The Debate about a European Institutional Order among International Legal Scholars in the 1920s and its Legacy

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Abstract

The inter-war period is a forgotten moment in the debate about a European institutional order amongst legal scholars. Although the European Communities established in the 1950s did not derive directly from the institutional schemes of the 1920s, the earlier period played an important role in the building of a specifically European legal doctrine. The failure of the universalist League of Nations led a certain number of international jurists, particularly French ones, to support regional solutions as an alternative. A European legal framework was thus seen as a possible way of adapting international law to meet the goals of peace and stability.

In the aftermath of the First World War, international law scholars enjoyed a considerable increase in influence and their ideas had an important impact on public and political debates in the period. Following the creation of the League of Nations in 1919, new multilateral legal techniques and procedures were implemented for the peaceful settlement of international disputes. Jurists seemed to have been 'able to impose on the political sphere the fact that law could serve as a realistic and efficient science for international governance'.[1] A great number of professors of international law practised diverse roles successively, and occasionally even simultaneously, including positions as legal advisers to their national governments, members of various international jurist committees, and judges at the Permanent Court of International Justice.[2]

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1 Guillaume Sacriste, Antoine Vauchez, 'La "guerre hors-la-loi" (1919–1930). Les origines de la définition d'un ordre politique international', *Actes de la recherche en sciences sociales*, 151–2 (March 2004), 91.

2 On inter-war international law and jurists, see notably Wilhelm G. Grewe, *The Epochs of International Law* (Berlin: De Gruyter, 2000); Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and*

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Many of these scholars initially considered any specifically European organisation to be in contradiction to the new global international order and to the spirit of international law. They believed that there was one single international society, subject to the law, which would lose all authority were it not universal. However, following the steady decline in inter-European relations and the failure of the universalist ambitions of the League of Nations, a major change in legal debates occurred during the 1920s leading a number of important scholars, predominantly French, to come out in favour of regional and European alternatives.

This article analyses this crucial turning point in European legal thinking by answering a number of different but related questions: what made international jurists think increasingly in European terms? What solutions and legal mechanisms were proposed in order to create a peaceful Europe? What form of mobilisation could and did they use, considering the variety of institutional positions they held within and beyond the state? Finally, what influence did these legal studies have on the subsequent development of European integration after the Second World War? Did post-1945 conceptions of European law as a distinct and new 'supranational order' emerge in direct contrast to the failed inter-war conceptions of regional/European law based on international law?

To answer these questions, this article will analyse primary source materials from the legal scholars involved throughout the 1920s. It synthesises a response across three distinct chronological periods, which reveals the gradual 'scaling-down' process that brought scholars to debate the reorganisation of the international system on a regional and European basis from the early goal of a truly global legal order. The first stage includes the debate that occurred in the early 1920s on the universalism of the League of Nations, which was deemed idealistically premature, and the subsequent need to create regional groups under an umbrella League of Nations. The second stage encompasses the mid-1920s, when the question of reorganising the League of Nations on the basis of solid regional foundations was raised in order to improve its capability to secure a sustainable peace (especially in Europe). The third stage focuses on the rise of concrete discussion on a European federation following the proposal made in September 1929 by the French Prime Minister, Aristide Briand, to forge 'a sort of federal link' between European peoples.

Universalism versus continentalism

The premature universalism of the League of Nations in the early 1920s

In the aftermath of the First World War, jurists had placed high hopes in the new League of Nations, considering it a crucial step in the evolution towards an organised

Fall of International Law 1870–1960 (Cambridge, Cambridge University Press, 2001); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004); Guillaume Sacriste and Antoine Vauchez, 'The Force of International Law: Lawyers' Diplomacy on the International Scene in the 1920s', *Law and Social Inquiry*, 32, 1 (2007).

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world community. According to Lassa F. L. Oppenheim, a British professor of German origin, writing in 1919, 'the League of Nations [sought], through its written constitution, to organise the community of states, which had remained unorganised until then'.[3] When the members of the famous Institute of International Law (the oldest transnational network of jurists) met for the first time since the end of the war in Rome in October 1921, they adopted a resolution which acknowledged 'the important progress made in political, legal and moral order by the creation of the League of Nations' and they showed themselves 'willing to help . . . the development of an institution the more full of the promise of progress the more it encounters an increasingly enlightened public opinion'.[4] Furthermore, some legal scholars engaged personally in the struggle for the League, joining the ranks of the Association française pour la Société des Nations (René Cassin, Ferdinand Larnaude, Georges Scelle),[5] the League of Nations Union in Great Britain (James Leslie Brierly, Alexander Pearce Higgins),[6] or the Deutsche Liga für Völkerbund (Walther Schücking, Hans Wehberg).[7]

The refusal of the US Senate to ratify the Treaty of Versailles seemed fatally to compromise the prospects of achieving a truly global League of Nations. As a result, the early optimism quickly ran its course. Legal experts, such as the French Professor Georges Scelle,[8] wondered openly whether the universalist claims of the League were not premature, and whether 'a scientific error and a breach of common sense' had been committed by imposing the same rights on all member states without considering the 'regional or even continental affinities' that already existed between some states.[9] In 1922, the Institute of International Law[10] asked its members to answer whether several leagues of nations organised on a continental or regional basis should exist, or rather one single universal association with continental or regional divisions? The predominant trend among the members was to call for a League of Nations with continental and regional divisions.[11]

[3] L. Oppenheim, 'Les caractères essentiels de la Société des Nations', *Revue générale de droit international public*, XXVI, 2, 1 (1919), 238.

[4] Institute of International Law, resolution passed on 5 Oct. 1921, available at http://www.idi-iil.org/idiF/resolutionsF/1921_rome_02_fr.pdf (last visited 1 Oct. 2011).

[5] See Jean-Michel Guieu, *Le rameau et le glaive: Les militants français pour la Société des Nations* (Paris: Presses de Sciences-Po, 2008), 308.

[6] See Donald S. Birn, *The League of Nations Union 1918–1945* (Oxford: Clarendon Press, 1981), 269.

[7] See Joachim Wintzer, *Deutschland und der Völkerbund 1918–1926* (Paderborn: Ferdinand Schöningh Verlag, 2006), 634.

[8] Georges Scelle (1878–1961) was a French professor of public international law. In 1912 he was appointed to the Law Faculty of Dijon, where he remained for twenty years before joining the University of Paris (1933–1948). From 1922 to 1958 he was member of the Commission of Enquiry on International Labour Conventions and, for twenty years, member and vice-president of the Administrative Tribunal of the International Labour Organization (Geneva). On Georges Scelle see notably 'The European Tradition in International Law: Georges Scelle', *European Journal of International Law*, 1, 1 (1990), 193–249.

