Statesmen of Independence: The International Fabric of Europe's Way of Political Legitimacy

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Scholars generally agree that 'independent' institutions such as the European Commission, the European Court of Justice and European Central Bank have created a space and role for themselves that has no equivalent in national political settings. However, we still lack a better understanding of the importance of this independent branch in the EU polity. This article contends that the central relevance of independence is connected to the historically rooted connection between 'independence' and 'international government' – a relationship the history of which can be traced back to the League of Nations' foundational period as the inaugural scene for the nexus between power and knowledge in international politics. Ultimately, this article questions the extent to which this specific grammar of international government has been constitutive of the EC polity in terms of valued modes of legitimacy and types of authority.

Most scholars agree that 'independent institutions' have become a ubiquitous and pervasive feature of the European Union (EU).[1] The blossoming of regulatory agencies, the critical role of the European Court of Justice (ECJ) and the salient position of the European Commission exemplify a process of delegation of government functions to institutions shielded to some extent from direct diplomatic and electoral pressures.[2] Yet, most accounts of this 'rise of the unelected' in the context of the EU have stuck to sector specific explanations providing idiosyncratic reasons for the functionality of statutory independence in the different branches of EU

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[1] See Giandomenico Majone, *Regulating Europe* (Abingdone: Routledge, 1996); Peter Mair, *Ruling the Void. The Hollowing of Western Democracies* (London: Verso, 2013); Antoine Vauchez, *Democratizing Europe* (London: Palgrave Macmillan, 2015).

[2] In a very rich literature, see, for example, Kenneth Dyson and Martin Marcussen, eds., *Central Banks in the Age of the Euro: Europeanization, Convergence and Power* (Oxford: Oxford University Press, 2009); Mark Thatcher, 'The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe', *Governance*, 18, 3 (2005), 347–73; Karen Alter, Establishing the Supremacy of European Law (Oxford, Oxford University Press, 2001).

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government. As a result, we still fail to grasp the deep and cross sectoral entanglement between 'independence' and EU polity. As the independent branch has progressively taken on a role in EU government which has no equivalent in other regimes, this article explores the longer historical pattern of this entanglement and identifies its roots in the grammar of political legitimacy specific to international government.[3]

Such continuity predating the Second World War is somehow counterintuitive: from its outset, the European Communities (EC) have claimed to be ontologically different from international organisations. From the founding fathers' claims that Europe was a radical departure from previous international organisations (IOs) to the academic rationalisation of the EU's alleged (incomparable) *sui generis* nature, most of the attention has been focused on the rupture with previous international and European endeavours. Authenticating this rupture thesis, much research has sought to identify those *national* influences that shaped new EU policies, institutions or even treaties: EU competition policy has been given German ordo-liberal roots,[4] and the EU's legal order – at least in its original form – has been viewed as quintessentially French,[5] just like the Common Agricultural Policy.[6] Other cases are less clear cut, like the EU's civil service, which has been seen as a hybrid product between the French *fonction publique* model and the Prussian model of bureaucracy.[7]

While the creation of the EC certainly triggered competition amongst national models, the continuity with interwar international organisations has remained strikingly unexplored as historians of the League of Nations tended to focus on rise and fall narratives.[8] More recently, however, international historians have told a more complex story, underlining the critical role of the International Labour Organisation (ILO) and the League in setting the stage for a whole range of international/European policies from human rights to drug control, public health and cultural exchange.[9] Some research has actually directly suggested post-Second

[3] With a view to overcome the scholarly fragmentation on the object, I suggest here a broad understanding of the notion of 'government', much broader than just the set of 'political' institutions but encompassing also judicial, executive and regulatory institutions and their distinct set of elites and specific forms of knowledge.

[4] David Gerber, 'Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the "New" Europe', *American Journal of Comparative Law*, 42 (1994), 25–84.

[5] Jean Rivero, 'Le problème de l'influence des droits internes sur la Cour de Justice de la CECA', *Annuaire Français de Droit International*, 4 (1958), 295–308.

[6] But see Kiran Patel, ed., *Fertile Ground for Europe? The History of European Integration and the Common Agricultural Policy since 1945* (Baden-Baden: Nomos Verlag, 2009)

[7] Daniela Preda, 'Hallstein e l'amministrazione pubblica europea', *Storia Amministrazione Costituzione, Annale dell'Istituto per la Scienza dell'Amministrazione Pubblica*, 8 (2000), 79–104; Michel Mangenot, 'D'où vient la fonction publique européenne. Les origines d'un modèle (1962–1958)', in E.V. Heyen, ed., *Les débuts de l'administration de la Communauté européenne* (Baden Baden: Nomos Verlag, 1992); Michel Mangenot, 'La revendication d'une paternité: Les hauts fonctionnaires français et le "style" administratif de la Commission européenne (1958–1988)', *Pôle Sud*, 15 (2001), 33–46 ; and, most importantly, Didier Georgakakis, *European Civil Service (in Times) of Crisis* (London: Palgrave Macmillan, 2017).

[8] Susan Pedersen, 'Review Essay. Back to the League of Nations', *American Historical Review*, 112, 4 (2007), 1091–117.

[9] Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley: University of California Press, 2002); Mark Mazower, *Governing the World: The Rise and*

World War continuities in policy solutions between the Geneva multilateral complex and the EC in a variety fields such from law[10] to labour relations (discussed by Lorenzo Mecchi in his article in this special issue) and economic conceptions of regulation.[11] Yet, this historiographical 'return to the League of Nations' has not so far questioned what might be deeper and cross sectoral continuities regarding shared understandings and beliefs of political legitimacy – i.e. regarding what it takes for international organisations and statesmen to be authoritative. Bringing a sociological outlook on competing forms of political legitimacy in close contact with the current historiographical turn, the article argues that the *grammar* of political legitimacy, that is, the institutional toolbox, the models of professional worth and the repertoire of political justifications mobilised by EC institutions and statesmen, has deep historical roots in the multilateral framework that coalesced in the context of the League of Nations. One critical aspect lies in the entanglement between 'independence' and international government.[12]

This article argues that there is an international and European conception of political authority that differs from its national equivalents in at least three respects. Firstly, what could be called international statesmanship[13] has been shaped across otherwise distinct judicial, regulatory and bureaucratic branches of government.[14] Second, the institutional toolbox of statutory independence from national and political interests has been viewed as *the* essential lever for guaranteeing statesmen legitimacy in leading and representing the newly created international organisations. Thirdly, these statesmen of independence, as they are called here, paraphrasing François Duchêne's labelling of Jean Monnet as a 'statesman of interdependence',[15] make up a new class of individuals whose common feature is to combine both expert and political profiles: they belong to transnational knowledge communities

Fall of an Idea (London: Allen Lane, 2012); Sandrine Kott, ed., 'Une autre approche de la globalisation. Socio-histoire des organisations internationales', *Critique internationale*, 52 (2011).

