



## The Academy of European Law

The Academy of European Law was founded in 1990 by ANTONIO CASSESE and JOSEPH WEILER (then professors in the Law Department of the EUI) in order to promote teaching and scholarship in European law and human rights law. It was funded by the European Commission through a specific grant to the EUI. It has, over the years, developed a number of initiatives that complement the activities of the EUI's Law Department.

The original activities of the Academy included the organisation of annual summer courses on European Community law and international human rights law; the publication of a documentation series on what was then called European Political Cooperation (later to become Common Foreign and Security Policy); and the publication of a new journal, the *European Journal of International Law*. These activities have been expanded and supplemented by others in the course of the years. However, the Academy of European Law has remained a small body, with a very small administrative staff. From an organisational point of view, the Academy is an integral part of the EUI, and is linked to its Law Department both through its directors (selected among the members of the Department), and through the exchange of ideas and advice on the annual summer courses.

The current directors are Professors GRÁINNE DE BÚRCA (since 1998), BRUNO DE WITTE (since 2000) and FRANCESCO FRANCONI (since 2004). Previous directors include, apart from the two founders, former EUI professors RENAUD DEHOUSSE, FRANCIS SNYDER and PHILIP ALSTON. ANNY BREMNER is the full-time administrator of the Academy. She is specifically responsible for budget management, the organization of the summer courses, the coordination of special projects and for the editorial coordination of the *European Journal of International Law*. BARBARA CIOMEI who worked full-time for the Academy until September 2004, is now employed half-time by the Academy (the other half by the EUI Library). She is mainly responsible for the *European Foreign Policy Bulletin* and for the publication of the *Collected Courses*. In addition to those two persons, who have been the true pillars of the Academy for a number of years now, the Academy also recruits on a temporary basis several assistants for specific tasks.

The Academy's Summer Course is its most prominent and visible activity. It consists of two intensive teaching programmes each year during the summer months (roughly between 15 June and 15 July), at the EUI (in Villa Schifanoia). One deals with European Union law and the other with human rights law. These courses are not intended to provide training or general orientation, but rather they are designed as advanced courses to provide sophisticated and original intellectual perspectives on important and topical legal issues. They bring young

academics and practitioners, and many of these return to the EUI in later years, as PhD students, postdoctoral fellows or guest lecturers. The courses are given by leading authorities in the respective fields, both from the world of practice and from academia.

Each programme features a Distinguished Lecture, a General Course and a set of Specialized Courses on a topical theme. Each General Course is given by a well-known scholar who is invited to present a course of lectures which either examines the field as a whole through a particular thematic, conceptual or philosophical lens, or which looks at a particular theme in the context of the overall body of law in the field. The Specialized Courses in each of the two fields focus on a particular theme. In 2004 the Specialized Courses were on Political Rights under Stress in 21st-century Europe and The Europeanization of Private Law. The General Courses were taught by Professors ANDREW CLAPHAM and PIET EECKHOUT, and covered, respectively, Human Rights Obligations of Non-state Actors: Time for a Radical Rethink and Constitutionalism and External Relations of the EU.

In 2004, The Academy received 502 applications from candidates worldwide for the 90 places in each of the two courses. The lectures at the summer courses are published as *Collected Courses of the Academy of European Law* by Oxford University Press.

In addition to its regular activities, the Academy has increasingly undertaken Special Projects. These are closely related with the Academy's 'core business' in the fields of EU law and international human rights, and designed to produce high-level academic publications. In 2004, the Academy launched a new special project. Under the direction of PHILIP ALSTON, the Academy staff organised the Inaugural Conference of the European Society of International Law. The conference was held in Florence in May 2004, bringing together over 300 international lawyers from Europe and beyond to discuss International Law in Europe: Between Tradition and Renewal. The ESIL is a legally independent body, but there is a double personal link with the Academy: FRANCESCO FRANCONI, a co-director of the Academy is a Vice-President of ESIL, and the secretariat of ESIL is held by an assistant of the Academy, GILLIAN WALKER.

The Academy's overall policy aim for the future is not to expand unrealistically or to 'massify' its activity, but to continue to occupy its small but extremely high-quality niche in the academic 'market' in EU law and human rights, by offering state-of-the-art courses and producing excellent publications in cooperation with the best and most renowned scholars and publishers in the field.

BRUNO DE WITTE

## At the cutting edge...: The Academy of European Law and its publications

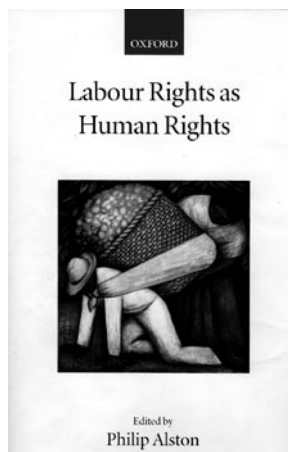
### The AEL Collected Courses

(Series Editors: GRÁINNE DE BÚRCA; BRUNO DE WITTE, and FRANCESCO FRANCONI).

This series, emerging from the annual summer school of the Academy, continues to grow in range and international stature, producing cutting edge scholarly analyses of the two fields under its lens: human rights law and European Union law.

Recently published volumes comprise: Philip Alston (ed.), *Labour Rights as Human Rights*, Philip Alston (ed.), *Non-State Actors and Human Rights*, Stefan Trechsel, *Human Rights in Criminal Proceedings*, and Gráinne de Búrca (ed.), *EU Law and the Welfare State: in Search of Solidarity*.

In *Labour Rights as Human Rights* the contributors explore the central importance of international

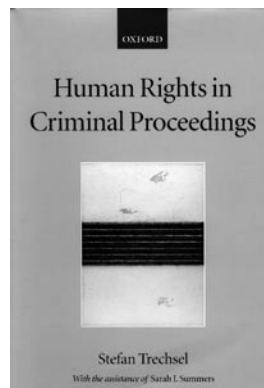


agreements and institutions for the protection of labour rights in a globalized economy, and critically appraise their performance in this respect.

In *Non-State Actors and Human Rights*, various authors argue that the responsibility of Non-State Actors, including that of important institutions such as the IMF and the WTO, as well as of transnational

corporations, is one of the biggest and most critical challenges facing international law today.

The monograph entitled *Human Rights in Criminal Proceedings* by Stefan Trechsel completes this round's release of human rights volumes. In this book the case-law of the most important and influential international bodies dealing with alleged human rights violations that take place during criminal proceedings is critically examined by an author who has spent almost a quarter of a century contributing to its evolution. STEFAN TRECHSEL who is Professor of Criminal Law and Procedure at the University of



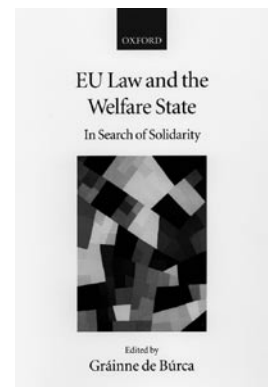
Zurich has been a former President of the European Commission of Human Rights.

In *EU Law and the Welfare State: in Search of Solidarity*, various authors question the perception that matters of social welfare remain essentially within the exclusive power of Member States of the EU, and that the EU's influence in this field is minor or incidental. The book as a whole points towards the emergence of a distinctive, although partial and fragmented, European Union welfare dimension.

Several volumes are in the pipeline and will be published in the first half of 2006. These comprise: Fabrizio Cafaggi (ed.), *The Institution-*

*al Framework of European Private Law*; Andrew Clapham, *Human Rights Obligations of Non-State Actors*; and Wojciech Sadurski (ed.), *Political Rights under Stress in 21-st Century Europe*.

Last but not least, a publication *hors série*, emerging from a lively Academy conference which took place in Florence on 18 and 19 June 2004. GRÁINNE DE BÚRCA and BRUNO DE WITTE, with the assistance of



LARISSA OGERTSCHNIG, edited a volume entitled *Social Rights in Europe*. The book examines some important recent developments in the systems of protection for the so-called 'neglected rights' – social rights – within the two major European fora: the EU on the one hand, and the Council of Europe's European Social Charter on the other. The book will be published in October 2005.

The collection of Academy of European Law volumes is published by Oxford University Press.

# Private Law: The challenge of Europeanization

The Law Department has from its early years emphasized its European vocation. Because of this orientation, the positioning of private law, a core legal subject at national level, has not been so easy to promote. But the new dynamics of European integration since the mid 80s have increasingly affected the realm of private law and in the 90s European private law established itself as a discipline with an exponential growth rate. The prominence of private law in the European arena was again enhanced through the project of a European private law code which its proponents would like to realize alongside with the new European Constitution. Research and teaching at the department has accompanied this process and has had to reflect fast and react to these profound transformations.