[9] Georges Scelle, 'La troisième Assemblée de la Société des Nations', *L'Europe nouvelle* (7 Oct. 1922), 1257.

[10] On the origins of the Institute of International Law, see Irwin Abrams, 'The Emergence of the International Law Societies', *The Review of Politics*, 19, 3 (1957), 361–80.

[11] *Annuaire de l'Institut de Droit international*, vol. 29 (1922), 80.

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Many European scholars, such as Alexandre Merignhac, Paul Fauchille, Charles de Visscher, Nicolas Politis or Joseph de Blociszewski approved of creating continental or regional groups within a universal League of Nations, as foreseen by the Covenant itself, of which Article 21 expressly provided that 'nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration and regional understandings like the Monroe Doctrine, for securing the maintenance of peace.'[12] But the Belgian scholar Charles de Visscher[13] warned against a double danger posed by the constitution of such groups, namely the risk of compromising the fundamental unity of the League of Nations and pitting hostile groups of states against each other.

American lawyers, by contrast, were less drawn to the existing League of Nations and instead, following in particular the example set by the Chilean scholar Alejandro Alvarez,[14] advocated the creation of a flexible world association, which would encompass the League of Nations – as a *de facto* European organisation – and the Pan-American Union. Alejandro Alvarez thought that the League of Nations should have taken into account the sentiments of continental solidarity. Despite the fact that Europe and America were of the same civilisation, he argued that there were many differences in their legal doctrines and preferred systems of international organisation, and these had been further accentuated by the First World War. Therefore the Covenant of the League of Nations should be reformed along continental lines. According to Alvarez, there were in fact only two possible continental 'leagues of nations' (as Asia and Africa were politically dependant on Europe): the 'European' League of Nations based in Geneva and the Pan-American Union based in Washington. He argued for a 'world association of states', which would secure co-operation between Europe and America, while also taking into account their specific interests.[15]

As a result of these contributions, the 27th Commission of the Institute of International Law in August 1922 adopted a draft convention on the creation of a world association of states. This argued that it was necessary to create a link between the League of Nations, the Pan-American Union, and states which were not part of either of these organisations but were willing to engage with the rest of the world on the basis of co-operation, peace and justice.[16] However, a few weeks later, in its session in Grenoble, and after long deliberations, the commission overturned its

[12] 'Covenant of the League of Nations', available online at http://avalon.law.yale.edu/twentieth_century/leagcov.asp (last visited 1 Oct. 2011).

[13] Charles de Vischer (1884–1973) was professor at the Law Faculty of Ghent and moved to the Catholic University of Louvain in 1931. After the First World War he also became legal adviser to the Belgium Ministry of Foreign Affairs.

[14] Alejandro Álvarez (1868–1960) was a Chilean professor of law. He co-founded the American Institute of International Law in 1912. He became enormously influential in Europe and the Americas. In 1932 he was a nominee for the Nobel Peace prize.

[15] See Liliana Obregón, 'Noted for Dissent: The International Life of Alejandro Álvarez', *Leiden Journal of International Law*, 19 (2006), 1006. See also Carl Landauer, 'A Latin American in Paris: Alejandro Álvarez's *Le droit international américain*', *Leiden Journal of International Law*, 19 (2006), 957–81.

[16] *Annuaire* (1922), 133 ff.

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previous decision so as not to harm the prestige of the League of Nations. Even if the putative world association of states was not designed to replace the existing League of Nations, the jurists did not want to fuel further the existing public distrust in the League of Nations. Consequently, all members of the commission, including Alvarez, agreed to remove the project from the agenda of the Institute.[17] This proposal had probably come too early and certainly seemed quite radical to many European jurists. Nevertheless the pressure coming from American side (especially from Alejandro Alvarez) to take regional solidarity seriously prompted reflection by the European jurists throughout the early 1920s on what constituted the best way to achieve a universal League of Nations despite the reluctance of the United States of America to take part.

Regionalism to the rescue of the League of Nations – the mid-1920s

From the mid-1920s the difficulties facing the League of Nations and its repeated failures to implement an ill-conceived universalist approach to international politics forced a growing number of legal scholars to accept the necessity of regionally focused solutions. For instance the Corfu Crisis in 1923 between Italy and Greece clearly demonstrated that the League could not exercise its authority effectively when a great power was involved in a dispute. Yet all attempts to strengthen its legal machinery led to failure, as British governments, in particular, were anxious to minimise the security commitments of the Covenant. The withdrawal of the United States from the League had led British governments to 'believe that only a flexible and consultative League could now have any hope of operating effectively'.[18] For instance Britain rejected a Protocol for the Pacific Settlement of International Disputes that had been unanimously adopted by the Fifth Assembly of the League of Nations in 1924 and which would go beyond the Covenant with regard to the compulsory arbitration of disputes and mutual assistance. The hopes of reforming the League of Nations on a universal model were thus increasingly compromised, and the failure of the Protocol of 1924 seemed to compromise the vision of European peace guaranteed by a universal pact.

The difficulties experienced by the League appeared to prove that it was necessary to reorganise the international system on the basis of solid regional foundations in order to avoid a slide towards a new catastrophe. From this point of view, the Locarno agreements of October 1925 seemed to demonstrate the importance of regional reconciliation. René Cassin of France even thought that this type of regional agreement was 'apt to lead to the general acceptance of a higher universal protocol, on the basis of the satisfactory experience of obligations that were more geographically limited'.[19] This was why these accords needed to be concluded within the framework

[17] Unfortunately, at this point, the historical record of the proceedings at the conference is too vague for the historian to conclude in greater detail what caused this about turn. This remains an area inviting much further scrutiny.

[18] Ruth Henig, *The League of Nations* (London: Haus Publishing Ltd., 2010), 85.

[19] Report by René Cassin submitted to the Congress of the International Federation of League of Nations Societies, Warsaw, 3–8 July 1925, CAT 7–230, International Labour Office Archives, Geneva.