[10] On how in EU law major doctrinal innovations draw from international law precedents, see Bruno de Witte, ' Retour du Costa. La primauté du droit européen à la lumière du droit international', *Revue trimestrielle de droit européen*, 3 (1984), 425–54.

[11] On how specific post-Second World War conceptions of the economic reconstruction of Europe are connected to the of the Economic and Financial Organization of the League of Nation, see Patricia Clavin, '"Old ideas in new bodies". The Economic Reconstruction of Europe in 1945', in Joachim Lund and Per Ohrgaard, eds., *Return to Normalcy. Concepts and Expectations for a Postwar Europe around 1945* (Copenhagen : Copenhagen Business School Press, 2008), 21–32 ; and Patricia Clavin, 'Reparations in the Long Run', *Diplomacy and Statecraft*, 16, 3 (2005), 515–30.

[12] To put it differently, the purpose of the article is not to explain why or how independent institutions such as international courts or secretariate may have proved influential or not. It is rather a genealogical inquiry into the framing of a specific grammar for political legitimacy at the international level. On independence as a political grammar for EU government, see Antoine Vauchez, *Democratizing Europe*.

[13] The admittedly broad notion of 'international statesman' proves useful for our purposes since it allows to think about the various figures embodying an international public authority collectively, be they judges, regulators, top civil servants, secretary generals, central bankers, regulators, etc.

[14] While there are possible intersections with our present concern for connections between independence and international government, the role of engineers, technological experts and the management of European infrastructures will not be tackled directly in this article. On this see the different volumes of Johan Schot and Phil Scranto, eds., *Making Europe* (London: Palgrave Macmillan).

[15] François Duchêne, *Jean Monnet, the First Statesman of Interdependence* (New York: W. W. Norton, 1994).

(most often law or economics) and have close connections with national political and bureaucratic networks. Thereby, this Janus-faced ideal type of the international statesman differs from national politicians deemed incapable of rising above national interests but also from academic experts viewed as incapable of understanding the mundane and short-term stakes of international politics.

To this aim, the article situates the shaping of the EC/EU's conception of statesmanship in a longer series of attempts to define international statesmanship. Rather than pretending to provide a full-fledged history of international statesmanship as a whole my intention is explorative in nature and aims at providing a renewed *problématique* for future research on the history of international government.[16] It tests the heuristic capacity of this long-term conceptual perspective by considering in closer detail a series of critical moments and early controversies that occurred within and on the periphery of international and European institutions as they were crafted and formalised. Drawing on previous in-depth research on international and European lawyers[17] the article looks in particular at the discussions of the 1920 Advisory Committee of Jurists that drafted the Statute of the Permanent Court of International Justice (PCIJ), also popularly known as the World Court, and considers its constitutive role in post-Second World War discussions on the definition of European statesmanship at the European Court of Justice and Commission.[18] The article does not bring new documents or explore archives; instead it re-examines the empirical material (official documents of League of Nations including the discussions of the advisory committee, conference proceedings, EU and international law journals' controversies, as well as biographical data, etc.) gathered over the past decade in the light of this new *problématique*.

In analysing these moments I have looked specifically at the rival conceptions of international worth and wealth debated in these venues. I have tried to identify the political functions given to statutory independence in institution building (courts,

[16] As we write these lines, first elements of the promising research project led by Karen Gram-Skoldager at the University of Aarhus on the history of international bureaucracy are been published: see Karen Gram-Skjoldager and Haakon A. Ikonomou, 'The Construction of the League of Nations Secretariat. Formative Practices of Autonomy and Legitimacy in International Organizations', *International History Review* (2017).

[17] See, in particular, 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), 83–107; Antoine Vauchez, *Brokering Europe: Euro-lawyers and the Making of a Transnational Polity* (Cambridge: Cambridge University Press, 2015).

[18] The emphasis put in the article on the definition of international/European *judicial* positions and the related *legal* debates may be considered as a limitation to the broader scope of the article on the genealogy of the international way of political legitimacy. It should be said however, as historians and sociologists of law have repeatedly shown, that legal expertise and institutions have historically been the laboratory from which modern professions and public institutions have emerged. In particular, the model of the knowledge-based professional crafted in Europe by legal professions in the late twentieth century have contributed to shape the other fields of expertise (economic, medical, etc.). See Maria Malatesta, *Professional Men, Professional Women. The European Professions from the 19th Century until Today* (Sage, London, 2011). Interestingly, the creation of the Advisory Committee of Jurists charged with the drafting of the World Court has been one of the very first decisions taken by the Council of the League of Nations in February 1920.

secretariats, agencies, etc.) as well as for legitimising one's institutional role at the international and European level.[19] Whether or not this form of independence was effective is not relevant here. Instead, the focus is on the extent to which the notion of independence provided the repertoire of arguments for leaders in such organisations (judges, commissioners, leading civil servants, secretary generals, regulators, etc.) for justifying their public authority.

This article therefore consists of two parts that suggest a genealogy of international statesmanship. First, the article tracks the crystallisation of a new model of political legitimacy in the framework of the League, arguably the first laboratory of international government. In the second section, it follows the selective transplant of this model to European statesmen in the EC's formative period when the role of the Commission and the Court and their respective office holders, were initially defined.

The Laboratory of the League of Nations

While the traditional historiography of the interwar period has long highlighted the many illusions and failures of the League of Nations' complex, more recently authors have convincingly argued that Geneva constituted a fascinating laboratory where international forms of expertise, knowledge-based networks and repertoires of solutions for international government were first defined. The multilateral setting in Geneva from 1919 onwards dramatically changed the landscape. While forms of international scientific socialisation, for example at congresses and in learned societies, existed before the First World War,[20] these earlier expert networks had no international political outlet. The IOs that existed at the time were technical organisations with limited competences in domains such as navigation, communication and commerce.[21]

With the creation of the League and the ILO, IOs moved from ad hoc technical institutions populated by experts to a set of generalist institutions with far-reaching competences.[22] In the few years between 1919 and 1925 a growing web of offices, working sections and permanent sub-committees emerged, bringing to Geneva hundreds of experts who worked on matters reaching from air navigation to contagious diseases of animals, opium traffic, the protection of children, refugees and

[19] While they are certainly a critical element in the definition of this grammar of political legitimacy, the many gendered, ethnic and social dimensions of international statesmanhip (and the overwhelmingly male, European, upper-class individuals that populated the nascent international organisations) are not discussed here. For further reflections in this direction, see Frederic Megret, 'The Rise and Fall of the "International Man"', in Prabhakar Singh and Vik Kanwar, eds., *Critical International Law: Post-Realism, Post-Colonialism and Transnational Law* (Oxford: Oxford University Press, 2012), 223–33.