## 1. The formative era: the benign neglect of private law by European law

It seems paradoxical but the phenomenon has its logic: The building up of a common market was, from the very beginning, a core objective of the European Economic Community. But European Law established itself as a sub-discipline of public law, situated in a grey zone between international law and national constitutional and administrative law. The apparent discrepancy between the economic rationale of the Community and its juridical design is, however, easy to explain. A market without private law is unconceivable. But a common European private law would have required a common market – and the development of such a market required first and foremost the abolition of tariffs and non-tariff barriers to trade.<sup>1</sup>

Although that process was well underway when the EUI opened in 1976, private law remained a somewhat poor relation of the European project. The Law Department can,

however, claim to have instigated a number of quite important reorientations. To be sure, the legendary ‘integration through law’ project,



Christian Joerges

the great beginning of the EUI's highly regarded research,<sup>2</sup> focused on fields like consumer protection and company law where the Europeanisation process had already left visible traces and also reflected upon the potential of private international law to contribute to the functioning of an integrating market. But there was more going on and two names in particular stand out: One is MAURO CAPPELLETTI.

Even prior to the integration through law project he had realized that Europe would have to develop perspectives for private law.<sup>3</sup> His comparative work had focused on crossroads between private law and welfare state activities.<sup>4</sup> The second name is GUNTHER TEUBNER. While CAPPELLETTI relied on comparative research when analysing the transformation processes of private law, Teubner initiated a turn to theory. With his ‘reflexive law’, published in 1983,<sup>5</sup> he started a systematic inquiry into the social functions of modern private law which fascinated legal theorists all over the world and irritated private law scholarship constructively and profoundly.

## 2. The new impetus of the 80s: The completion of the internal market and its irresistible dynamics

The internal-market initiative of the Delors Commission<sup>6</sup> seemed to follow familiar patterns. Market building once more relied on ‘public law’, albeit a law which was to promote new and sophisticated regulatory policies. The EUI followed suit. In the SPS Department, GIANDOMENICO MAJONE started to develop his project of a European ‘regulatory state’<sup>7</sup> and the Law Department started to focus on the legal problematic of European regulatory politics.<sup>8</sup>

The Europeanisation of the whole regulatory framework of the European economy was bound to affect private law. The private law systems of all European jurisdictions had, in a process of *longue durée*, learned to coexist with public law intervention in the economy. Civil law and common law had both become law ‘for the age of statutes.’<sup>9</sup> This had been the so-to-speak endogenous development which private law theorists could, during the formative phase of the integration process, perceive as a general tendency; albeit one taking place within nation state confines. Tensions between the ‘functionalist logic of integration’ in European private law and the ‘normative logic’ of national private law had been visible since the early 80s. But, by now the Europeanisation process had started to decouple national private law from its national regulatory environment. New tensions in the adaptation processes were bound to follow.

Private law in the law department, was at that stage not particularly strongly represented.<sup>10</sup> But the new interdependence of private law – which was still for the most part national – and Europeanised regulatory policies was discussed at the EUI, mainly thanks to the proceedings

of the Academy of European Law in 1996 and the sensitivity of the (then) new European Law Journal.

### 3. The EUI Forum of Private Law: the challenges ahead

Since the arrival of MARIE-JEANNE CAMPANA in 1996 and CHRISTIAN JOERGES as a full-time professor in 1998, the private law section of the Department and the Academy became more active. Seminars on European Private Law were offered regularly. A very active Working Group, organized by CHRISTOPH SCHMID, produced Working Papers, law review articles,<sup>12</sup> PhD and LLM theses. These activities got noticed. In its Resolution of 15-11-2001 the European Parliament suggested that the EUI should contribute to work on a 'Restatement' of private law which was to further the Europeanisation process. This signal helped to persuade the President and the Research Council of the EUI to support the establishment in 2003 of the 'European Private Law Forum at the EUI Law Department'<sup>12</sup> by FABRIZIO CAFAGGI, CHRISTIAN JOERGES and JACQUES ZILLER who wanted to support the forum as a professor of comparative public law and thereby promote the importance of the field. In January 2003 the Forum was created by the three directors. CHRISTOPH SCHMID acted as the Forum's first Scientific Co-ordinator. ANN-ELISABETH COURRIER became his successor in 2004. Also in 2004 two new colleagues joined the forum, namely HANNS ULLRICH and MARIE-ANGE MOREAU, both professors at the Law Department. The growth of academic institutions enhances their complexity. FABRIZIO CAFAGGI strengthened its comparative orientation and widened its theoretical perspectives by his expertise in the economic analysis of law. HANNS ULLRICH, like CHRISTIAN JOERGES a proponent of *Wirtschaftsrecht*, is observing the links of private law with such divergent areas as, on the one hand, intellectual property, and, on the other, antitrust and competition law. Last but not least, with MARIE-ANGE MOREAU, the Forum has opened itself to the realms of labour law and social law. This complexity is appropriate. Eu-

ropean private law must continue to reflect upon its relationship with public law and define its functions in the European constitutional order. It cannot neglect comparative research



Marie-Ange Moreau

and it goes without saying that the economic approach is an indispensable dimension of contemporary private law scholarship. It is equally true that the tensions between private law and European regulatory policies in general competition law in particular, remain unsettled. And with the deepening of European integration it will become ever more difficult to withhold issues of distributive politics from the European agenda – and private lawyers will have to respond to concerns over the impact of the Europeanisation process on the social dimension of private law.

These are enormous challenges. The Forum cannot address them all at once. It cannot commit itself to one particular theoretical orientation but must practice pluralism. The multitude of issues at present pursued mirrors that complexity: FABRIZIO CAFAGGI is currently working on a comparative law project concerning the role of self-regulation for the integration of European private law. CHRISTIAN JOERGES, co-operating with CHRISTOPH SCHMID, is organising a project on 'judicial governance', which is supported by the EU-funded CIDEL ('Citizenship and Democratic Legitimacy in the European Union') network. MARIE-ANGE MOREAU is working of the transformation of regulation and regulatory techniques of labour

and social law in the light of the effects of the globalized economy. 'Defining intellectual property for the knowledge based economy: The roles of national, Community, and international systems of protection' is the *leitmotiv* of HANNS ULLRICH's research. JACQUES ZILLER is currently working on access to justice in a comparative perspective. It is obvious that this broad variety cannot be subordinated to one particular master-project. But its positive effect is the mutual enrichment of individual projects and perspectives.

CHRISTIAN JOERGES

#### Notes

1 There are further and more complex reasons, such as the non-existence of the category of *Wirtschaftsrecht* outside Germany; suffice it here to point to the works of Terence C. Daintith, e.g. his edited volume *Law as an instrument of economic policy: comparative and critical approaches*, Berlin-New York: W. de Gruyter, 1988.

2 *Integration through law: Europe and the American federal experience*, 5 volumes, under the general editorship of Mauro Cappelletti, Monica Seccombe, Joseph Weiler, Berlin: W. de Gruyter, 1986 ff.

3 M. Cappelletti (ed), *New perspectives for a common law of Europe / Nouvelles perspectives d'un droit commun de l'Europe*, with a foreword by Max Kohnstamm, Leyden-London: Sijthoff, 1978

4 See his pathbreaking *Access to justice and the welfare state* (edited with the assistance of John Weisner and Monica Seccombe), Alphen aan den Rijn: Sijthoff, 1981

5 'Substantive and Reflexive Elements in Modern Law', (1983) 17 *Law and Society Review*, 239-285.

6 Commission White Paper to the European Council on the completion of the Internal Market, COM(85) 310 final, 14 June 1985.

7 'Regulating Europe: Problems and Prospects' (1989) 3 *Jahrbuch zur Staats- und Verwaltungswissenschaft* 159-177

8 See Christian Joerges, Renaud Dehousse, Giandomenico Majone, Francis Snyder, Michelle Everson, *Europe After 1992: New Regulatory Strategies*, EUI Working Paper Law 92/31, San Domenico di Fiesole/FI 1992.

9 Guido Calabresi, *A Common Law for the Age of Statutes*, Cambridge, Mass.-London 1982.

10 The only private lawyer (Christian Joerges) held a part-time position.

11 No less than 7 EUI researchers contributed to a special issue of *European Review of Private Law* 8 (2000), 1-255 on 'Interactive Private Law Adjudication in the European Multi-level System – Analytical Explorations and Normative Challenges' (ed. by Marie-Jeanne Campana and Christian Joerges).

12 <http://www.iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw>.

# Le Forum Européen de Droit Privé

Si le développement institutionnel de l'Europe a besoin du droit public, le formidable défi que représente la fabrication du tissu tant économique que social entre les peuples européens fait du droit privé une discipline incontournable



Christoph Schmid

de la construction européenne. En créant le Forum Européen de Droit Privé il y a quelques années déjà, le Département de droit l'a parfaitement compris. Sous la direction des professeurs FABRIZIO CAFAGGI, CHRISTIAN JOERGES, MARIE-ANGE MOREAU, HANNS ULLRICH, et JACQUES ZILLER, ce groupe de recherche a vocation à offrir es-



Fabrizio Cafaggi

sentiellement aux chercheurs du Département de droit, la possibilité de réfléchir aux questions relatives à l'europanisation du droit privé.

Cette année, le Forum a orienté ses réflexions selon deux modalités.