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of the League of Nations, respecting as far as possible the principles of the now defunct Geneva protocol. However, some other lawyers were more concerned about the consequences of the Locarno settlement on the League of Nations: for instance José Ramon Orúe y Arregui, professor of international law at the University of Valencia, believed that in Locarno 'the healthy international mind [had been] defeated by the most decentralising particularism'. As an ardent supporter of the Geneva organisation, he preferred a 'courageous work of rejuvenation rather than a risky dislocation the consequences of which [were] clearly problematic'.[20]

Nevertheless the League of Nations looked increasingly like a European project: for the Greek legal scholar and diplomat Nicolas Politis[21] the European character of the League was 'the main reason for Russia's hostility and especially [explained] the attitude of the United States'.[22] Furthermore, the League of Nations faced a real crisis in 1926 arising out of Germany's decision to apply for membership. Legal scholars were worried about the campaigns by Spain, Brazil and Poland, who each wanted a permanent seat on the Council and opposed Germany's application. According to Georges Scelle, this crisis was due to the 'initial misconception' of the League of Nations, that is to say 'the error of centralising uniformity'.[23] The remedy consisted in the 'decentralisation' of the Geneva system, or in institutionalising 'the distinction between the universal League of Nations and the particular continental or other societies that it harbours'.[24] For the French professor, the League of Nations had to 'develop in the direction of a complicated federation of federations, superimposed and interconnected'.[25]

Along with the influence of Alejandro Alvarez, the idea of reorganising the League of Nations along continental lines led to further, quite intense debate within the legal community during 1926 and 1927. In June 1926, the Union juridique internationale, another transnational network of specialists in international law set up by Ferdinand Larnaude and Léon Bourgeois, took up the question of reforming the League of Nations Covenant along continental or regional lines. Alejandro Alvarez again proposed to 'establish a link between the two great international organisations presently in existence: the League of Nations and the Pan-American Union, leaving to each its proper shape'.[26] He emphasised the fact that 'states of the New World do

[20] Orue y Arregui, 'La Sociedad de Naciones y eus actuales problemas. Universalismo e igualdad contra descentralizacion y desigualdad', *Revista de Législation* (1927), 420–422, cited in J. R. De Orúe y Arregui, 'Le régionalisme dans l'organisation internationale', *Collected Courses of the Hague Academy of International Law*, vol. 53 (1935), 15.

[21] Nicolas Politis (1872–1942) had been professor of international law in Paris prior to the First World War. During the inter-war period he served successively as Greek Minister of Foreign Affairs, Greek representative to the League of Nations and Greek Ambassador to France.

[22] 'La Pan-europa et la Société des Nations' (summary of the speech made by Mr. Politis in Vienna, 3 Oct. 1926) ', Politis Papers, Box 214, League of Nations Archives, Geneva.

[23] Georges Scelle, 'La crise de la SDN', *La Dépêche* (18 May 1926), 1.

[24] Ibid., 1.

[25] Georges Scelle, *Une crise de la Société des Nations: La réforme du conseil et l'entrée de l'Allemagne à Genève (mars-septembre 1926)* (Paris: PUF, 1927), 252.

[26] Review of Alejandro Álvarez, La Réforme du Pacte de la Société des Nations sur des bases continentales et régionales, *Revue générale de droit international public* (1926), 550.

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not want to get involved in European affairs and those of other continents, and they refuse to allow the states of these continents to become involved in theirs. However they are disposed to co-operate in world affairs with these continents and especially with Europe'.[27] His colleagues, notably Larnaude[28] and Lapradelle[29], insisted that the Covenant already authorised regional accords for peace in its Article 21, and that there was no need to revise or amend it. Larnaude called for prudence and for 'infringing on the great Covenant of the League of Nations as little as possible'.[30] These legal scholars were unwilling to compromise the possibility of a truly universal legal framework through the League. Nevertheless, the Union juridique internationale agreed on the idea that 'to achieve its universal vocation, the League of Nations could delegate the accomplishment of some task or other to a given region or continent, to the organs set up within them'.[31]

At the same time, some scholars were keen to commit themselves to one (or several) of the pro-European movements that were starting to flourish. They sometimes played an important role in these militant organisations, not only as legal experts but also as involved intellectuals worried about Europe's future. George Scelle, already an indefatigable activist for peace and for the League of Nations, became vice-chairman of the French Committee for a European Customs Union. Walther Schücking became vice-chairman of the Federal Committee for European Co-operation, whose national sub-committees brought together some of the most renowned lawyers of that time: Hans Kelsen and Alfred Verdross[32] in Austria, Joseph Barthélemy, Jules Basdevant and Louis Le Fur in France, Nicolas Politis in Greece, and others. Politis also played an important role in the Pan-European Union chaired by the cosmopolitan aristocrat Richard Coudenhove-Kalergi.[33] During its first International Congress in Vienna (October 1926), Politis gave an important speech declaring that 'the Pan-Europa has the same goal, the same ideal as the League of Nations: serving the cause of peace and international co-operation. It is in perfect harmony with the spirit of the Covenant'.[34]

In the mid-1920s, due to the continued failure of the League, a certain consensus seemed to have emerged among jurists, especially French ones, about the desirability of European regionalism within the framework of the League of Nations. But it was

[27] Union juridique internationale (UJI), *Séances et travaux* (1926), 179.

[28] Ferdinand Larnaude (1853–1942) was professor of public law and dean of the law faculty at the University of Paris. He had been one of the two French representatives (with Léon Bourgeois) to the commission on the League of Nations (chaired by Wilson) at the Paris Peace Conference in 1919.

[29] Albert Geouffre de Lapradelle (1871–1955) was professor of international law at the Paris faculty of law and a legal adviser to the French Ministry of Foreign Affairs (1919–1934).

[30] UJI (1926), 239.

[31] Ibid., 288.

[32] For the continuing influence of Verdross on post-war German debates on European law, see the contribution by Bill Davies in this special issue.

[33] Richard Coudenhove-Kalergi (1894–1972) published his programmatic book *Paneuropa* in 1923 and launched his pan-European movement at the same time in Vienna. In his mind a continental Europe gradually evolving into a federation would be able to win back the world power status it had enjoyed until 1914.

[34] Politis, 'La Pan-europa'.

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the Briand Plan for a European Federal Union that launched a widespread debate on European questions among international law professors during the late 1920s.

The Briand Plan and the debate on a European federation

This movement in favour of a united Europe reached its climax at the end of the decade, when Aristide Briand, French Prime Minister and Minister for Foreign Affairs, proposed in September 1929 the creation of 'some sort of [European] federal link', further clarifying his ideas in his later 'Memorandum on the Organisation of a Regime of European Federal Union' (May 1930).[35] Although legal experts had already anticipated the question of a European union, the French proposals now gave them the opportunity to examine the European question more deeply and concretely. A number of specialised reviews and learned societies took note of this great debate, contributing to theoretical reflections that had until then been somewhat distant from reality.