[20] Anne Rasmussen, 'L'Internationale scientifique 1890–1914', Ph.D. thesis, École des Hautes Études en Sciences Sociales de Paris, 1995.

[21] Michael Wallace and David Singer, 'Intergovernmental Organization in the Global System (1815–1914). A Quantitative Description', *International Organization*, 24 (1970), 239–67.

[22] On this, see Megret, 'The Rise and Fall'.

health-related issues.[23] As a consequence, the League moved from employing a group of barely a hundred or so permanent international civil servants to a bureaucracy of more than a thousand employees.

The Appeal of Independence

The new venues that emerged differed considerably from more traditional diplomatic conferences and technical international organisations. Older conceptions of international relations, especially the reliance on power balance, war alliances and secret diplomacy, were discredited by the experience of the First World War. Thus various political and social groups asked for international government and policy making to take place somewhat independently of national loyalties and political ideologies. As the French international law professor Albert de Geouffre de Lapradelle put it at the time, many felt that 'statesmen, politicians, diplomats and jurists residing in different countries, with different codes of behaviour, trained . . . in different legal systems and speaking different languages lack international solidarity'.[24] All that should be changed. In this context, the notion of 'independence' from national bonds and interests projected by governments' legal experts and diplomats became a central feature of the credibility of the League's new set of institutions. For people like de Lapradelle, they needed impartial umpires and independent civil servants.

This need for brokers whose reputation for impartiality was beyond doubt in itself was not new: the good offices of neutral countries such as Switzerland or of personalities like the Pope had traditionally played this role in international politics. While Popes Benedict XV and Pius XI, the Italian King Vittorio Emmanuele III, the American President Calvin Coolidge or former US Secretary of State William Taft were attributed qualities of impartiality, their intervention in interwar politics could only be punctual and exceptional. Moreover, the combined effects of numerous new international treaties and the progressive technification of many international issues called for more than a traditional aristocratic conception of international statesmen as wise men endowed with moral respectability, detachment and seniority. The recruitment of IO personnel required the creation of a new class of individuals whose expertise in international affairs and independence from the contending parties of interstate conflicts and politics was guaranteed.[25]

[23] 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), 83–107.

[24] Geouffre de Lapradelle, in *Proceedings,* Permanent Court of International Justice, Advisory committee of jurists, *Procès-Verbaux of the Proceedings of the Committee, June 16th–July 24th, with Annexes* (The Hague: Van Langenhuysen Bros., 1920), 48.

[25] The application of the numerous post-First World War bilateral peace treaties, for instance, rested on the so-called 'mixed arbitration tribunals' (MAT), some twenty in all (Franco–German, Franco–Greek, Greco–German, Franco–Turkish MATs, etc.) whose presidents would have to be chosen outside of the contending parties, amongst independent, impartial and disinterested statesmen.

Soon enough, the issue of defining a form of statesmanship for the multiple tasks of this emerging multilateral order became urgent. A variety of committees and expert groups became engaged in defining these new statesmen. The Advisory Committee of Jurists (ACJ) created in February 1920, less than a month after the entry into force of the Versailles Treaty, was charged with drafting the statute of the Permanent Court of International Justice. This was the very first occasion when the new form of statesmanship was discussed and defined.[26] Shortly afterwards the 1921 Noblemaire Committee was set up to define the statute of the League's emerging international civil service. In this inaugural moment of the League these committees designed much more than just new international institutions – they also defined the professional requirements as well as incompatibilities, of international public office: all in all, the contours of a new form of statesmanship.

Both the World Court and the League's statutes bore the mark of this central concern for independence. Crucially, the Noblemaire Report (so-called after its French rapporteur, member of the French Chambre des députés) that defined most of the 1922 League staff statute, coined the idea of an international civil service and connected it tightly with the principle of independence. An entire institutional machinery emerged with a view to constrain as much as possible national and political passions amongst the new international statesmen. Article 1 of the 1922 League staff regulation and Article 2 of the ACJ draft statute for the World Court put the notion of 'independence' at the core of the respective institutions.[27] Other institutional devices pertaining to the methodology of independence were crafted to denationalise international office holders, be they international public servants or judges. They included oaths, the definition of incompatibilities of international and national offices, legal protection through immunities and privileges and remuneration through international funds, for example.[28]

Politicians of the Law

The notion of independence was thus becoming the foundational category through which international statesmanship was conceived and legitimised vis-à-vis politicians and diplomats. Two essential qualifications substantiated the claim to independence: first, the capacity to call upon expertise and, second, a long-standing political or bureaucratic experience of international affairs.

From the very beginning, legal science provided the firmest scientific grounds for such newly defined independence. This was perhaps not surprising in the early

[26] To this day the most complete account remains Ole Spiermann, *International Legal Argument in the Permanent Court of International Justice: The Rise of the International Judiciary* (Cambridge: Cambridge University Press, 1996).

[27] 'The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law'.

[28] Suzanne Basdevant, *La condition juridique des fonctionnaires internationaux* (Paris: Sirey, 1930).

twentieth century when most of the political and bureaucratic elites had been trained in European law schools.[29] Strikingly, the ten experts gathered in the ACJ had a variety of professional profiles, from prominent politicians like former the former US Secretary of State Elihu Root to law professors or Supreme Court judges. They defended often antagonistic state interests in conflicts between small states and major powers. Nonetheless, they swiftly managed to reach agreement that there was indeed such a thing as an autonomous realm for law in international affairs. As they had been trained in law schools in a period when the scientisation of legal knowledge was reaching its peak,[30] most committee members believed in the existence of a great division 'between the political and the juridical point of view'.[31]

The recognition of the law's *specificity* in international affairs was far from trivial: it constituted the social and cognitive basis for the new type of statesmanship that the ACJ was delineating. Only a knowledge-based professional, duly trained in the best European law schools, could claim to hold the international public office of judge. This approach was radical and new at the time. Until the First World War the idea of scientised statesmen made little sense. At the time it was considered obvious that, just as there was no separation between law and diplomacy, experienced ambassadors and diplomats could become international judges. Even some of the strongest proponents of an 'international court', like Brazilian lawyer and politician Rui Barbosa, heavily criticised the idea of taking national judges as a model for international systems of dispute resolution in 1907: 'if the judicial system is preferable in the matter of relations between individuals, the arbitral system is the only one that is applicable between nations, who only submit to such authorities as they wish to accept. And he added: this 'is not progress that has been suggested. It is rather a dangerous innovation, reactionary in its tendencies and in its probable results'.[32] Most other pre-1914 World Court projects only referred to 'the highest moral reputation' as a prerequisite for nomination.[33] Thus, the exclusion of diplomats after the First World War was far from obvious.