D'une part, le colloque "Codes et Constitutions", organisé les 8 et 9 Octobre 2004, a marqué un temps fort. Il reposait sur une interrogation simple : faut-il, pour faire du

droit privé une matière européenne, adopter la voie de la codification alors même qu'on assiste en Europe à des mouvements de constitutionnalisation du droit privé ? Pour en débattre, il fallait éclaircir les rapports entre codes et constitutions, non seulement du point de vue de leurs caractéristiques formelles et de leurs modes d'élaboration mais également de leur mise en application et de leurs conséquences dans l'espace normatif. Privilégiant une approche comparative menée à partir d'expériences nationales et disciplinaires, ce colloque a donc permis d'ouvrir un large débat quant à l'impact possible des processus de codification et de constitutionnalisation pour l'intégration européenne du droit privé.

D'autre part, depuis décembre 2004 ont été mis en place les "Mercedes du Forum". Tous les mercredis au cours desquels le Conseil Académique se réunit (une fois par mois), est proposé un séminaire de recherche portant sur l'un des sujets de droit privé européen. Laissés à la discrétion de l'intervenant, les thèmes retenus ont prouvé, s'il en était besoin, la diversité des questions que pose l'harmonisation d'un droit privé européen mais également la difficulté et la sensibilité de ces questions au regard de la culture juridique des Etats membres. JACQUES ZILLER a ouvert ces séminaires en relevant le rôle joué par le terme de "constitution" (comme contrat social ou comme norme fondamentale) dans le débat relatif à l'europanisation du droit privé. CHRISTIAN JOERGES a, pour sa part, commenté le Manifesto for social Justice en insistant sur le caractère innovateur d'une telle initiative et FABRIZIO CAFAGGI s'est demandé dans quelle mesure il était possible de "privatiser la souveraineté". D'autres ont pu proposer un débat relatif à la protection européenne des données personnelles informatisées ou à la négociation des contrats commerciaux. Dans la même

perspective, il est prévu dès la rentrée 2005, la poursuite de ces séminaires avec une intervention de MARIE-ANGE MOREAU consacrée à "l'europanisation du droit social en questions" et une présentation sur la régulation des informations internet.



Anne-Elisabeth Courrier

L'année 2004-2005 aura donc permis au Forum de mûrir son programme d'activité et de prouver encore davantage, qu'au sein du Département juridique d'un Institut universitaire et européen, ce "Forum" "européen" en "droit privé" a toute sa raison d'être.

ANNE-ELISABETH COURRIER

JMF - Coordinatrice Scientifique du Forum Européen de Droit Privé

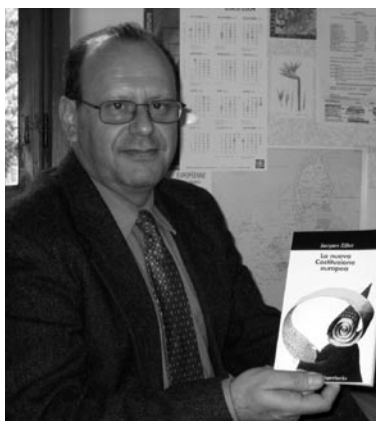
## Le droit comparé et les langues à l'IUE

Des ses premières années d'existence, le Département de droit de l'IUE a bénéficié de la présence de deux des meilleurs praticiens et théoriciens du droit comparé, disparus depuis lors : RENÉ DAVID et MAURO CAPPELLETTI. RENÉ DAVID, professeur à l'Université de Paris II (Panthéon-Assas) avant de rejoindre l'IUE a été notamment l'auteur du manuel de droit comparé « *Les grandes systèmes de droit contemporains* », traduit entre autres en anglais « *Major legal systems in the world today : an introduction to the comparative study of law* », en allemand « *Einführung in die grossen Rechtssysteme der Gegenwart : Rechtsvergleichung* », espagnol « *Los grandes sistemas del derecho* » et italien « *I grandi sistemi giuridici contemporanei* » ainsi que d'un ouvrage scientifique mais plein d'humour écrit après son passage à l'IUE « *Les avatars d'un comparatiste* ».

MAURO CAPPELLETTI, quant à lui, était professeur à l'Université de Florence et à l'Université de Stanford<sup>2</sup>, et s'est illustré notamment en publiant « *Judicial review in the contemporary world* », « *The judicial process in comparative perspective* », et en particulier, durant et après son passage à l'IUE « *Access to justice and the welfare state* » ainsi que « *Integration through law : Europe and the American federal experience* ». L'héritage de ces deux auteurs reste présent au département droit.

L'on aurait même pu penser, avec l'impulsion donnée par ces deux illustres auteurs, que l'IUE pourrait devenir un centre européen de droit comparé unique en son genre, bénéficiant de la présence de juristes, professeurs et chercheurs, puis titulaires de bourses post-doctorales, en provenance d'une très grande variété de pays européens. Pour qu'il en fût ainsi, il aurait fallu faire un choix de spécialisation trop étroit pour que

le Département puisse accueillir suffisamment de représentants des diverses traditions juridiques qui font la richesse du droit en Europe – et qui font aussi la difficulté d'un programme d'enseignement et de recherche commun allant au-delà du droit européen proprement dit : droit communautaire et de l'Union européenne, d'une part, droit du Conseil de l'Europe d'autre part. Nos prédécesseurs au département droit ont refusé une spécialisation castratrice limitée à l'une des branches, des droits nationaux, de même qu'ils ont refusé une spécialisation en droit Européen qui aurait limité le champ des recher-



Jacques Ziller

ches sans pour autant lui donner les moyens d'autres centres de droit communautaire ou européen, qui sont partout ailleurs appuyés sur la présence d'étudiants de tous les cycles d'étude, alors que l'IUE n'accueille que des étudiants de troisième cycle (doctorants, LLM) ou des visiteurs post-doc. C'est pourquoi l'on ne saurait parler d'une école de droit comparé propre à l'IUE, qui aurait produit sa propre théorie, ou une série ininterrompue de travaux de recherches comparatifs appliqués.

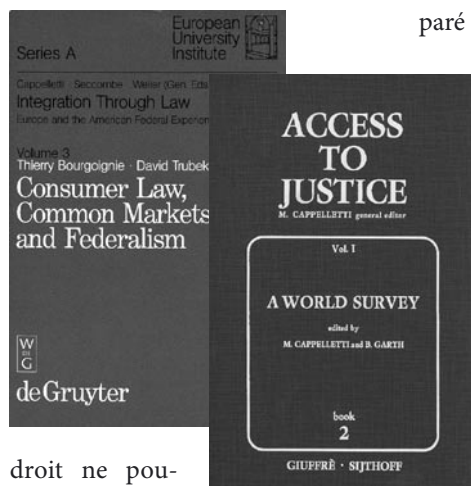
L'élargissement progressif des Communautés et de l'Union européenne a rendu utopique tout projet de comparaison systématique et exhaustif. Après la publication de recherches sur les systèmes élec-

toraux, et sur les parlements dans l'Europe des Neuf, ainsi que les travaux de droit comparé menés dans la perspective du développement d'une discipline nouvelle, le droit administratif européen, les ressources nécessaires à ce type d'études n'ont pas augmenté, ni à l'IUE ni ailleurs. Les générations successives de professeurs comparatistes du département de droit ont donc choisi de concentrer plutôt leurs efforts sur une analyse comparée du phénomène d'europanisation des droits nationaux, que ce soit en droit public – en particulier avec la constitutionnalisation croissante du droit européen et des rapports entre droits nationaux et droit européen – ou en droit privé (voir la contribution de CHRISTIAN JOERGES à ce numéro).

Une autre caractéristique du département droit a une forte influence sur la manière dont est conçue et pratiquée la comparaison juridique : les forces vives du département sont ses chercheurs, engagés dans un programme de recherche de trois à quatre ans (doctorat) ou d'un an (LLM) dont la caractéristique essentielle est qu'il s'agit d'une recherche individuelle, conçue notamment pour un apprentissage professionnel dans une branche où tant les universitaires que les praticiens doivent maîtriser les ressorts d'une activité relativement isolée. Or, les manuels de droit comparé le démontrent, les grandes productions de droit comparé sont des œuvres collectives, rassemblant un nombre suffisant de spécialistes provenant de différents pays ; la méthodologie du droit comparé repose pour ce faire largement sur des techniques bénéficiant de dynamiques de groupe – et c'est d'ailleurs l'une des limites principales de la théorie contemporaine du droit comparé. L'apport de l'IUE en la matière est considérable, mais largement caché : la plupart des thèses produites au département de droit sont basées en partie sur une

recherche comparative, que ce soit dans la perspective d'études transnationales de droit interne ou celle d'études de cas en droit européen. Beaucoup de ces thèses contiennent également de très intéressants développements méthodologiques tirés d'une expérience individuelle et publiés soit avec l'ensemble de la thèse, soit séparément. Le département de droit a également eu un rôle très actif dans l'étude des possibilités offertes au droit comparé par l'internet et l'utilisation des nouvelles technologies de l'information. Avec des ressources renouvelées, ces études déboucheront peut-être dans les prochaines années sur la diffusion de nouveaux instruments de recherche.