The community of international legal scholars did not react in unanimous fashion to the French scheme. In their comments, they were partly influenced by their national origins and the interests of their individual countries. Their positions often reflected those of their respective governments, all the more so as they were frequently employed as legal advisers and consultants for their respective ministries for foreign affairs.[36] For instance, Francis Deák, assistant professor at Columbia University Law School, who served as legal expert to the Hungarian delegation to the League of Nations, published an article in 1931 in the *Political Science Quarterly* that criticised Briand's proposal. For him, Europe could not unite unless there were no longer post-war winners and losers, but equal states acting together:

> The framers of the European federation scheme should have realised, in the atmosphere of Geneva, separated from the hysteria of 1919 by more than a decade, that certain fundamental errors and substantial injustices still exist, and are not conducive to the development of a community of interest and of a sentiment of solidarity.[37]

French international legal scholars, on the other hand, argued that this European solidarity did exist and generally took a positive view of Briand's proposal. Between European states there was, in the words of Louis Le Fur,[38] 'the same common ground, a deep unity, due to a single civilisation, not only moral . . . but also intellectual and

[35] See Antoine Fleury, Lubor Jílek, eds., *Le Plan Briand d'Union fédérale européenne: Perspectives nationales et transnationales avec documents* (Berne: Peter Lang, 1998), 610; Jacques Bariéty, ed., *Aristide Briand, la Société des Nations et l'Europe 1919–1932* (Strasbourg: Presses universitaires de Strasbourg, 2007), 543.

[36] Guillaume Sacriste and Antoine Vauchez, 'Le plan Briand d'Union fédérale européenne ou l'impossible autonomie du constitutionnalisme européen des années 1920', in Gilles Pécout, ed., *Penser les frontières de l'Europe du XIXe au XXe siècle* (Paris: Editions Rue d'Ulm, 2004), 155–6.

[37] Francis Deák, 'Can Europe Unite?', *Political Science Quarterly*, 46, 3 (1931), 428–9.

[38] Louis Le Fur (1870–1943) was a French professor of international law and legal philosopher. In 1896 he defended a thesis on *Federal State and Confederation of States*. He taught successively at the universities of Strasbourg, Rennes and Paris.

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technical',[39] and this old civilisation now had to be formalised through common institutions. As a consequence French legal scholars played a prominent role in this intellectual debate on a united Europe, which contrasts with the little interest in this question shown by other European legal circles at this time, notably British ones. Although this point deserves further investigation, this seems to corroborate the frequently-noted British reluctance towards the European idea in the 1920s, Great Britain experiencing its Europeanist 'golden age' only in the late 1930s.[40] The role played by French legal experts was not a question of loyalty or allegiance to their government, for they were not invited to participate in the elaboration of the Memorandum of May 1930, which was instead drafted by Alexis Leger, political director of the Foreign Ministry, with the help of a handful of French diplomats.[41]

Now that the French proposal had been made public, international legal scholars were certainly among the most qualified to address the question of the appropriate European institutional architecture. While the community of international legal scholars was not naturally inclined to think in a focused European perspective, the previous reflections on international life and regional solidarities could nevertheless help the most innovative professors rethink the official French proposal in legal terms. Yet, how did they conceive of a specific 'European' law? How did they anticipate the legal nature of a united Europe and its institutional form?

The outlines of a European union

International law and 'European' law

In the 1920s, the community of international legal scholars shared the same beliefs about the universal and non-national nature of international law.[42] For them there was *one single* international society, which was subject to the law, and the law was law only if it was universal. 'If you repeal the idea that law is "one", not only international law, but law as a whole, you remove most of its power', warned Fernand Larnaude;[43] 'Law is universal by nature . . . Do not give up the idea of the universality of law'.[44] Nonetheless, as they considered that law emerged from given social facts, many scholars maintained that international law had to take account of and reflect the 'realities' of international life. Though the gradually increasing economic and cultural interdependence of humankind was noticeable, Scelle and

[39] Louis Le Fur, 'Les conditions d'existence d'une Union européenne', *Revue de Droit international* (1930), 81.

[40] See Christophe Le Dréau, 'Quelle Europe? L'Europe franco-britannique: Les projets d'union franco-britannique (1938–1940) ', in Katrin Rücker and Laurent Warlouzet, *Which Europe(s)? New approaches in European Integration History* (Brussels; P. I. E. Peter Lang, 3rd edition, 2008), 39 ff.

[41] See Renaud Meltz, *Alexis Léger, dit Saint-John Perse* (Paris: Flammarion, 2008), 314 ff.

[42] Sacriste and Vauchez, 'The Force of International Law', 95.

[43] Larnaude, in UJI (1926), 225.

[44] Ibid., 238–9.

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Mirkine-Guetzevitch identified 'areas of more intense solidarity' between some 'families of peoples or nations, that is to say smaller international societies within the global or world international society'.[45]

In his 'Treaty of International Law' Paul Fauchille wrote that 'one must not become obsessed, as has been the case up to now, by the idea that all rules must be universal: for this could only be the case if all continents were in the same condition, which is not the present reality'.[46] In fact, European legal scholars were strongly influenced by the development of a truly American international law, fashioned by Alejandro Alvarez and the American Institute of International Law. This breakthrough on the other side of the Atlantic had a great impact on the idea of the regionalisation of international law. However the rise of international law would not be compromised by the development of regional or continental laws, according to Politis, as 'they are in constant touch so that one could not separate them without harming them.'[47] The unity of international law was therefore 'the general framework within which . . . legal rules of smaller societies are drawn up.'[48]

Even if a specific European law did not necessarily contradict the spirit of international law, many legal scholars, such as the Greek lawyer Stélio Séfériadès, were dubious of an overly strong focus on European regionalism: 'every effort should be made to avoid splitting world-wide interests if there is damage to the solidarity that should exist between states'.[49] Moreover, the German Walther Schücking[50] wondered whether 'bringing together states by continents' could lead to the danger that these groups 'break the unity of the League of Nations and that they become hostile towards each other'.[51] Nevertheless, he and the majority of his colleagues did not want to oppose this regionalist legal trend on principle, as long as it was compatible with the Covenant and its Article 21. But there was a need, as the Spanish lawyer De Orrué y Arregui wrote, to put these 'regional understandings under the auspices and the control of Geneva, investing [the League of Nations] with clear authority over them'.[52]

[45] Boris Mirkine-Guetzevitch and Georges Scelle, *L'Union européenne* (Paris: Librairie Delagrave, 1931), 5.

[46] Paul Fauchille, *Traité de droit international public*, vol. 1, Pt 1 (Paris: Rousseau & Compagnie, 1922), 39.

[47] Speech by Nicolas Politis, in UJI (1926), 233.

[48] Scelle, *Une crise*, 225.

[49] Stélio Séfériadès, 'Principes généraux du droit international de la paix', *Collected Courses of the Hague Academy of International Law*, 34 (1930), 278.