The ACJ members developed their notion of independence of the judges in the future court in delineation of such past practices and proposals. De Lapradelle critically referred to the Permanent Court of Arbitration in The Hague created in 1899 as a 'college of mediators, diplomats, conciliators', 'only half (of them) jurisconsults, the other half politicians'. Creating an authentic court capable of dealing with specifically *legal* matters therefore required the establishment of a 'truly permanent and professional judicature such as we know to be assured in national

[29] See Heinrich Best and Maurizio Cotta, eds., *Parliamentary Representatives in Europe 1848–2000: Legislative Recruitment and Careers in Eleven European Countries* (Oxford: Oxford University Press, 2000).

[30] On the rise of the scientific paradigm in law schools, see Guillaume Sacriste, *La République des constitutionnalistes* (Paris: Presses de Sciences Po, 2011).

[31] Geouffre de Lapradelle, in *Proceedings*; Permanent Court of International Justice, Advisory Committee of Jurists, *Procès-Verbaux of the Proceedings of the Committee, June 16th–July 24th, with Annexes* (The Hague: Van Langenhuysen Bros., 1920), 104.

[32] Quoted in Antonio Sanchez de Bustamente, *The World Court* (New York: Carnegie Endowement for International Peace, 1918), 363.

[33] Ibid.

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jurisdiction'.[34] In other words, independence (and the related capacity of the judge and the civil servant to rise above national interests and political ideologies) was best guaranteed through strong connections to and continuous socialisation in the scholarly community of international lawyers which was emerging at the time.

The emergence of this knowledge-based conception of international leadership only constitutes half of the picture, however. Many diplomats and foreign ministers expressed fears that these new international statesmen, be they civil servants or judges, would not be seasoned politicians fully aware of power balances in the international community but dangerously uprooted cosmopolitans. As a matter of fact, the idea that the international judge would have more authority by operating outside of national settings was profoundly alien to the participants in the two committees that drafted the statutes for judges and civil servants. Independence emphatically did not imply that these statesmen would have to be disconnected from national settings, quite the opposite. Thus, the ACJ came around to the view expressed by its British member, Lord Phillimore, that the judge's 'native country should not be entirely deprived of his services in so far as his international work allowed him leisure to be of service to his country'. This preference resulted in a very loose conception of the incompatibilities between the function as international judge with other commitments in diplomacy, academia, national judiciary and even politics.

De Lapradelle successfully defended the idea that 'a great judge or a great professor (when international judge) must be allowed to continue in his existing functions. Similarly an eminent member of Parliament may retain his legislative function.'[35] When the first case of incompatibility was eventually brought to the World Court a few years later (the case of Spanish senator and international judge Rafael Altamira),[36] the Court confirmed the very lenient approach. It stated that 'as long as the judge is independent from his government, there is no incompatibility' with political positions such as that of senator.[37] In other words, it was agreed that the World Court needed to attract the best and brightest and that they would normally be engaged in their home countries in a variety of political and professional occupations related to the handling of international affairs including teaching, consulting, practicing law and producing expertise for their respective governments. In sharp contrast with the national judge whose independence was secured by incompatibilities, international judicial independence meant that the office holder had to be someone with substantial experience in international affairs, from national to international settings and from learned circles to political arenas, or bureaucratic contexts.[38]

[34] Ibid., 48.

[35] Geouffre de Lapradelle, in *Proceedings, op. cit.*, 192.

[36] Cour permanente de justice internationale, 'Décisions administratives', in *Premier rapport annuel (1er janvier 1922-15 juin 1925)* (Leyden: Sijthoff, 1925), 239.

[37] Bernard Loder, 'Troisième séance du 4 février 1922', in Cour Permanente de Justice Internationale, *Actes et documents relatifs à l'organisation de la Cour. Préparation du Règlement de la Cour. Procès verbaux des séances de la session préliminaire de la Cour (30 janvier–24 mars 1922)*, Coll. Publications de la CPIJ, Série D (Leyden: Sijthoff, 1922), 11.

[38] On this, see Sacriste and Vauchez, 'The Force of International Law'; Martti Koskienniemi, 'Between Commitment and Cynicism: Outline for a Theory of International Law as Practice', in Office of Legal

As a result, the figure of international statesmen that emerged during the 1920s was a hybrid: both a knowledge-based professional lawyer listened to for his expertise and a seasoned practitioner of international relations with acknowledged political or administrative experience. Acting as statesman required a balancing act between the capacity to take state interests into account, for which political seniority was considered a good proxy, and the necessary distance to diplomatic games – with academic titles considered a good proxy for this second aspect. In other words, international statesmen had to show awareness and concern for the perennial issues of interstate politics and have the capacity to call upon the universalistic principles of the academic community as the voice of 'the legal conscience of the civilised world' to use a sentence coined by the founding statutes of the International Law Institute.[39]

A Template for European Statesmen

With the rise of fascism and the start of the Second World War, experts and politicians across the globe reflected intensely on the failures and (few) successes of the interwar multilateral experiment. Initially, this debate mostly took place in the United States and the United Kingdom.[40] With the move of the League's personnel to the University of Princeton and the early talks on the future world order in Dumbarton Oaks, the Carnegie Endowment for International Peace from 1942 to 1946 actively promoted 'studies of international administrative experience of the past in anticipation of the certainty of the restoration of an international organisation to maintain peace in the post-war world'.[41] These studies resulted in eight volumes mostly authored by former League officials.[42] With the end of the war and the blossoming of European projects, the centre of gravity of this discussion about the legacy of the League progressively moved towards Europe.[43] Many European and Western organisations were created at the time, including the Organisation for European Economic Co-operation in 1948, the Council of Europe and NATO

Affairs, *Collection of Essays by Legal Advisers of States, Legal Advisers of International Organizations and Praticiennes in the Field of International Law* (New York: UN Offices of Legal Affairs, 1999), 495–523.

[39] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).

[40] Julia Eichenberg, 'The London Moment: European Governments-in-Exile during the Second World War and Beyond', paper presented at the 'Hidden Continuities. From Interwar to Postwar Forms of Cooperation and Integration in Europe' conference held at the KFG 'The Transformative Power of Europe', Free University, Berlin, Oct. 2014.

[41] George Finch, 'Preface', in Egon Ranshofen-Wertheimer, *The International Secretariat: A Great Experiment in International Administration* (Washington, DC: Carnegie Endowment for International Peace, 1944), vii.