Ayant refusé la spécialisation en droit européen, le département de



droit ne pouvait pas se contenter de pratiquer le bilinguisme anglais-français propre au Conseil

de l'Europe et à certains établissements d'enseignement et de recherche européen. Le choix plus



Mauro Cappelletti

difficile de maintenir une diversité culturelle basée sur l'usage d'un nombre aussi grand que possible de langues est la conséquence directe de l'importance du droit comparé dans les travaux de l'IUE. Les séminaires tables rondes et colloques, bien qu'utilisant majoritairement la langue anglaise, sont très souvent organisés avec au moins une autre langue (le français souvent, l'italien parfois, l'allemand ou d'autres langues européennes de temps en temps). Les travaux de recherche continuent d'être produits non seulement en anglais, mais aussi en allemand, en espagnol, en italien et en portugais en particulier, et le département veille à avoir en son sein

suffisamment de professeurs multilingues pour assurer la direction et la correction de ces travaux.

La science du droit comparé connaît depuis quelques années une mutation significative. Cette discipline a été longtemps consacrée à la comparaison des systèmes juridiques nationaux. Cependant, l'attention accordée plus récemment à la mondialisation du droit et à son européanisation ont contraint à reconsidérer l'unité d'analyse et la méthodologie à employer. Ceci renvoie également à une redéfinition de la notion même de "système juridique", puisque nombre d'études sont désormais vouées, de façon transversale, à des systèmes non étatiques aussi bien qu'étatiques. C'est ainsi que beaucoup de travaux de comparatistes envisagent le droit des contrats sans le rapporter spécifiquement à l'un ou l'autre système national.

JACQUES ZILLER

#### Notes

1 Rechtsvergleichung und Sprachen im EHI - Comparative Law and Languages at the EUI - Derecho comparado y idiomas en el IUE - Le droit comparé et les langues à l'IUE - Diritto comparato e lingue all'IUE

2 Après son décès le 1er novembre 2004: "Mauro Cappelletti was one of the early European legal scholars to bring to the United States European ideas about American law and to Europe American ideas about European law," said current Stanford Law School Dean Larry Kramer. "He was an internationally recognized leader in a number of important areas of legal scholarship. Stanford Law School greatly mourns his loss."

## Le droit international à l'I.U.E / International Law at the EUI

Le droit international a toujours occupé une place importante au sein du département. Il a bénéficié



Antonio Cassese

d'un environnement particulièrement favorable puisque l'Université de Florence, avec laquelle il a été amené à établir des liens fréquents, a toujours possédé en son sein des internationalistes de grand talent et de haute réputation, comme en particulier GIORGIO GAJA, LUIGI CONDORELLI (entre temps parti à Genève puis revenu à Florence) ou ANTONIO CASSESE. Ce dernier a lui-même été professeur à l'IUE pendant deux mandats durant les années quatre vingt et a su y attirer et y former des élèves dont plusieurs, tels ENZO CANIZZARO, SALVATORE ZAPPALÀ ou LUISA VIERUCCI sont ensuite devenus de brillants universitaires italiens, le premier d'entre eux, professeur à l'université de Macerata, étant aujourd'hui membre du Conseil de la recherche de l'IUE.

La réputation du département en droit international s'est rapidement répandue à travers toute l'Europe mais également aux Etats-Unis grâce à l'admission précoce de l'un de ses anciens élèves, JOSEPH WEILER, comme professeur à la Law School de l'Université du Michigan (Ann Arbor) puis à Harvard et enfin à la New York University.

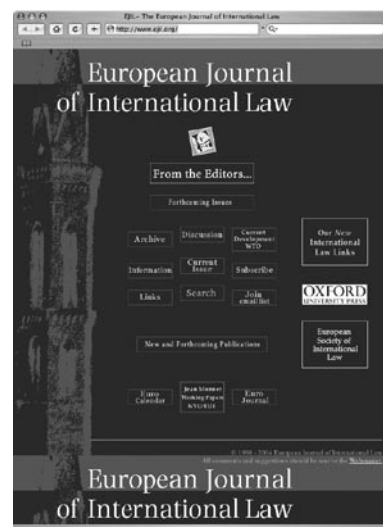
C'est d'ailleurs à l'initiative d'ANTONIO CASSESE et de JOSEPH WEILER qu'a été lancé à partir de l'I.U.E et avec l'aide généreuse de son Président d'alors, EMILE NOËL, *Le Journal Européen de Droit International/ European Journal of International Law*, devenu depuis, avec cinq parutions annuelles, l'un des tout premiers journaux de droit international au monde. Il s'efforce notamment de faire connaître l'œuvre et la personnalité de ceux qui ont fait la tradition du droit international en Europe, tels GEORGES SCELLE, DIONIZIO ANZILOTTI, HERSCH LAUTERPACHT, ALFRED VERDROSS, CHARLES DE VISSCHER ou HANS Kelsen. Au sein de la diversité des articles qu'il consacre à la théorie du droit international comme à l'analyse de sa pratique la plus contemporaine, le *European Journal of International Law* (publié depuis quelques années en anglais par Oxford University Press) continue d'accorder une attention particulière à la pratique de la Communauté européenne en tant qu'acteur des relations juridiques internationales. Ce journal conserve des liens personnels étroits avec le dépar-



Salvatore Zappalà

tement juridique de l'IUE. PHILIP ALSTON, professeur au département jusqu'à janvier 2004 en est le rédacteur en chef et l'auteur de ces lignes est membre de son comité de rédaction depuis les origines.

C'est également à la collaboration fructueuse d'ANTONIO CASSESE et de JOSEPH WEILER que l'on doit la parution, dans la première moitié des années quatre vingt, d'ouvrages restés importants vingt ans plus tard, dont en particulier l'un sur la responsabilité pour crimes inter-



nationaux de l'Etat sur la base des travaux de la Commission du droit international des Nations Unies (C.D.I.)<sup>1</sup>. Le premier des deux devait connaître un prolongement autant qu'une mise à jour dans un ouvrage publié sous la responsabilité de PIERRE-MARIE DUPUY à la suite de la clôture des travaux de la C.D.I. sur le droit de la responsabilité internationale des Etats, en décembre 2001.

L'étude des droits de l'homme dans les cadres européen et international a toujours constitué également un champ de recherches privilégié. Engagée par ANTONIO CASSESE, devenu par la suite le promoteur incontesté du droit international pénal en tant que premier président du Tribunal Pénal International pour l'ex-Yougoslavie (TPIY) créé par le Conseil de sécurité des Nations Unies, l'étude des droits de l'homme a été particulièrement développée par PHILIP ALSTON, fort



de l'expérience qu'il en avait acquise notamment en relation directe avec le Centre des Droits de l'Homme des Nations Unies comme à la tête du Comité sur les droits économiques et culturels des Nations Unies. Durant son séjour à Florence, PHILIP ALSTON devait devenir le promoteur de l'Académie de droit européen fondée en marge du département mais au sein de l'IUE dont une large part des parutions annuelles est consacrée précisément consacrée à l'étude des droits de l'homme en Europe. FRANCESCO FRANCONI en assure aujourd'hui la co-direction aux côtés de BRUNO DE WITTE et de GRAÏNNE DE BURCA.



Francesco Francioni

Cette attention particulière vouée par le Département au droit international a été non seulement maintenue mais consolidée au sein du département. A l'heure actuelle, il existe trois chaires de droit international au sein de l'IUE, l'une d'entre elles étant établie conjointement au Centre Robert Schumann. Occupée par ERNST-ULRICH PETERSMANN, elle est plus spécialement tournée vers les questions relatives au droit du commerce international (O.M.C.) auquel une abondante production a déjà été consacrée sous l'égide de l'I.U.E. La seconde est occupée par FRANCESCO FRANCONI ; elle est plus spécifiquement consacrée aux droits de l'homme. Sous l'égide du professeur FRANCONI, un programme de recherche a notamment été entrepris, en collaboration avec les deux autres internationalistes du département, à propos de l'incidence des biotechnologies sur les droits de l'homme.



Graïinne de Burca

La troisième chaire, occupée par PIERRE-MARIE DUPUY, reste affectée au droit international général et à la diversification de ses adaptations à l'épreuve de la globalisation. En relation directe avec sa vaste expérience du contentieux international notamment devant la Cour internationale de justice, ce dernier accorde en particulier une importance particulière aux problèmes liés au règlement des différends internationaux.



Pierre-Marie Dupuy

Il est sans doute utile de préciser que, tout comme le droit comparé, le droit international reste étudié dans plusieurs des séminaires semestriels, en deux et souvent trois langues (anglais, français, italien) tant il est vrai que la terminologie juridique du droit international demeure façonnée par la diversité des cultures juridiques au sein desquelles un certain nombre de concepts clé sont élaborés avant d'être véhiculés à l'échelle internationale. Cette diversité linguistique est également présente en pratique dans les séances des groupes de travail formés à l'initiative des chercheurs comme

des professeurs, particulièrement en droit international pénal et en droit international de l'environnement mais l'on peut également constater la rédaction de mémoires de L.L.M. ou de thèses en au moins cinq langues (anglais, français, italien, allemand, espagnol). Le droit international public est un mais ses analyses sont multiples ; elles dépendent largement de l'origine culturelle de ceux qui les mènent.