[50] Walther Schücking (1875–1935) was a German professor of international law and the first German judge at the Permanent Court of International Justice (1930–5). He also joined the progressive liberal party (deputy in the Reichstag from 1920 to 1928) and became involved with the pacifist movement. See 'The European Tradition in International Law: Walther Schücking', *European Journal of International Law*, 22, 3 (2011), 723–808; Franck Bodendiek, *Walther Schückings Konzeption der internationalen Ordnung* (Berlin: Duncker & Humblot, 2001).

[51] Walther Schücking, 'Le développement du Pacte de la Société des Nations', *Collected Courses of the Hague Academy of International Law,* vol. 20 (1927), 442.

[52] José Ramon De Orúe y Arregui, 'Le régionalisme dans l'organisation internationale', ibid., vol. 53 (1935), 90.

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The legal nature of a European union

Legal scholars faced further difficulties in anticipating the legal form of a future European union and showed a high degree of caution in their reflections on European constitutionalism. Scelle and Mirkine-Guetzevitch explained that 'any specific plan for European organisation is all the more fanciful or unreal when it is more detailed'.[53] They did not want to develop any specific institutional scheme. This would better be left to natural evolution: 'most of the time these schemes first develop in political reality, in facts, and only then do jurists construct their doctrines'.[54]

As they could not completely escape the debate on the nature of a future European union, legal experts warned of the dangers of simplified formulas such as the 'United States of Europe', as this suggested 'a misinterpretation that would give a misleading idea'.[55] Thus Yves de La Brière wanted to 'banish [it] mercilessly'[56] because the situation was clearly different on each side of the Atlantic: unlike the United States of America, 'the various European states are inhabited by true nations with a very old history, whose political and moral features are clearly characterised, and almost always with a distinctive language'.[57] Nevertheless, some American lawyers, such as James Brown Scott, reminded their European colleagues of the American experiment:

> It will perhaps not be considered impertinent to venture to suggest that America should not be overlooked in contemplating a rapprochement, however loose, of the nations of Europe. . . . what one group of states has done, another may do, even though it be to a lesser and different degree.[58]

However few European lawyers echoed this vision. Most believed that the US could not be used as a model for a European union. One exception was a young scholar from the Lyon Law School, Jacques Lambert, who published an article in 1929 entitled 'The United States of Europe and the American Example'. He recalled the fact that the unification of the US had been a long and difficult process and that according to him, American federalism 'contain[ed] some elements that may contribute to the solution of the problems Europe faces'.[59] But most of his colleagues considered that only the Pan-American Union could provide a relevant pattern for a European union, as such a union should also operate through regular inter-state meetings. In fact, legal experts were not really willing to learn from foreign experiments and considered that a European union would find its own way within international society.

Nevertheless, taking recourse to legal doctrine, international jurists did not believe that a European understanding could lead to a real federation, not even Georges

[53] Mirkine-Guetzevitch and Scelle, *L'Union européenne*, 9.
[54] Ibid., 26.
[55] Yves de la Brière, 'L'Union continentale européenne', *Revue de droit international et de législation comparée*, 12, 1 (1931), 6.
[56] Ibid., 9.
[57] Ibid., 8.
[58] James Brown Scott, 'American Background to Briand's Vision of a United Europe', *The American Journal of International Law*, 24, 4 (1930), 738.
[59] Jacques Lambert, 'Les Etats-Unis d'Europe et l'exemple américain', *Revue générale de droit international public*, 36, 4–5 (1929), 404.

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Scelle[60] who 'held law a translation of sociological and ultimately biological processes that led inexorably to federalism'.[61] For the moment, he did not believe that a European union could be a 'merging of European peoples in one super-state with common governmental institutions'.[62] Thus 'speaking of a European federation means nothing', as 'we can hardly speak yet, nor even in the future might we speak of an outline of a "confederation".'[63]

In the context of the release of the French 'Memorandum on the Organisation of a Regime of European Federal Union', Joseph Barthélemy,[64] one of France's leading constitutional lawyers, made a substantial and in some ways highly prescient contribution to the question of the legal nature of a future united Europe in June 1930. In a report for the International Federation of Committees for European Co-operation, he developed the idea that the European union would be 'a mere union of free nations, independent, sovereign within and outside of its borders, each nation preserving its personality, its characteristics and traditions'.[65] He thus preferred to speak in terms of 'union' than in terms of 'unity'. The European union would act as an organ of international law and not of constitutional law: 'Decisions will be made unanimously. Each state, for each decision, will have no obligations other than its own consent'.[66] Barthélemy wanted this European union to respect the national sovereignty of its member states, which was different in his mind from keeping *absolute* sovereignty. He believed that 'sovereignty as an absolute liberty to act its own way [was] but a historical ghost'.[67] State sovereignty was henceforth 'the power of acting freely within the limits set by international law'.[68] As a consequence 'there [could not be] any European union without limitation of sovereignty'.[69]

Since the end of the First World War, many lawyers had indeed vigorously denounced classical international law and called into question the absolute sovereignty of states, in particular the fact that they had sovereign rights to go to war with another state.[70] Traumatised by the horrors of the First World War,[71] Scelle called

[60] On the sociological federalism of Georges Scelle, see Hubert Thierry, 'The European Tradition in International Law: Georges Scelle', *European Journal of International Law*, 1, 1 (1990), 193–209; Olivier Beaud, 'Aperçus sur le fédéralisme dans la doctrine publiciste française au XXe siècle', in *Revue d'histoire des facultés de droit et de la science juridique*, 24 (2004), 165–204.

[61] Koskenniemi, *The Gentle Civilizer of Nations*, 327.

[62] Georges Scelle, 'Anticipations d'ordre juridique sur un éventuel fédéralisme européen', *L'Europe nouvelle* (28 Sept. 1929), 1297.

[63] Mirkine-Guetzevitch and Scelle, *L'Union européenne*, 26.

[64] Joseph Barthélemy (1874–1945) was a French professor of constitutional law at the Law School in Paris and at the École libre des Sciences Politiques. He also was deputy from 1919 to 1928 (representing the centre right).

[65] Joseph Barthélemy, 'Le problème de la souveraineté des Etats et la coopération européenne', *Revue de droit international* (1930), 435.

[66] Ibid., 473.

[67] Ibid., 422.

[68] Ibid., 428.

[69] Ibid., 421.

[70] See for instance Martin Breuer and Norman Weiss, eds., *Das Vertragswerk von Locarno und seine Bedeutung für die internationale Gemeinschaft nach 80 Jahren* (Frankfurt/Main: Peter Lang, 2007).

[71] Mobilised on 3 Aug. 1914, Georges Scelle was promoted to lieutenant in Oct. 1917 and then posted at the headquarters of the 8th army as a legal expert (1917–8).