[42] See, for example, Ranshofen-Wertheimer, *International Secretariat*; Manley Hudson, *International Tribunal: Past and Future* (Washington, DC: Carnegie Endowment for International Peace and Brookings Institution, 1944); and Martin Hill, *Immunities and Privileges of International Officials: The Experience of the League of Nations* (Washington, DC: Carnegie Endowment for International Peace, 1945).

[43] Kiran Klaus Patel, 'Provincialising European Union: Co-operation and Integration in Europe in a Historical Perspective', *Contemporary European History*, 22, 4 (2013), 649–73.

in 1949 and the European Coal and Steel Community (ECSC) in 1951–2. These IOs provided new sites for the definition of the new international statesmen after the Second World War.[44] One important indicator of this effervescence was the November 1955 conference on 'La fonction publique européenne' at the University of Saarbrücken in the German Saarland, which was still integrated economically at this point into France, organised with the support of both the Council of Europe and the ECSC High Authority by Georges Langrod and Paul-Henri Gaudemet, two public law professor and leading specialists of international civil service. At this time, such experts created a new space to reflect about the set-up of IOs. Given the profile of the participants in these conferences and their related publications, the type of knowledge that was mobilised in these settings was in large part drawn from the public international law – and to a lesser extent from the emerging space of international administrative sciences originally associated with the creation of what was then called the International Institute for Administrative Sciences in Brussels in 1930.

In that context, the most efficient carrier of continuity from the interwar to the post-war period were disciplinary cognitive frames to which commentators and scholars – and in particular lawyers – resorted when it came to building the new European organisations and making sense of them. Considered from the point of view of international law's deep-seated canons, the founding principles of an international civil service such as its independence and loyalty to the international community of states were not considered to be *per se* problematic. Actually, the contrary was the case, as the demise of interwar IOs was explained with the betrayal by the great powers in the 1930s. While the Carnegie book series presented a first opportunity to 'offer an account of past mistakes' to 'make an important contribution to the international administration of the future', its authors insisted on the League *acquis* that 'had afforded conclusive proof that international administration is possible and that it can be highly effective' provided that the 'principle of international loyalty' and independence were fully recognised – as it had been 'the most important elements safeguarding the cohesion and effectiveness of the Secretariat'.[45] Contributing to the 1955 Saarbrücken conference, Egon Ranshofen, a former official of the League's secretariat and author of *The International Secretariat* in the Carnegie book series, recalled that 'the European civil servant . . . needs to draw from the well-known principles and experiences of the many inter-state organisations. In this domain, we are no longer facing an empty field.'[46]

[44] Among other moments: the ECJ *Règlement intérieur* of 7 Mar. 1953 (and revisions in Apr. and June 1954), the 1 July 1956 *Statut du personnel* of the High Authority defining the first '*supranational* civil servant' (and the earlier provisory Statute of 22 Mar. 1954), the drafting of the 1962 *Statut unique des fonctionnaires européens* and of the 1965 *Protocole sur les privilèges et les immunités des Communautés européennes.*

[45] Egon Ranshofen-Wertheimer, former 'Chef de section' at the LoN Secretariat, see Ranshofen-Wertheimer, *The International Secretariat,* 431.

[46] Egon Ranshofen, 'Formation des fonctionnaires européens', in Universität des Saarlandes, *La fonction publique européenne* (Luxembourg: Librairie Encyclopédique, 1956), 128–43. Own translation from French.

As a matter of fact, the high officials of the OEEC, NATO and the ECSC, as well as law professors gathered in Saarbrücken, took direct inspiration from the League experiment when defining a common statute for all European IOs. The definition of the 'European official' (*le fonctionnaire européen*), suggested by Paul-Marie Gaudemet, was directly taken from that of the 'international official' as coined by the most authoritative international law professor on the subject, Suzanne Bastid-Basdevant, at the time president of UN administrative tribunal. Paraphrasing her 1930 canonical definition of international civil servant[47], Gaudemet suggested that European 'civil servants include all employees who are in charge of exclusive and continuous functions whereby they lead, coordinate or control services of an institution which groups exclusively European states or the European branch of a generalist international organisation'.[48] This formula embraced both the idea of a public service (as opposed to temporary contracts) and the principle of a European loyalty guaranteed by the independence of civil servants 'shielded from political pressures'.[49]

Indeed, the EC, starting with the ECSC, was not at first sight the best candidate for continuity. Yet, although they explicitly sought to delineate themselves from what most officials viewed as the failure of the interwar experiments in terms of IOs, it, however, drew heavily on the grammar of international government. True enough, the emergence of a 'functional federalism' in the wake of the Schuman Declaration of 9 May 1950, which led to the ECSC, marked a new political path. The new Europe then envisioned apparently had to depart from the international experiment of the League as a counter model.[50] A whole vocabulary (from supranationalism to constitutionalism) was crafted with a view to shaping a radically new set of institutions and policies.[51] Drafed by René Mayer, then president of the High Authority, and Jacques Rueff, then judge at the ECJ and President of the Staff regulation committee (*commission Statut du personnel*), the 1956 *Statut du personnel* of the High Authority even talked in its first article about '*fonctionnaires supranationaux*', a phrase which was initially interpreted as creating a new category of civil servants, nor national, nor international.[52]

Strikingly, however, the specific grammar of international statesmanship that had emerged in the 1920s proved far more resilient, providing a template for the

[47] Suzanne Basdevant, *La condition juridique des fonctionnaires internationaux* (Paris: Sirey, 1930).

[48] Paul-Marie Gaudemet, 'Le fonctionnaire européen. Notion, rôle, situation juridique', in Universität des Saarlandes, *La fonction publique européenne*, 26. Own translation.

[49] Ibid., 33. Along the same lines, see Roger Bloch, *La fonction publique internationale et européenne* (Paris: LGDJ, 1963).

[50] Koskenniemi, *The Gentle Civilizer.*

[51] On this departing from international law, see Julie Bailleux, *Penser l'Europe par le droit* (Paris: Dalloz, 2014).