PIERRE-MARIE DUPUY

#### Notes

1 J.Weiler, A.Cassese, M.Spinedi, *International Crimes of States*, De Gruyter, 1989.

## Theory vs Positivism: The legal theory perspective

The Department of Law has a rich tradition of legal theory and legal philosophy – mostly, developed in an “applied” rather than a pure manner, if that distinction is meaning-



Karl-Heinz Ladeur

ful at all. GÜNTHER TEUBNER, who was our professor since 1981 until 1994, developed here a theory which made him famous: of reflexive law, or autopoiesis, that is of law as an autonomous system whose operations form a closed network. TEUBNER’S “autopoiesis” served as a vehicle for the integration of legal and social sciences, and was employed by him for a number of illuminating purposes, most notably that of studying the role of law in the organization of a state. One specific legal interest of TEUBNER was that of “ecological responsibility”, as evidenced by a conference (published as a book) on the topic of “ecological responsibility and self-organisation” in 1992.

The long tenure of TEUBNER at the EUI overlapped partly with the work of other legal theorists, including PATRICK NERHOT and, later, MASSIMO LA TORRE. NERHOT’S main interests were epistemology and legal hermeneutics; LA TORRE’S broad range of interests covered institutional theory of law, foundations of legal knowledge, and theory of citizenship. He also had keen interest in history of legal thought, including in the Nazi and fascist heritage of legal thought in Europe (an interest which he shared with one important aspect of the wide scope of scholarly

interests of CHRISTIAN JOERGES). Another important legal theorist who held a position in the EUI in the second part of the 1990s was KARL-HEINZ LADEUR. A true generalist, who made important contributions to legal scholarship in the fields of criminal, private, constitutional and environmental law, LADEUR at the EUI also wrote on postmodern constitutional theory, on social rights and the “paradigm of preceduralisation”, on constitutional economic rights, and on the production of social capital by social institutions. These days, quite a number of professors in the Department contribute to legal-theoretical scholarship.

My own work has been largely at the intersection of philosophy of law, constitutional theory and comparative constitutionalism: I have written on the relationship between democratic legitimacy and the protection of constitutional rights both at a more abstract, theoretical level, and with a more specific focus on post-communist constitutionalism in Central and Eastern Europe. My other interest was triggered by the enlargement of the European Union: I studied both the alignment of the post-communist constitutional cultures with the approaches to rights protection, characteristic of the older EU Member States, and the impact that the accession to the EU has had, and is likely to have, on the rule of law and democracy in new Member States. I have also pursued my earlier interests in a theory of justice (writing on Rawls’s theory of international justice), and more recently, on the procedural theory of legitimacy.

A number of my colleagues here contribute importantly to “jurisprudential” scholarship. NEIL WALKER’S work is firmly located within constitutional theory. In particular, it is concerned with the relevance and adaptability of arguments about the basis and terms of constitutional authority in the state context to

non-state contexts – both sub-state and supra-state. Prominent amongst these non-state contexts is, of course, the EU itself, and in recent years, as the question of a European Constitution has become a matter of immediate political concern, WALKER’S work has focused more and more closely on the distinctive nature of constitutional authority in the EU. PIERRE-MARIE DUPUY’S work in the field of international law is also highly theoretical: although remaining basically in accordance with the positivist approach in terms of methodology, he has been long depicting the inherent ideological limits of its most formal version. It has been DUPUY’S claim that the classical positivist doctrine is unable to analyse the trend towards a substantial unification of the basis upon which the international legal order is currently trying to grow. CHRISTIAN JOERGES in all the fields of his study (private law, economic law, risk regulation) places the social responsibility of the economy as the core issue, which he explores on the basis social theories of law, in line in particular with the German tradition punctuated by such thinkers as MAX WEBER, JÜRGEN HABERMAS and NIKLAS LUHMANN. Another legal-theoretical strand in JOERGES’ work is his historical research which he calls “the Darker Legacies” project. ERNST-ULRICH PETERSMANN emphasizes the need for “normative individualism” and for a “constitutional approach” to international law, i.e. the moral, legal and democratic arguments for interpreting and developing international law with due regard to the human rights obligations and domestic constitutional systems of states. His continuous emphasis is on the promotion of human rights, democratic governance and rule of law in all areas of international relations, rather than on alleged “state interests” and inter-governmental power politics.

WOJCIECH SADURSKI

# His Biggest Case was the Banana

## Ernst-Ulrich Petersmann rules in WTO disputes

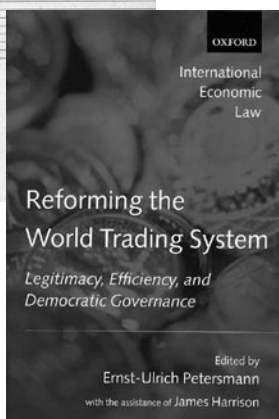
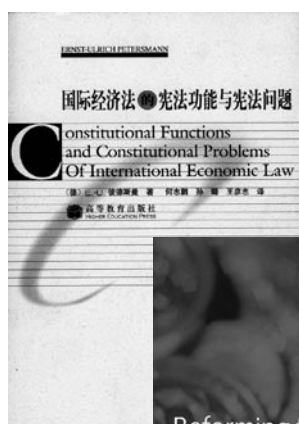
German ERNST-ULRICH PETERSMANN is ready. Any day now he is expecting a call from the World Trade Organisation. It could come this Wednesday, since by then the Geneva institution will be looking for experts to consult in the trade dispute between the USA and the EU over a billion-euro subsidy in favour of aircraft manufacturer Airbus. Petersmann belongs to the exclusive club of international legal experts who – as members of the WTO Panels – determine the fate of companies and sometimes even entire national economies. “WTO Panels are committees of three independent experts who prepare WTO decisions on trade disputes”, explains the law professor of the European University Institute in Florence. A Panel’s recommendations must be approved by all 147 WTO States. The parties in dispute have the right of appeal, though they often accept the experts’ decision, so settling the trade dispute.

Over the decades, PETERSMANN (59) has become something of an institution as a legal expert at the WTO Headquarters in Geneva, and has taken part in half a dozen Panel procedures. His biggest case was the banana: for some twelve years the EU wrangled with a US-led coalition of producing and exporting countries such as Ecuador. In the end, the USA won the day.

### A lawyer through and through

Since the WTO was set up in 1995, its members have crossed swords in more than 330 cases, ranging from tax subsidies to imports of alcohol and bans on the import of meat from animals treated with hormones. “The panellist’s job is

becoming increasingly difficult because of the short deadlines they have to work to and the ever-widening jurisprudence”, says PETERSMANN. Often the panellists have to sweat over difficult cases right through the weekend. This doesn’t make them rich: the WTO pays a flat fee of around 400 euros a day, as much as international law firms charge for an hour. “Most experts regard working on the Panels as an honour”, says PETERSMANN. That’s how he feels about it: the Hamburg-born legal



expert is a lawyer through and through. As he strides briskly along the long corridors of the WTO headquarters on the shores of Lake Geneva, he is greeted with reverence by WTO staff and trade diplomats alike. “Like few others, PETERSMANN brings both theoretical and practical wisdom to the cases”, they say in the WTO Secretariat.

As an expert in international and European law, PETERSMANN studied at Heidelberg University, where he graduated. Between 1981 and 1990, he helped to set up the law department of the GATT (General Agreement on Tariffs and Trade), forerunner of the WTO. Today, under the auspices of the WTO, he



Ernst-Ulrich Petersmann

provides assistance to developing countries belonging to the Organisation.

Moreover, he lectures at universities all over the world. He speaks warmly of his chair at the European University Institute in Florence: “There I have researchers and graduate students from all over the world and we have lively exchanges.” PETERSMANN’s private life is just as international as his career: he is married to a Polish head physician and they have eight children in all. Two of them study in Geneva and another two in Australia and in Stuttgart. It is pointless to ask him about his hobbies: “Between such a big family and my work,” says PETERSMANN, “I haven’t much time left.”

JAN DIRK HERBERMANN

From: Süddeutsche Zeitung No 164, 19 July 2005 page 25:  
*Sein größter Fall war die Banane*  
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His Biggest Case was the Banana

## So, you want to go to Florence ?

“So, you want to go to Florence? But, climate apart, why? There is nobody there.” I can still hear the sarcastic voice of one of my professors when, in the Spring of 1982, I informed him that I had decided to enrol in the EUI’s PhD programme. To be fair, I had only a vague idea of what writing a PhD entailed, and the Institute, which had opened its doors a few years before, had not yet had the opportunity to make a distinct contribution to scholarship. The question was therefore quite sensible. My motivations were simple enough. After five years of (mostly) black-letter legal education, I wanted to broaden my own intellectual horizons, preferably in an international environment. And if I could do this in pleasant environment, well, why not?