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for the deliberate and definitive rejection of the notion of sovereignty 'because it is false and harmful'.[72] Influenced by the theories of Léon Duguit, who considered the state to be pure fiction, he contested the notion of the state's personality: for him, the only subjects of law were individuals, and this was why he came back to the old expression *ius gentium*,[73] 'law of the peoples', 'people' being understood in the everyday sense of 'individuals'. Louis Le Fur, professor at the Paris law faculty and defender of a return to natural law, also hoped to see an end to references to 'the absolute sovereignty of the state, its arbitrary will in domestic policy and its unlimited independence in foreign policy, a double error which has overthrown and corrupted all of public law'.[74] This is why many legal experts showed great reserve towards the French government's proposal published in the famous Memorandum of May 1930 and the legal imprecision of its language. Scelle pointed to the fact that 'the conciliation between the idea of absolute sovereignty and the idea of federation or confederation is a logical and juridical impossibility'.[75]

In fact, legal scholars felt much more comfortable criticising the legal imprecision, loopholes and contradictions in the Memorandum than in proposing alternatives. Joseph Barthélemy considered it 'remarkable by the richness of its uncertain formulae, by the care with which these formulae have been robbed of their juridical content and also by the loose usage of these terms'.[76] George Scelle also deplored the great number of 'ambiguous phrases', 'inaccurate passages', 'dangerous assertions' and 'counter-truths', all of which reflected essentially diplomatic preoccupations.[77] As a result, many jurists felt the need to place their legal expertise at the disposal of European governments, and they thus attempted to clarify the legal contours of a European union.

A cautious construction process

As a whole, international jurists were extremely cautious regarding the institutional form that European co-operation might assume. Barthélemy stated that 'everything has to start small . . . An effort to rush things would be likely to compromise the whole endeavour'.[78] Louis Le Fur declared that it was necessary 'not to jump the gun and to observe the rule of steady growth which is very natural'.[79] In Scelle's view, the European union could at first resemble 'a diplomatic congress, analogous to the "assembly of representatives" envisaged in Wilson's initial scheme as the unique organ of the League of Nations – indeed the only organ, with a secretariat or technical

72 Georges Scelle, *Le pacte des Nations et sa liaison avec le traité de Paix* (Paris: Librairie du recueil Sirey, 1919), 6; Scelle, 'Une ère juridique nouvelle', *La paix par le droit* (July–Aug. 1919), 297–8.

73 See similar references to *'ius gentium'* in Karin Van Leeuwen's article in this special issue.

74 Le Fur, 'Philosophie', 580, 582.

75 Mirkine-Guetzevitch and Scelle, *L'Union européenne*, 28.

76 Joseph Barthélemy, paper at the Comité national d'études sociales et politiques, 6 July 1931, *Crise économique – Union européenne* (Paris, 1931), 6.

77 Georges Scelle, 'Essai relatif à l'Union européenne', *Revue générale de droit international public* (1931), 11.

78 Barthélemy, 'Le problème', 440.

79 Extract from a speech by Louis Le Fur, in UJI (1930), 163.

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commissions as necessary'.[80] Barthélemy referred to 'a pre-organised organism, set up ahead of the time when it will have particular needs to address'.[81]

In the summer of 1930, the Union juridique internationale took up the problem. In the light of the reservations they had expressed concerning the French Memorandum, eminent lawyers such as Alvarez, Lapradelle, La Brière, Politis, Le Fur and Truchy tried to clarify the legal contours of the European institutions highlighted by the Briand Memorandum: a general conference, an executive council and a permanent secretariat. Therefore they developed a Plan for an International European Union consisting of twenty-one articles, mostly inspired by the Pan-American Union and the Covenant of the League of Nations. The European Council would be made up of five permanent members (Germany, Britain, Spain, France and Italy), three members elected for three years, and members representing regional unions within Europe. Decisions would be taken by unanimous vote of the council and assembly, except in matters of internal regulation, where a qualified majority of four-fifths of those present would suffice.[82] However, the text was disappointing from an institutional point of view as it was, like the French Memorandum, an imitation of the workings of the League, although it claimed that the European union, based in Geneva, would not duplicate the work of the League. The document was released on 30 August 1930, on the eve of the General Assembly of the League of Nations. The proposal was notably published on the front page of the influential Parisian daily newspaper *Le Temps*[83] and was widely commented on during the following days, not least by some civil servants of the International Labour Office, who disapproved of the creation of continental unions within the framework of the League of Nations.[84]

The legacy of this first legal debate on a united Europe

The official responses to the French Memorandum were muted, if not hostile, because of the deteriorating economic and political context in Europe. In September 1930, delegates to the League of Nations agreed to sidetrack the Briand proposal to a new committee within the framework of the League of Nations, the Commission of Inquiry for European Union. In the context of the Great Depression, it held a series of meetings in 1931/2 devoted to economic problems, and worked out plans for agricultural surpluses, unemployment, public works, and an International Agricultural Mortgage Credit Company. But the economic crisis made any attempt to implement these simply futile.

The Depression of the 1930s had already altered the European landscape and caused the decline of a certain international mindset as Feliks Frankowski, a Polish lawyer,

[80] Scelle, 'Anticipations d'ordre juridique', 1297.
[81] Barthélemy, 'Le problème', 437.
[82] UJI (1930), 195–204.
[83] 'Un projet d'union fédérale européenne', *Le Temps* (31 Aug 1930), 1.
[84] Marie-Renée Moutou, 'La Société des Nations et le Plan Briand d'Union européenne', in Fleury and Jilek, *Le Plan Briand*, 246.

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wrote in 1934: 'the failure of pan-European ideas, the repeated failures of the so-called policy of the League of Nations, and finally the rise of nationalist and authoritarian governments in most countries of the world mark the low tide of internationalism.'[85] However some legal scholars still advocated a united Europe in the 1930s. In 1935 José Ramon Orúe y Arregui declared himself to be a 'resolute supporter of regionalism' within the framework of the League of Nations,[86] whereas in 1937 Louis Le Fur admitted the possibility of two separate leagues of nations, an American one and a European one, as he deplored the American unwillingness to build a truly global organisation.[87] In the light of the rise of authoritarian regimes, these legal scholars considered it essential for Europe to be able to benefit from a strengthened League of Nations. Regionalisation could help the League reinforce its global capability and bolster it against authoritarian states likely to threaten peace. But the outbreak of the Second World War led some jurists to advance ever more radical reforms of the international system and for a more demanding type of federalism, criticising the institutional reticence of the 1920s. For instance, in 1940 Scelle attempted to outline the perspective of establishing a true European federation after the war, taking the Franco-British relationship as an initial central bond to which other states would adhere.[88]