[52] See Claude Lassale, 'Contribution à une théorie de la fonction publique supranationale', *Revue du droit public de la science politique en France et à l'étrange* (Paris, 1957), 474–512. However, the notion of 'fonctionnaire *supranational'* will be abandoned in the 1962 Staff regulation and substituted by that of 'fonctionnaire *des Communautés'*. Generally speaking, on the genesis of the EU civil service, see Didier Georgakakis, *European Civil Service (in Times) of Crisis*.

definition of the European notion of political legitimacy that the EC needed to function. One word in particular survived the Second World War and flourished in the context of the EC: independence. Just like for the League, the notion of independence was ubiquitous in the emerging EC as it formed the basis for the public authority of its supranational institutions, the ECJ and the High Authority and for its political leadership, particularly the top civil servants. Paul Reuter, a close collaborator of Monnet's, even turned the notion of independence into a pillar of the concept of supranationality. He went as far as to portray it as the ECSC's main innovation. Having contributed to the drafting of the ECSC Treaty Reuter wrote: 'what constitutes supranationality is the independence from one's milieu, in particular vis-à-vis national governments'.[53] In their search for an autonomous source of legitimacy that would grant them some autonomy vis-à-vis the member states, EC institutions have therefore drawn from the same professional and political model as the League during the interwar years.[54] How is it then that this understanding of international statesmanship proved so resilient?

Carriers of Continuity

It was not so much concrete people who connected the early EC with the League system as high-ranking civil servants. True, the first presidents of the High Authority and of the ECJ, Jean Monnet and Massimo Pilotti, had been League deputy secretary generals before: Monnet from 1919 to 1923 and Pilotti from 1932 to 1937. Influential as they may have been, the vast majority of the members of the High Authority and EC Commissioners, leading civil servants and judges had little international experience from the interwar period, if any. Of the seventy-one judges and commissioners nominated between 1951 and 1970, only twenty-three had work experience in IOs including the UN, UNESCO, the OEEC and NATO – and only five of the twenty-three in the League.[55] The EC's activities in sectors like the economy, transport and nuclear energy required profiles that had been rare in the multilateral organisations of interwar Europe. In addition, many 'internationalists' who were initially asked to take office in the new EC institutions declined.[56] Prominent international lawyers like Paul Reuter and Henri Rolin refused to become judges at the ECJ. They initially thought that the prospects of advancing international public law were not good in what appeared to them like a technical court of trade arbitration – especially when

[53] Paul Reuter, *La Communauté européenne du charbon et de l'acier* (Paris: Lgdj, 1953), 139.

[54] Mikael Madsen and Antoine Vauchez, 'European Constitutionalism at the Cradle: Law and Lawyers in the Construction of a European Political Order (1920–1960)', in Alex Jettinghoff and Harm Schepel, eds., *In Lawyers' Circles: Lawyers and European Legal Integration* (The Hague: Elzevir reed, 2005), 15–34.

[55] These figures are drawn from Nicole Condorelli-Braun, *Commissaires et juges dans les Communautés européennes* (Paris: Lgdj, 1972), 107.

[56] See also Vera Fritz, 'Contribution à l'histoire de la CJUE à travers des biographies historiques de ses premiers membres (1952–1972)', Ph.D. thesis, University Aix Marseille, 2014; Mauve Carbonell, *Des hommes à l'origine de l'Europe. Biographies des membres de la Haute Autorité de la CECA* (Aix-en-Provence: Publications de l'Université de Provence, 2008).

they compared the new court in Luxembourg with the European Court of Human Rights (ECHR) in Strasbourg where many of them actually moved.[57]

Instead, the most effective carriers of continuity were those legal experts who drafted the treaties. Many of them were international lawyers trained in the interwar period in the framework of the new international public law that had emerged in Geneva. Among the main drafters of the ECSC Treaty there were traditional legal advisers such as Maurice Lagrange, a member of the *Conseil d'Etat*, but also well-known international public law professors, in particular Paul Reuter for France and Max Ophüls for Germany. In the case of the EEC Treaty drafted during 1956–7, a working group (*groupe de rédaction*) of legal advisors played a critical role as it was tasked with devising the new organisation's institutional design.[58] This group included Michel Gaudet and Nicola Catalano from the High Authority's Legal Service as well as legal advisers of foreign ministries: Yves Devadder from Belgium, Pierre Pescatore, a young Luxembourg lawyer, international diplomat and future judge at the ECJ,[59] and Willem Riphagen from the Netherlands had also negotiated the Benelux Treaty in 1956. While they were for the most part strongly committed to the idea that the EC had to be different from previous international experiments,[60] they built institutions by referring to the canon of knowledge at their disposal and hence they mainly referred to interwar international law arsenal.

Interestingly, in his account of the drafting of the EEC Treaty, Pescatore recalls that the first issue on which the group of legal advisers found itself 'spontaneously in agreement' was the upgrading of the statute of the ECJ to the level of World Court in terms of the required legal qualifications of the judge: 'we are all jurists and despite our different national origins, we participate in a world of common values . . . if we take into account the quintessentially legal nature of our discussions, we will not face conflicts of interest amongst us'.[61] Views that had emerged in the debate around the League thus impacted on the emerging EC.

Statutory Independence

The continuity from the interwar to the post-war period was most obvious in the case of the judiciary. The World Court statute remained the essential template for judging the properly international character of a court. Indeed, both European courts created

[57] Antonin Cohen and Mikael Madsen, 'Cold War Law: Legal Entrepreneurs and the Emergence of a European Legal Field (1945–1965)', in Volkmar Gessner and David Nelken, eds., *European Ways of Law: Towards a European Sociology of Law* (Oxford: Hart Publishing, 2007), 175–201.

[58] Pierre Pescatore, 'Les travaux du 'groupe juridique' dans la négociation des traités de Rome', *Studia diplomatica*, 24 (1981), 159–78. See also Anne Boerger, 'La Cour de justice dans les négociations du traité de Paris instituant la CECA', *Journal of European Integration History*, 14 (2), 2008, 7–33.

[59] Fritz, *Contribution à l'histoire de la CJUE*.

[60] See, for example, the 1952 'Avis' of three international law and government's legal advisers, Reuter (France), Ophüls (Germany) and Rossi (Italy) to the common parliamentary assembly which indicated the *ad hoc* nature of European law, halfway between international law and national law.

[61] Pescatore, 'Les travaux', 164–5.

after 1945 – the ECHR and the ECJ – drew heavily on the statute, often copy-pasting entire sections of it.[62] The notion of independence was equally the foundation of the High Authority, especially for Monnet, as Wolfram Kaiser also shows in his article. It continued to be of crucial importance for the two communities created in 1957–8. All EC executives were in fact framed in a way similar to the League civil service. Members of the High Authority had to be both competent ('chosen on the grounds of their general competence', art. 9) and independent ('the members of the High Authority shall exercise their functions in complete independence, in the general interest of the Community', art. 9). Reuter coined the High Authority as an 'expert' and a 'referee' – a quasi-judicial definition not so different from what the ECJ looked like at the time for many scholars in the field.[63] As Reuter stated, 'in the economic system set up by the Schuman Plan, the High authority is in part a sort of economic judge in charge of monitoring the implementation of the rules of the game'. In the end, no matter whether in judicial or bureaucratic matters, independence provided the foundational ground: 'how can one build Europe without Europeans without calling upon independent personalities?',[64] asked Reuter in an influential doctrinal piece on 'political power in the ECSC Treaty'.