The institution I subsequently rediscovered as a member of staff largely differed from the one I left a good 17 years later. For one thing, it was much smaller then. Departments counted a maximum of five professors and admitted significantly fewer students. It was therefore fairly easy to get to know virtually everyone: researchers, faculty members as well as administrative staff. Many of them, or so it seemed, felt part of a small, privileged community, which was attempting to build something new. All four departments being located in the Badia, it was fairly easy to find oneself attending a seminar in another department.

One of the key assets of the EUI was its genuinely international character. Although many universities now have a significant number of foreign students, and possibly some faculty members recruited in other countries, they always retain their national character. The *Institut d'études politiques de Paris* (better known as *Sciences Po*), where I now teach, has a good 35% of non-French students, but there is no question that it remains a French institution: the way it operates, and the culture of the place are clearly influenced by

this factor. No such thing existed at the Institute. While this may be a source of many difficulties, it was a real source of intellectual wealth. Besides, already then, the EUI was a kind of hub where you could frequently come across big names in social sciences from both sides of the Atlantic. It is difficult to over-emphasize the importance of this fact in pre-Erasmus years, where student and faculty mobility was far less developed than it is today.

Such structural elements probably affected the way the Law Department developed. Crossing disciplinary boundaries being fairly easy, its members could acquire a degree of openness to other social sciences that was then rather rare within European law faculties. Like Molière’s Mr Jourdain, the Department was developing an identity of its own without really being aware of it; the theorizing only came afterwards. The Department’s European character, so prominent today, was far less obvious then. Law remained primarily a national reality. Europe was going through a wave of so-called ‘euro-sclerosis’ and was only preparing the ambitious plans that lead to the 1992 programme, and the ensuing ‘Europeanization’ of so many policy areas. Furthermore, European studies were somehow suspect in the eyes of some professors, weary of a would-be hostile takeover of the EUI by ‘Brussels.’ The creation of the small ‘European Policy Unit’, the little seed that was later to develop into the Robert Schuman Centre, was to be the subject of a bitter fight in the Academic Council in 1985. One could get the impression that research on European issues could not possibly be conducted in a scientific way, or be intellectually rewarding.

The situation also had its downsides. The unstructured character of the teaching programme provided curious students with ample opportunities to explore new shores, but it left quite a few of them at a loss, notwith-

standing the presence of powerful personalities on the faculty side. The absence of a methodological component was strongly felt, not least given the Department’s scholarly ambitions. This is why, even before the New public management wave hit the Institute in the 1990s, the Law Department moved towards the setting up of a structured first year at the time the LLM was established.

The almost complete absence of contact with Italian society was another lost opportunity. I remember hearing the then *Sindaco di Firenze* describe the EUI as a kind of ‘UFO on the Fiesole hills’. This was correct - and sad. Italy was not only more open to outside influence than other large European countries, it was also going through a phase of intense change. Yet, apart from language classes, the possibilities of contact with this moving reality offered by the EUI were disappointingly few. To be fair, the reverse was also true: trying to get information from the University of Florence on what was going on there was a helpless task.

Doing research in this ivory tower was clearly perceived as a golden opportunity by most of the students. My approach to legal issues, and of research in general, was definitely shaped by the exposure to the variety of influences I got from my stay at the Badia, as well as through contacts with a number of scholars whom I met there. If I had listened to the sarcastic comments I referred to in starting, it is uncertain whether I would have opted for an academic career. What is certain, is that the chances that I would have ended up teaching in a country which is not my own would have been far fewer!

RENAUD DEHOUSSE  
Jean Monnet Professor of Law & Politics, Director, Centre for European Studies, Sciences Po, Paris

# “I did my LLM in Florence”

It remains a good talking point to this day – “I did my LLM in Florence”.

I still think of the EUI as the European Union’s best-kept secret and it was certainly very good to me in the year I spent there. I arrived fresh from Cambridge and a structured degree course, to the freedom of my own research (human rights in relation to Bosnian refugees), in a splendid setting.

Only perhaps it was too splendid. I hadn’t exactly suffered in terms of an aesthetically pleasing environment at Cambridge, but I do recall struggling to buckle down to work at the EUI. After all, there were all these international types to meet, all these coffees to drink on the terrace and it would be rude not to make time just to gaze out at the city from the seclusion of the loggia.

I must eventually have done some work, as I did emerge with a degree, but my best memories of the place are the most visual: the ceilings of those wonderful rooms at the Villa Schifanoia, the walk - or should I say the amble - between the Villa and the Badia.

And then there’s the human side – the people who made my time at the EUI what it was. The friends of course, but also PHILIP ALSTON who reinforced with every word why I was interested in international law; CECILE

APEL who was just off to the Rwanda war crimes tribunal and made a lasting impression; and YVES MÉNY who discovered my interest in journalism. One day, he suggested I have a chat with the FT’s LIONEL BARBER, who was visiting from Brussels. Lionel duly gave

me a few pointers about getting into journalism, and a few years later I re-introduced myself to him when interviewing him for the BBC business programme I presented at the time. He was taken aback for a moment and then said “It must have been decent advice”!

My friend SIMON BAGSHAW, with whom I spent so much time working on refugees/displaced persons, still teases me that I abandoned them for the lure of the media (he is now at the UN). But its extraordinary (and sad, too) how often

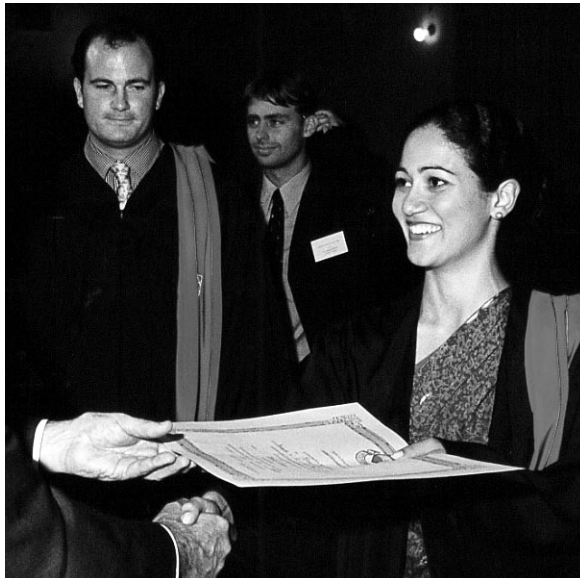
those same human rights issues crop up in my work today. What I learned at the EUI has stayed with me, and I am grateful for it.

The personal connection has also lingered. In the autumn of 1995, my friend Nadia Hashmi came to visit from London, ended up applying for a PhD and staying for five years. She is now my sister-in-law. But that, as they say, is another story...

MISHAL HUSAIN

Anchor BBC World News

and a Washington correspondent for BBC News



Mishal Husain receiving her LLM diploma at the Badia in 1996



## Working Group on International Criminal Law

The Working Group on International Criminal Law was set up within the Law Department during the academic year 2002/2003 at the initiative of PROFESSOR PIERRE-MARIE DUPUY.

It responded to the increasing focus of researchers and fellows at the EUI on issues related to this relatively new branch of international law, which came into the spotlight of both public and academic interest with the recent creation of the International Criminal Court.

The working group is composed of researchers, fellows and professors both from the EUI and some Italian universities, in particular the University of Florence. The group has greatly benefited from the specialised professional experience and expertise of some of its participants, especially that of Professor ANTONIO CASSESE, former President of the International Criminal Tribunal for Former Yugoslavia (ICTY), and Professor LUIGI CONDORELLI, a long-time specialist and authority in international humanitarian law.

With its monthly meetings, the working group provides a forum for discussion on a wide range of questions falling within the scope of international criminal law, while primarily focusing on the current research topics of its participants and on latest developments in international and sometimes national case-law. Several researchers have used the opportunity given by the working group to present their ongoing research, enabling them to 'test' their approach and findings beyond the usual exchanges with their supervisors.

The issues addressed since its first meeting in April 2003 include both procedural and substantive questions, and range from the division

of labour between States and the International Criminal Court in the prosecution and trial of authors of international crimes, to the legal situation of the detention camps at Guantánamo Bay or the



CHRISTINE BAKKER  
Fourth Year Researcher

nal Court, with the participation of an expert from the Court's Office of the Prosecutor.

The reports of the working group's sessions held in 2003 and 2004, summarising the main points of the discussions, have been published as an EUI Working Paper<sup>1</sup> and can be consulted on the Institute's website.

### Notes

<sup>1</sup> EUI Working papers, Law No. 2005/02, *Selected Issues in International Criminal Law: Collected Reports 2003-2004*, edited by Christine Bakker, Elsa Gopala Krishnan, Luisa Vierucci and Pierre-Marie Dupuy.

upcoming 'hybrid' tribunals for the crimes committed in Cambodia and Iraq.

Some sessions have also been devoted to specific case-law from the international ad-hoc tribunals for former Yugoslavia and Rwanda, or to decisions from the International Court of Justice or even from national courts, addressing issues within the group's field of interest. Specific attention has been devoted to judicial decisions concerning the application of universal jurisdiction by some States including Belgium and Spain, a practice which has raised a good deal of controversy both at political level and in legal doctrine.