After the Second World War, some legal scholars were involved in movements supporting a federal Europe, such as the Union of European Federalists (UEF) set up in late 1946, and the European Parliamentary Union (EPU) founded in July 1947 on the initiative of Coudenhove-Kalergi. These legal experts helped to establish European institutional schemes, such as two professors from the University of Strasbourg, Michel Mouskhély and Gaston Stefani, who drew up in March 1948 a 'draft federal European constitution' for the UEF of which they were members. Michel Mouskhély, a Russian émigré who had fled communism, was a former doctoral student of Louis Le Fur, and then became a follower of Georges Scelle.[89] After the Second World War, he specialised in European federalism and published numerous studies on the subject. He and Gaston Stefani indicated in broad terms in their draft certain fundamental constitutional provisions: legislative power would reside in a federal chamber intended to represent the people of the federation and elected directly by universal suffrage, and in a Chamber of States representing member states. The executive organ would be a federal council of ten members at most, elected by the federal assembly. Finally, to settle any disputes arising from the application, interpretation or execution of the constitutional or federal laws, there would be a federal supreme court consisting of eleven to fifteen judges. A few months later, the authors developed their ideas in

[85] Feliks Frankowski, 'L'idée de souveraineté dans les relations internationales', *Revue de droit international*, 13 (1934), 504.
[86] Arregui, 'Le régionalisme', 90.
[87] Speech by Le Fur, in UJI (1937), 49.
[88] Georges Scelle, 'Le problème du fédéralisme', *Politique étrangère*, 5 (1940), 161.
[89] Beaud, 'Aperçus', 185–6.

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book form: *L'Europe face au fédéralisme*,[90] and their draft for the UEF was used in June 1948 by François de Menthon for the purpose of his 'Constitution for the United States of Europe'. At the time de Menthon was a French deputy and leader of the Mouvement Républicain Populaire (MRP) parliamentary group (and formerly law professor at the University of Nancy in the 1930s), and he chaired the legal committee set up in 1947 within the European Parliamentary Union (EPU) that was responsible for preparing a European constitution. But his plan was turned down in September 1948 by the Interlaken Congress of the EPU, and in 1952–4, as president of the Assembly of the Council of Europe, he became firmly opposed to his own previous federal views advocating a confederative model for Europe.[91]

Ultimately, the federalist movement did not succeed in winning support for its ideas, either among the general public or from national governments. Moreover it was competing with the unionists who were satisfied with a simple union of states and whose main champion was the former British Prime Minister, Winston Churchill, chairman of the United Europe Movement. The first European institutions born in the late 1940s were strictly intergovernmental bodies and their scope of action was limited by the unanimity rule, as was the case for the Organisation for European Economic Co-operation (1948) and the Council of Europe (1949), which did not become a real European political authority despite the efforts of pro-European activists.

In 1950, the Schuman Plan inaugurated a new method of European construction, which attempted to overcome the divisions between federalists and unionists. The European Coal and Steel Community (ECSC) was the first European organisation based on supranational integration whose aim was to create '*de facto* solidarity' as a first step in the 'federation of Europe'. In these first steps of European unification, the inter-war lawyers did not play any direct role, with the exception of a young professor of international law, Paul Reuter, who worked with Jean Monnet on the development of the High Authority of the ECSC, as described in Anne Boerger's article in this special issue. While he was professor of International Law at the University of Aix-en-Provence and Legal Adviser to the Ministry of Foreign Affairs, he drew up a draft proposal with Jean Monnet for the pooling of the coal and steel resources of France and the Federal Republic of Germany, and he worked to transform it into legal rules: 'Paul Reuter was the origin of the High Authority, of the word as of the thing', wrote Jean Monnet in his *Mémoires*.[92] But Reuter's involvement was purely accidental[93] and the young legal expert had been less influenced by the doctrine

[90] Michel Mouskhély and Gaston Stefani, *L'Europe face au fédéralisme* (Strasbourg-Paris: F.-X. Le Roux, 1949).

[91] Clara Isabel Da Silva de Melo Serrano, 'François de Menthon and his Project for a Federal Constitution of the "United States of Europe" (June 1948)', in Jean-Michel Guieu and Christophe Le Dréau, eds, *Le 'Congrès de l'Europe' à La Haye (1948–2008)* (Brussels: PIE-Peter Lang, 2009), 299–310.

[92] Jean Monnet, *Mémoires* (Paris: Fayard, 1976), 352.

[93] Monnet wrote in his *Mémoires*: 'An accident brought into my office . . . a young law professor whom I did not know' (Monnet, *Mémoires*, 349). See also Antonin Cohen, 'Le plan Schuman de Paul Reuter. Entre communauté nationale et fédération européenne', *Revue française de science politique*, 48, 5 (1998), 646.

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of inter-war international law than by the spirit of the 1930s and the Third Way ideology between capitalism and communism, individualism and collectivism, USA and USSR, advocating anti-materialism, State planning and corporatism.[94] He had been also inspired by the New Deal model of independent regulatory authorities, and by inter-war ideas about functional evolution of governance structures.[95] Paul Reuter had mainly developed his thinking on the need for European federalism during the Second World War, when he was one of the lecturers at the Ecole Nationale des Cadres at Uriage. At that time, in the context of a general critique of the pre-war liberal regime, he urged the need for the 'beginning of a political federalism' between the European states, the better to resist the capitalist 'trusts', as unified political forces would be stronger than 'economic forces of concentration'.[96]

But, as Martti Koskeniemi has pointed out, to elaborate on his European proposal 'Jean Monnet had not consulted Georges Scelle or the other inter-war lawyers'.[97] In fact, it would be the debate on the creation of a European Political Community (EPC) at the time of the negotiations on a European Defence Community (EDC) in 1952/3 that would once again offer scholars of international law an important role in discussions about a European institutional order. Georges Scelle, who had participated in the famous 'Congress of Europe' at The Hague in May 1948 under the auspices of the International Committee for the Co-ordination of the Movements for a United Europe, played a key role in these debates of the early 1950s. For instance, he sat on the International Juridical Committee created on 17 December 1950 by the UEF. This committee was chaired by Fernand Dehousse, a Belgian socialist senator and professor of international law at the University of Liège. It also comprised three other law professors from the inter-war period, Hans Nawiasky (University of Munich) Piero Calamendrei (University of Florence) and Léon Julliot de la Morandière (University of Paris).[98] The committee eventually formulated a proposal for a Statute for the European Constituent and a memorandum containing the outline of a federal constitution, which were finalised and adopted at the Lugano conference in April 1951.[99] Subsequently, Dehousse, Calamandrei and Nawiasky took part in the Committee for the European Constitution, established by Paul-Henri Spaak and with Dehousse as functioning secretary in 1952 within the framework of the European Movement. This new committee had to prepare the ground for the planned Ad Hoc Assembly that, according to article 38 of the EDC treaty, would be given the task of writing a constitution for the EPC.[100] But again all these efforts were in vain, as the EDC failed to be ratified by the French National Assembly in 1954.