A couple of months later, faced with the success of ECSC, when the Council of Europe started debating a general statute for 'specialised authorities' and pools, it did not object to Reuter's definition. For the moment a majority of members felt that it would be premature to request that a specialised authority be directed by a 'minister' or 'High Commissioner' as 'such a formula would only be acceptable if the Executive of the various Authorities were already grouped within a European government'. They nevertheless agreed that their members 'should be not only senior officials, but also statesmen, leading professional figures in the field concerned, and so on, chosen in such a way to assure the standing and competence of the institution'.[65] While the EEC Treaty backtracked somewhat on the notion of 'supranationality' after the backlash against it in France in particular during the heated debate about the European Defence Community, which had failed in the French Parliament in 1954, it affirmed that the Commissioners had to be selected on the 'ground of their general competence and European commitment from persons whose independence is beyond doubt' (art. 19).

[62] To state one international law professor, Jiri Malenovski, 'la CJCE, la CIJ, la CEDH ou le tribunal international du droit de la mer se sont largement inspirés, voire laissés guider, par le Statut de la Cour permanente de justice internationale et, plus particulièrement, par les règles relatives au statut de ses juges', in 'L'indépendance des juges internationaux', *Recueil des cours de La Haye*, 349 (2010), 9–276, here 36.

[63] Paul Reuter, *La Communauté économique du Charbon et de l'Acier* (Paris: Lgdj, 1953), 47.

[64] Ibid., 51.

[65] Margaretha A. M. Klompé, *Nature, caractéristiques et structure des Autorités Spécialisées et leurs liaisons avec le Conseil de l'Europe*, doc. 13, 5 May 1951, Commission des questions politiques et de la démocratie, Assemblée Parlementaire, available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-FR.asp?fileid=227&lang=FR (last visited 10 June 2016).

The Janus Face of European Statesmen

Moreover, the profile of this first generation of post-war European statesmen as members of the European executives or judges in the Court was strikingly similar to that of their League predecessors. Although, as we have seen, the group included few former League or UN officials, they had a strikingly similar combination of academic credentials in law or economics (PhDs, teaching positions, scholarly books, etc.) and political and bureaucratic connections.[66] Thus, Walter Hallstein and Andreas Donner, who were nominated presidents of the EC Commission and the ECJ in 1957, had their higher education, disciplinary training and scholarly credentials in law. While the newly set-up institutions initially had little authority of their own, these individuals drew many of their jurisdictional claims on European affairs from building transnational research networks and doctrinal work.[67] Hallstein, who liked to be addressed as professor,[68] typically combined the two key characteristics of the international statesman: having worked as state secretary in the German foreign ministry, he was actually a well-known and connected international private law professor, touring academic conferences and congresses during his years at the top of the Commission, publishing several doctrinal pieces on the (legal and political) nature of the EC and generally keeping in close touch with various scholarly communities.

Hallstein, Donner and others cooperated in defining the institutional projects for the Commission and the Court, insisting on their independence and the notion of objectivity and their greater ability compared to national politicians and diplomats to identify the real nature of the European project and what Monnet called the general interest. Over the years the privileged role that they claimed for themselves was rationalised through *ad hoc* theories of European (legal) integration.[69] For instance, the theory of the quasi-constitutional nature of the EC Treaties – a theory to which the Commission and the Court actively contributed – gave both institutions a specific mandate; a mandate that, crucially, did not derive directly from parliamentary majorities or national diplomacies.[70] Instead, it seemed to originate in

[66] Antonin Cohen, 'Ten Majestic Figures in Long Amaranth Robes: The Formation of the Court of Justice of the European Communities', *Revue française de science politique*, 60 (2010), 23–41.

[67] For an overview of the literature of this point, see Cécile Robert and Antoine Vauchez, 'L'Académie européenne. Savoirs, savants et experts dans le gouvernement de l'Europe', *Politix*, 89 (2010), 9–34.

[68] See Wilhelm Greve, 'The Lawyer as Diplomat', *Society of International Law Proceedings*, 54 (1960), 232–6.

[69] Stephanie Mudge and Antoine Vauchez, 'Building Europe on a Weak Field: Law, Economics and Scholarly Avatars in Transnational Politics', *American Journal of Sociology*, 118, 2 (2012), 449–92.

[70] For a classic example of these theoretical formalisations of the European Communities, see the highly influential doctrinal piece by ECJ judge Pierre Pescatore on the 'quadripartisme institutionnel'. In this seminal article he claimed that the specific rationale of the European political order could not be boiled down to the ternary principle of the 'separation of powers.' Instead, he argued that the four main institutions of the EC (the Commission, the Court, the Council and the Parliament) actually derived their legitimacy from the representation of four types of interests. While the Court and the Commission embodied supranational interests independent from Member States as they represented 'l'intérêt communautaire' and the interest of 'the treaties', the Council was in charge the interests of the governments and the European Parliament with that . . . 'the popular forces': Pierre Pescatore,

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both institutions' particular capacity to understand and foster Europe's long-term general interest through rational procedures that kept political short-termism at bay. These supranational statesmen defined rational foundations for their political claims: 'functional necessities', 'historical needs' and the 'legal logic' of the 'European project'. In doing so they crafted a supranational mandate for themselves which did not require electoral legitimation. In short, 'independence' (from national politicians and diplomats) and 'objectivity' (established through rational procedures and academic credentials) became key characteristics of European statesmen.

Insisting on the rational guidance of the European project was just one of two components as these leaders simultaneously claimed to be seasoned statesmen with extensive experience in international affairs. It is no surprise, then, that the statute of commissioners and judges in the EC Treaties remained almost as vague on office incompatibilities as the League statute of international civil servants and judges had been a few of decades earlier. Just as the 1920 Advisory Committee of Jurists had refrained from defining their required qualifications clearly, the drafters of the EC Treaties in 1951 and 1956–7 and the ECJ judges drafting their own internal rules refused to clarify who the European judges and commissioners would have to be and what sort of credentials they would need. The solution adopted by the EC Treaties and the ECJ's internal rules was almost copy-pasted from that agreed in 1920. In fact, professors, government officials with a law degree, politicians and lawyer-diplomats could be appointed as a judge at the ECJ. At the same time, the rules about incompatibility were relatively blurred allowing for the judge to play a large variety of roles during his or her ECJ mandate.