Upcoming events of the Working group include a special session on the relationship between the principle of universal jurisdiction and the principle of 'complementarity', which is at the basis of the division of tasks between national jurisdictions and the International Crimi-

# A View from Inside?

The European University Institute and its Law Department are unique, that's for sure. The Department hosts about 13 Professors from different European countries. Around 100 LLM- and PhD-students and several research fellows come from all over Europe and beyond. This diversity in the Department opens a rich field of experiences and insights for each researcher for which he or she won't find an equivalent at any other university institution. The most illuminating effect of this gathering of so many different legal positions and traditions is that it makes one aware how deeply entrenched in one's own national legal system one's legal outlook can be. This diversity forces one to engage with quite different and unknown approaches and conceptualisations of legal fields. Remarkably enough, this diversity includes the supranational fields of European and international law, as well as legal theory.

Here at the Law Department of the EUI, it becomes obvious that there is no place more apt to undertake a real European scholarship, real in the sense that it does not adopt one style as hegemonic (for example the Anglo-american or a hybrid "Commission" style) but adopts a European style where all traditions carry weight. Moreover, it becomes clear as well, that such an undertaking involving overcoming the Babylonian situation – Babylonian not in terms of languages as such, but in terms of legal conceptions – is and will be, enormously demanding. Correspondingly, at present, the Department's diversity often appears fragmentary, at the risk of the *Bildung* of the individual researcher.

The Department does very well overall in revealing and taking note of national and also disciplinary differences in the numerous seminars, conferences and work-shops; often with high-ranking guest-speakers from all over the world present.

Taking the Institute as a whole, the investment in language courses to enable reading and discussion in languages other than English and the generous library resources for international purchases play also a helpful role.



However, there do appear to be difficulties in establishing mutual understanding and fruitful debate in working towards an overarching discourse, where it is possible to judge positions from different national backgrounds, even though this should be considered a noble officium for the Institute and its potential basis for an outstanding profile besides a desirably advanced level of research. Certainly, many efforts of the Department are pointing in the right direction but one could question the efficacy of the implementation of such efforts. The seminar programme, for example, is a compilation of the current research interests of the faculty members which does not appear to have an underlying curriculum. A more robust curriculum could introduce students to the conditions and difficulties of research at the Department's European research community and to some aspects of the substantive profile of the Department, as well.

Likewise, one could question the appropriateness of the title of the series of "methodological seminars" – these seminars could offer a great opportunity to approach the

diversity of legal traditions from a bird eye's view but it seems that this chance is not taken.

Hence, the Department as a whole is more of an academic "market place" than a "public forum": the

possibilities are rich but it all depends on what the student makes of it individually. In this sense, the student's relationship with his or her supervisor, is vital. Thankfully, the slightly bureaucratic appearance of the Department as a whole is not often mirrored in the supervision relationship. Whether such a relationship turns out to be fruitful and illuminating is a different issue. Thus, it is advisable, at least for PhD-students, to be really interested in linking his or her project to the research of a particular professor before applying to the Institute. Our "Code of Good Supervision" notwithstanding, a supervision relationship which is based on mutual interest appears to be, just as anywhere else, the prerequisite for an academically fruitful stay at the Institute.

FLORIAN RÖDL  
Third Year Researcher

## A Student's Perspective on the EUI Law Department

I arrived at the EUI from the U.K. as a qualified solicitor, having worked as a human rights lawyer in private practice and as a legal researcher for several UK human rights organisations. I would therefore say that I was a reasonably experienced (and fairly old!) individual when I arrived at the EUI to start my PhD studies.

Although I had a good knowledge of the British legal system, and of ECHR law as a British based human rights lawyer, I was largely ignorant of the wider international legal system. As I had chosen to study inter-linkages between international human rights and trade law, I had a lot to learn. I had high expectations of how the law department at the EUI could help me, and I would say that by and large my expectations have been satisfied.

During my first year in the law department I was able to take eight different seminar courses in all, ranging from international economic law, international dispute settlement, European constitutional law, and European and international human rights law. All of these subjects were expertly taught, and the didactic style whereby professors tended to promote discussion among seminar participants, allowed me (and others) to raise and discuss our own particular issues and concerns, and thereby become involved in some fascinating debates. By the end of my first year at the Institute, the wide ranging teaching that I had received seemed to have filled many of those gaps in my knowledge about the international legal system. I felt much more confident then to write about my chosen subject, aware of the wider context in which I was working.

During my second year at the Institute I was able to broaden my in-

ternational legal experience by taking up some of the opportunities for more practical work experience that became available through the law department – a placement at UNICEF's offices in Florence, and work with the Council of Europe and Office of the High Commissioner for Human Rights. All very valuable experience.

I also became involved in organising several international conferences and was able to meet academics

the EUI. It is a small, friendly and expert community of scholars, and I have benefited greatly from the generosity of many with their time and expertise. But at the same time, it is very much connected to the wider European and international legal and policy debates, which many scholars here are personally involved in. Whether it be discussions about the European Constitution, transatlantic relations or the future of the world trading system, there always seem to be people at



and practitioners specialising in my area of research from all over the world. One of the best aspects of my academic work here at the EUI is that there always seems to be a different internationally renowned professor of law popping in to give a lecture. Are they attracted by their peers at the EUI, or is it the Tuscan sun and Chianti wine that draws them in? A bit of both I am sure, but whatever the reasons I am glad to have been able to reap the benefits.

As I now approach the end of my third year in Florence, and start thinking about how to finish writing up my PhD project, I can look back with much gratitude at the opportunities that have been presented to me by the law department at

the EUI with hands-on experience of the issues in a way that breathes life into our academic debates. For me it has been a truly life-enriching experience.

JAMES HARRISON  
Fourth Year Researcher



# Our Most Solid Basis

## The Administrative Staff of the Law Department

The permanent administrative staff of the Department consists of MARLIES BECKER (D), ANNICK BULCKAEN (F) and ANNA CODA-NUNZIANTE (I), secretaries, PIETER JESPERS (B), Administrative Site Officer and ALISON TUCK (UK), Departmental Administrator as well as of an administrative trainee – MARCO TRIUNFO (I) for 2004-05 and PRISCILLA Foschi (I) for 2005-06. The Department also benefits from the help of LAURA BURGASSI and SYLVIE PASCUCCI, secretaries in the Robert Schuman Centre who work for the Joint Chairs held by professors DE WITTE and PETERSMANN, as well as of the site officer for computing services ANGELO URSO.

The quality of the administrative staff is essential to the good functioning of the Department. Without them, the PhD and LL.M programmes would only be a mere label covering a series of bilateral relationships between researchers and professors. The secretaries and departmental assistant, with the help of a trainee, organise the seminars, making sure the reading materials are prepared and distributed. They monitor the numerous deadlines for seminar papers, progress reports and the June paper. At the end of a researcher's journey through the programme they organise thesis defences. The most important factor is not administration in the strict sense: they are famous for being the researchers' primary interlocutors for big and small problems, as they are the ones who know the most about the Department, its professors, the Institute and Florence.

Whereas researchers and professors only spend a short period of their careers at the EUI, the administrative staff is the solid basis which allows the smooth functioning of a system otherwise based upon turnover. ALISON TUCK joined the Department and the EUI in October 1976 and has made a major contri-

bution to the development of both. MARLIES BECKER and ANNICK BULCKAEN arrived in 1996 and 1997, but both had already been working for the EUI for quite some time, as did PIETER JESPERS, who joined the Department in 2003 when the financial administration of the EUI was decentralised.

Administering the Department has important financial and organisational dimensions both in quantitative and qualitative terms especially when it comes to organising the missions of researchers and professors, as well as of visitors participating in seminars, and even more when it comes to setting up workshops, conferences and thesis defences at the EUI. The diversity of the origin of visitors and researchers – from all over Europe and other continents – entails not only the need to know foreign languages (the whole administrative staff speaks fluent English, French and Italian as well as German for the major part). The EUI regulations are complex and quite some expertise is needed to understand and apply them well. The author of these lines can only compliment the staff for their competence and dedication which have no equivalent in any academic institution he knows.

Furthermore, the administrative staff has to deal with the professors of the Department who come from very different institutional backgrounds and a never ending change in membership. Without the administrative

staff we would live in permanent chaos and not be able to do half of what we do as a Department. MARLIES BECKER, organises the research and teaching activities of Professors JOERGES, SADURSKI, WALKER, the teaching activities of Prof. PETERSMANN and acts as one of the Department's web-editors. ANNICK BULCKAEN, works with Professors AMATO, DUPUY, FRANCONI, ZILLER and Prof. DE WITTE for teaching activities, and is also in charge of room reservations. ANNA CODA-NUNZIANTE works for Professors CAFAGGI, MOREAU and ULLRICH and will also work with Prof. CREMONA when she joins the Department; she also acts as a Departmental Web editor.

Last but not least, the Department has a growing number of visitors: post-doctoral fellows in the framework of the EUI's Jean Monnet programme or the European Commission's Marie-Curie programmes, visiting fellows, visiting researchers etc. ALISON TUCK, who has had the main organisational responsibility for so many years and thus has always been its mainspring, is also famous throughout Europe and the world for the dedication, kindness and humour which she deals with entire cohorts of visitors.