[94] Cohen, 'Le plan Schuman', 657.
[95] See Peter L. Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford: Oxford University Press, 2010), 96–8.
[96] Cohen, 'Le plan Schuman', 658.
[97] Koskenniemi, *The Gentle Civilizer*, 345–6.
[98] Bertrand Vayssière, *Vers une Europe fédérale? Les espoirs et les actions fédéralistes au sortir de la Seconde Guerre mondiale* (Bruxelles: Peter Lang, 2006), 278.
[99] Sergio Pistone, *The Union of European Federalists* (Milano: Giuffrè Editore, 2008), 62.
[100] Antonin Cohen, 'La constitution européenne: Ordre politique, utopie juridique et guerre froide', *Critique internationale*, 26 (Jan. 2005), 126.

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After the rejection of the EDC, the supranational dimension of the European construction process seemed to be under question. The Italian Centre for Legal Studies decided to organise an international conference on the ECSC in Stresa in 1957 to rethink approaches to European integration. Giuseppa Pella, the Chairman of the Common Assembly of the ECSC, chaired the organisation committee of the Conference.[101] The main objective of this conference would be to legitimise the ECSC from an academic perspective and the Communication and Legal Departments of the High Authority were of great help in its organisation. However, the committee of international law scholars, who were invited to write a report on the legal nature of the ECSC, concluded that the latter was merely an international organisation, albeit of a peculiar kind, and refused to accept the concept of supranationality as a new legal category. Their argument thus stuck with the classical and well-established theory of international law from the inter-war period and refused to admit that this nascent 'European law' could constitute a new legal order. They were above all attached to the universality of international law. This contrasted with a miscellaneous group of young professors (mainly specialised in comparative law) and some of 'the organic jurists of the Community'[102] who had strong links with the European institutions (Michel Gaudet, member of the Legal Service of the High Authority, Pierre Wigny, of the Common Assembly, and Louis Delvaux, of the European Court of Justice), supported the opposite point of view, and conceived supranationality as an autonomous legal category.[103] In Stresa, despite the conclusions of the committee, it was clear that the doctrines of international law were deemed insufficient not only by the new European institutions responsible for developing European integration, but also by a new generation of law scholars from comparative law. Thus, the debate expressed a trend towards the development of an independent legal doctrine in European law – a doctrine that the European Court of Justice (ECJ) finally developed with *Van Gend en Loos* and *Costa* v. *E.N.E.L.* in 1963–4.

As has been asserted in this study, the inter-war period was a key (but rather forgotten) moment in the debate among legal scholars on a European institutional order. Although the European Communities established in the 1950s did not derive directly from the institutional schemes of the 1920s, the 1920s can be seen as having played an important role in the building of a European legal doctrine. After the failure of the universal ambitions of the League of Nations and the pressure coming from the American side (especially from the Latin American jurist Alejandro Alvarez) to take regional solidarity seriously (such as the Pan-American Union), an increasing number of legal scholars, especially French ones, came out in support of regional and European solutions. The need to create a peaceful Europe through the rule of law, the increase in salience of regional solidarity due to of the failures of universalist solutions, and the criticisms of the absolute sovereignty of the state were all promising

[101] Julie Bailleux, 'Comment l'Europe vint au droit: Le premier congrès international d'études de la CECA (Milan-Stresa 1957) ', *Revue française de science politique*, 60, 2 (2010), 302.
[102] Ibid., 307.
[103] Ibid., 312.

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concepts used by international scholars from the aftermath of the First World War to the aftermath of the Second.

However, inherent in international law were also certain obstacles to thinking about European unification and what kind of legal shape it would take. In the 1920s, legal scholars generally showed a high degree of caution regarding the institutional architecture and the feasibility of any form of European construction. They were unwilling to consider any institutional reality of possible European unification in legal terms before the politicians had taken the first steps. In this respect the Briand Memorandum of 1930 boosted their reflection on European legal construction. But in contrast with the shallowness of the 1920s debates, the Second World War pushed a certain number of international legal scholars to uphold more extreme positions on the abandonment of sovereignty and some of them were even keen to commit themselves to federalist organisations.

The conclusion we can draw from this study on professors of international law is that the two worldwide cataclysms did lead many to question existing legal doctrine and the legal organisation of Europe was seen each time as a possible way of adapting international law to meet the needs of the present time, according to the functionalist – and inter-war – idea that institutions and law should evolve as a function of the problems they addressed. But in the 1950s, when European integration really began to develop according to a functionalist method, international legal doctrine revealed itself to be inefficient in dealing with the new challenge of supranationality. International law was no longer the crucible for European law. This was now set to become a category all of its own.

La question d'un ordre institutionnel européen: Le débat international parmi les juristes pendant les années 1920 et ses suites

La période de l'entre-deux-guerres représente un moment crucial (quoique plutôt oublié) du débat entre juristes sur la question d'un ordre institutionnel européen. Même si les Communautés européennes établies dans les années 1950 ne tirent pas directement leur origine des schémas institutionnels des années 1920, cette période peut être considérée comme ayant joué un rôle important dans la construction d'une doctrine juridique *européenne*. L'échec des ambitions universalistes de la Société des Nations conduisit en effet un certain nombre de professeurs de droit international, particulièrement français, à soutenir des solutions régionales et européennes. L'organisation juridique de l'Europe fut alors envisagée comme une réponse possible en vue d'adapter le droit international aux nécessités du temps présent.

Internationale Rechtswissenschaftler und die Frage einer europäischen Institutionenordnung in den 1920er Jahren

Die Zwischenkriegszeit ist ein vergessener Moment in der Diskussion um eine europäische Institutionenordnung unter Rechtswissenschaftlern. Wenngleich die in den 1950er Jahren gegründeten Europäischen Gemeinschaften nicht direkt von den Institutionensystemen der 1920er Jahre abgeleitet waren, spielte der frühere Zeitabschnitt eine wichtige Rolle beim Aufbau einer speziell europäischen Rechtsdogmatik. Das Scheitern des universalistischen Völkerbunds führte dazu, dass eine Reihe internationaler, vor allem französischer Juristen stattdessen regionale Lösungen befürworteten. Ein europäischer Rechtsrahmen wurde daher als eine Möglichkeit zum Anpassen des internationalen Rechts betrachtet, um die Ziele Frieden und Stabilität zu erreichen.

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