The debate about the case of French ECJ Judge Jacques Rueff in 1958, when the EEC Treaty entered into force, is particularly emblematic of the continuities from the interwar to the post-war period.[71] A top civil servant and well-known free market economist, Rueff had initially been appointed at the ECJ in 1952. When Charles de Gaulle returned to power in 1958 he called on Rueff to play a prominent role in the creation and work of the committee of experts charged in late 1958 to draw up a financial and monetary stabilisation plan for France, which was later adopted as the Rueff Plan. The ECJ judge became a prominent member of the Armand-Rueff committee in charge of analysing 'obstacles to economic expansion'.[72] Rueff was therefore at the same time an ECJ judge in Luxembourg and a very important government expert in Paris. While this dual appointment provoked some embarrassment at the ECJ, some members of the European Parliament (EP) began to denounce it as a conflict of interest: Marinus van der Goes van Naters, a Dutch socialist politician, lawyer and member of the EP, submitted a written question to the EEC Council of Ministers on 23 June 1959. He claimed the incompatibility

'L'exécutif communautaire. Justification du quadripartisme institué par les traités de Paris et de Rome', *Cahiers de droit européen*, 14, 4 (1978), 387–406.

[71] On the 'Rueff case', see also Antonin Cohen, 'Juge et expert. L'affaire Rueff et la codification des règles de la circulation internationale', *Critique internationale*, 59 (2013), 69–88.

[72] See Michel-Pierre Chélini, 'Le plan de stabilisation Pinay-Rueff 1958', *Revue d'histoire moderne et contemporaine*, 48 (2001), 102–23.

between the functions of judge at the ECJ and 'the very active role as chairman of a commission of experts mandated to make proposals to the government of a Member State as to measures to be taken by said State in economic and financial matters'.[73]

Revising its draft response which initially emphasised the fact that Rueff's expert work for the French government was 'purely occasional and therefore not a full time position', the Council ultimately gave a laconic response that de facto recognised the possibility of multiple mandates: 'the nature of Mr Rueff's activities does not fall under any of the bans or incompatibilities stipulated' in the ECJ statutes.[74] 'The higher interest of the Communities' – and, in this case, of one of its member states – appeared to be sufficient to justify the dual appointment which clearly diverged from prevailing national rules. A few years later, Donner, who had been the ECJ president during the 'Rueff case', also endorsed that view. He stated that in keeping his government functions in Paris, Rueff 'was giving to Europe the greatest service he could, that of helping the heart of Europe [read: the French economy] to sustain the effort demanded of it by a new era. He was continuously recalled to Paris to undertake duties as honourable as they were difficult.'[75] This tolerant attitude to additional professional activities was perhaps the price to pay to make the ECJ attractive when many individuals had declined appointments including the former leader of the French Mouvement Républicain Populaire and ex-minister Pierre-Henri Teitgen or Reuter.[76] But it also confirmed that one key component of the European statesmen's legitimacy remained to 'never lose sight of the public affairs of their country'.[77]

In other words, the model of professional excellency and legitimacy that emerged from the early years of the European Court of Justice was strikingly different from the ones that prevailed for *national* judges and public officials. In line with conceptions that had coalesced in Geneva in the early 1920s, European statesmen grounded their authority on their capacity to be both seasoned practitioners of political and administrative realms praised and a expert listened to by the major players of international affairs.

Conclusion

On the whole then, there is much more to the word 'independence' than just a legal toolbox of institutional techniques used to distance a given institution (and its

[73] Written question no. 27 of 23 June 1959, series of the Council of ministers, CM2/1959/442, Historical Archives of the European Communities in Florence.

[74] Reply of 25 July 1959 to question no. 27 submitted to the Council by Marinus Van der Goes van Naters of the European Parliamentary Assembly, AHCE, CM2/1959/442.

[75] 'Funeral oration in honour of Mr. Jacques Rueff given by judge A. M. Donner in 11 May 1978', in *Formal sittings of the CJEC. 1978 and 1979* (Luxembourg: Curia, 1979).

[76] See Condorelli-Braun, *Commissaires et juges.*

[77] 'Address delivered by the President of the Court of Justice, H. Kutscher, at the formal sitting of the Court on 29 Mar. 1979 on the occasion of the retirement of Judge Andreas M. Donner', *Formal Sittings of the Court of Justice 1978 and 1979* (Luxembourg: Official Journal of the EC, 1979), 18.

office holders) from political/governmental influences. This article has argued that ever the since the interwar period, the notion has been home to the invention of a particular model of international statesmanship. Charged with leading the new multilateral complex, the set of new positions created within the League of Nations emphasised independence and expertise as a key element enabling international organisations to perform their missions 'in the name of the international community'. A singular conception of independence was invented in this context, one that values the combination of expertise with direct experience and practical understanding of national political and administrative realms. Faced with the challenge of building new, partly supranational institutions, the drafters of the EC Treaties as well as the first EC office holders in the 1950s resorted to the same hybrid notion of 'independence', thus importing a grammar of political legitimacy that had crystallised in the 1920s.

Thereby, this article suggests a complementary explanation for the ubiquitous and pervasive presence of independent institutions in the context of the EU. While scholars have up to now mostly pointed out *ad hoc* explanations related to the intrinsically technical nature of European integration that called for a rise of technocrats, this contribution delineates an alternative line of inquiry, one that positions the EC in a longer historical trajectory, that of the international way of political legitimacy and its founding moment in the post-First World War period.

While there is much to be gained in considering the EC as the direct heir of Geneva's 'great experiment',[78] it should be said however that the 'constitutional turn' promoted by the Commission and Court in the mid-1960s gave the notion of 'independence' an unprecedented political saliency. The idea that the different EC treaties and communities constituted one unique *constitutional* order oriented towards the achievement of the 'European project' connected even more narrowly the notion of independence and that of government.[79] As guardians of the treaties, Europe's statesmen of independence, from the commissioners to the ECJ judges or the civil servants, could claim to have been granted an 'objective' and apolitical function: that of protecting and fulfilling the political promise of European integration enshrined in this constitutional structure against the pitfalls and shortcomings of partisan and member states' politics. While this definition of EU polity as deeply connected to the leadership of independent statesmen (be they judges, commissioners or, more recently, central bankers) has encountered repeated resistances and political backlashes, it has remained so far the seemingly inescapable political formula when it comes to fabricate authentically 'European' institutions able to provide (political and national) impartiality and rational guidance in running European affairs.

[78] Egon Ranshofen-Wertheimer, '*The International Secretariat: A Great Experiment in International Administration*'.

[79] On this broad historical process of transformation of the European Communities, see Antoine Vauchez, *Brokering Europe: Euro-lawyers and the Making of a Transnational Polity* (Cambridge: Cambridge University Press, 2015).