*Les politiques et les militaires ont l'habitude de dire que "l'intendance suivra...". Au département de droit de l'EUI, l'indépendance précède, et sans elle, rien ne se ferait !*

JACQUES ZILLER



P. Jaspers, A. Tuck, M. Triunfo, M. Becker, A. Coda-Nunzianta, A. Bulckaen and P. Foschi

## The Department says good bye to Professor Gráinne de Búrca

PROFESSOR GRÁINNE DE BÚRCA became a member of the Law Department in 1998 and gained the admiration of researchers at once. All of them immediately recognized the value of her brilliant seminars on European constitutional and substantive law. Soon, researchers also began to appreciate her wonderful personality. Professor DE BÚRCA was an extremely hard-working person, she was able to integrate the duties of a professor, Director of Academy of European Law, Director of Graduate Studies, and most importantly supervisor, always smiling, always passionate about her work, always most tactful and considerate when facing problems, always resolving them discretely and most adequately.

Moreover, students admired her way of teaching because GRÁINNE DE BÚRCA always combined her most profound knowledge and thorough legal analysis of European issues

with openness to their arguments, true respect for their new ideas or often, diverging views. Her ability to accommodate and explain differing opinions was quite incredible. Thus, her popularity among researchers, and, I believe, professors as well, was based on both her authority as a legal scholar, and on respect for her



Gráinne de Búrca

unquestionably charming personality. Her understanding of the role

of a legal academic who contributes to the development of European Law, but also European legal culture and society was profound. Professor GRÁINNE DE BURCA is a role model for us, many of who hope to become legal scholars themselves.

Shortly before GRÁINNE DE BURCA left at the end of last year to share her generous professorship with American students I asked her what she would miss most after leaving the Institute. "Researchers", she responded with no hesitation, "They are the most important quality of the Institute". I am honored and privileged to have been given an opportunity to work with Professor DE BURCA during her time at the EUI in Florence.

PATRYCJA DABROWSKA  
with the assistance of  
Karolina Szawlowska  
Researchers

## The Department welcomes Professor Marise Cremona

MARIE-LOUISE (MARISE) CREMONA who will take up her duties in the EUI Law Department in January 2006 is currently Professor of European Commercial Law, Head of International Commercial Law and Tax Unit and Associate Director, Centre for Commercial Law Studies, Queen Mary, University of London.

Professor CREMONA received BA Honours in Jurisprudence at Somerville College, Oxford in 1974 and her LL.M. in International Law from Darwin College, Cambridge in 1975. From 1977 to 1992 she taught Law at London Guildhall University. In 1992 she joined the European Commercial Law Unit, Centre for Commercial Law Stud-

ies, Queen Mary, University of London where she was appointed Professor of European Commercial Law in 2001.

She has had many years' experience of teaching European Union law, specializing in the European Internal Market and the external relations of the EU.

MARISE CREMONA is editor of a series of textbooks published by Palgrave, the EC law editor for Goode, Consumer Credit Law and Practice (Butterworths) and is on the Advisory Board of the *European Foreign Affairs Review*.

Professor CREMONA will take office at the EUI in the second term of

the academic year 2005-2006, and will run a joint seminar on "EU International Relations Law and the Treaty Establishing a Constitution for Europe" with Professor ERNST-ULRICH PETERSMANN.



# Dipartimento giuridico e multilinguismo: una scelta obbligata

Se l'uso di una sola lingua fra popoli diversi è sinonimo d'imperialismo culturale, non stupisce che il testo della Convenzione che istituisce l'Istituto universitario europeo consideri come proprie lingue ufficiali tutte le lingue degli Stati membri dell'Unione europea e stabilisca l'obbligo di utilizzare per l'attività accademica almeno due lingue di lavoro, che saranno scelte all'interno di questa rosa tenendo conto delle preferenze dei docenti e dei ricercatori<sup>1</sup>.



Tale requisito, che nell'economia delle attività dell'Istituto ha la funzione di preservare la diversità culturale in quanto tale, nella cornice del Dipartimento giuridico dell'Istituto, costituisce una *conditio sine qua non* per svolgere una ricerca proficua nel diritto internazionale, dell'Unione europea e nel diritto comparato. In effetti, mai come in questa congiuntura storica fortemente dominata dal positivismo giuridico, in cui la norma non è tale fin tanto che non è "detta", il linguaggio ha acquisito tanta importanza per fare diritto.

In questo contesto in cui esiste una stretta correlazione fra norma e sistema linguistico, la conoscenza di più lingue permette non solo di accedere a sistemi di norme diversi da quello di appartenenza, ma anche di affinare, attraverso un confronto con la terminologia straniera, la comprensione di concetti giuridici utilizzati talvolta in modo inconsapevole nel proprio ordinamento. Basti pensare proprio al termine ordinamento giuridico che in inglese viene tradotto con l'espressione *legal system* e in tedesco *Rechtssystem*. Dietro la scelta di ognuno di questi termini c'è una determinata concezione del diritto, che in assenza di una certa sensibilità linguistica rischierebbe di non essere colta.

La guida del dipartimento giuridico in questo senso è rassicurante in quanto al suo interno si sottolinea che «*the Law Department attaches particular importance to the maintenance and encouragement of linguistic diversity in all of its activities*».<sup>2</sup>

Nonostante questa dichiarazione d'intenti, la promozione di seminari, conferenze o altre attività accademiche attraverso il ricorso a lingue diverse dall'inglese, è affidata alla buona volontà dei singoli docenti e manca, mi pare, una politica di fondo perseguita dal dipartimento nel suo complesso. In qualità di ex ricercatrice, che ha avuto la possibilità di prendere parte alle attività accademiche promosse dal dipartimento giuridico per un arco di tempo di tre anni e mezzo, ho, in effetti, assistito a seminari ed a conferenze che contemplavano l'uso di lingue diverse dall'inglese molto raramente<sup>3</sup>.

Se davvero il Dipartimento giuridico desidera tutelare e promuovere la diversità linguistica, sarebbe auspicabile, non solo garantire che in ogni attività accademica si utilizzino almeno due lingue di lavoro, ma anche favorire seminari in cui si affronta il multilinguismo da un punto di vista metodologico.

VALENTINA BETTIN

## Notes

<sup>1</sup> Ai sensi dell'art. 27 della Convenzione che istituisce un Istituto universitario europeo:

"1. Le lingue ufficiali dell'Istituto sono il danese, il finlandese, il francese, il greco, l'inglese, l'italiano, l'olandese, il portoghese, lo spagnolo, lo svedese e il tedesco.

2. Per ogni attività accademica sono scelte, tra le lingue di cui al paragrafo 1, due lingue di lavoro, tenuto conto delle conoscenze linguistiche e delle preferenze dei docenti e dei ricercatori".

<sup>2</sup> Guide to the Law Department. Academic year 2004-2005, p.29.

<sup>3</sup> Tali occasioni, per altro, sono state create sempre dallo stesso docente, ad indicare l'assenza di una sensibilità generalizzata in tal senso in seno al dipartimento.

## Honours and Prizes

The European Social Fund in 2006-07 will finance a new research project on the subject of the economic and social changes in Europe.

The project "AgirE" (Anticiper la Gestion Innovante des Restructurations en Europe) is founded on a partnership between experts working in firms on restructurings and academics in the field of law, economics and sociology, with a core of academics specializing in questions of labour law, employment and social policies in Europe. Professor MARIE-ANGE MOREAU of the EUI Law Department will, in

collaboration with the EUI SPS Department, coordinate the academic part.

Case studies on restructuring will be carried out in eight countries and explained in the light of studies on European economic and social policies. The research goal is to identify the conditions for creating a "social mainstream" in Europe for anticipating restructurings to try to identify a typology of restructuring, the new synergy between the actors to answer to the movement of restructuring, and the line for the future for European policies.



Koen Lemmens

The Fondation Lucien Champion has awarded "le prix Lucien Champion" to Dr KOEN LEMMENS for his thesis "La presse et la protection juridique de l'individu. Attention aux chiens de garde!". This thesis was defended under the supervision of Professor SADURSKI at the Law Department in March 2003.

Dr LEMMENS is currently Professor of Law, Science Technology & Society (LSTS) in the Department of Metajuridica - Faculty of Law, Vrije Universiteit Brussel.

The "Premio Mauro Cappelletti" (Mauro Cappelletti Prize) has been established in memory of this great scholar, and will be awarded to the best doctoral thesis written in the EUI LAW Department during the past year in the field of comparative law, in the broadest sense. The first Prize has been awarded to Dr FLORIAN HOFFMANN, in recognition of the academic excellence of his doctoral thesis "Are Human Rights Transplantable? Reflections on a Pragmatic Theory of Human Rights under the Conditions of Globalization" defended in January 2004.

Dr HOFFMANN is currently Assistant Professor of Law, Deputy Director, Núcleo de Direitos Humanos, Department of Law, Pontifícia Universidade Católica do Rio de Janeiro (PUC-Rio), Brazil.



Florian Hoffmann

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Views expressed in articles published reflect the opinions of individual authors and not those of the Institute.