CENTRAL EUROPEAN UNIVERSITY
Department of Legal Studies
and
Summer University

&

TOTAL LAW™

Central European University Diploma
in
Advanced European Union Legal Practice
The European Union and the Individual

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Budapest

Course Directors:

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General presentation

The 2011 Advanced Course in European Union Legal Practice is offered jointly by the Department of Legal Studies and Summer University of Central European University (CEU), in cooperation with the Total Law™ Team. For the seventh consecutive year, the program brings together for 2 weeks around 50 participants from all over the world and from diverse backgrounds, i.e. law students near completion of their law degree, law graduates and legal professionals, advanced students or practitioners in other connected disciplines with special interest and expertise in EU law, who are seeking further credentials and experience in the field. The 2011 edition will implement for the very first time the completely new and revamped Total Law program and we are very excited to take on this new adventure with the Summer School participants.

Course Description

This ***advanced course*** focuses on the practice of European Union Law. Participants receive hands-on insider analysis about the functioning of the European Union. The program is designed to combine seminars on different subjects as well as workshops supporting the topics addressed in these seminars or some aspects thereof. The Total Law™ Method constitutes the backbone of the program and gives it its exceptional flavor.

The Total Law™ teaching team is a unique blend of well-known academics and senior officials working in European Union institutions, who have also written widely in the field. The particular composition of the team gives the seminar and the workshop both that advanced knowledge and the insider view that is so valuable for the participants.

Since 2005 the course has attracted participants from over 30 countries, including EU member states, candidate countries, the US, Australia, Brazil, India, Singapore, etc.

The Total Law™ method, developed by the Jean Monnet Center at the New York University School of Law, believes in contextualization: situating a legal controversy, a court decision, a Treaty provision, a Directive or a Regulation in its economic, social and political context.

The aim is not to make participants amateur economists or political scientists, but rather to give them "another perspective" on the problem. Only rigorous technical expertise and the ability to contextualize can adequately respond to the most challenging questions. Indeed, rigorous technical expertise is not possible without the ability to contextualize. For example, the very hermeneutics of the Court, its method of interpretation, its biases in reading the facts of a case and its ideological proclivities in giving meaning to legal texts as applied to the factual matrices before it, are all determined by contextual considerations. The "cultural" and the "professional" are, thus, inextricably intertwined. Lawyers who believe that it is possible

to be wholly "professional" without understanding the contextual setting of jurisprudence - who claim that 'all that contextual stuff is not law' - sadly delude themselves.

The course will improve the participants' skills by explaining how economic, social and political contexts shape the particular legal problem addressed and impact the thinking about its legal solution. The program will equip participants with the ability to understand the economic, social and political consequences of different legal outcomes. The discipline is Law. The focus is Law. But the premise is that Law cannot be understood, nor practiced professionally and competently, without understanding its broader contexts. Furthermore, this specificity of the Total Law™ method allows for the program to be appealing and enriching to participants coming from different disciplines.

The Total Law™ approach was designed jointly by all members of the team so as to make the parts fit into a coherent whole and to ensure that the different methodological and intellectual approaches practiced in the course all add up so that the whole is greater than the parts. This approach is also used at other universities worldwide.

The Total Law™ approach is based on Pro-active learning. Lecturing will be limited. We reject the Magisterial Frontal Lecture format of teaching. There will be some lecturing but most teaching will be interactive, "Socratic" and dialogical.

Participant engagement is indispensable if we are to live up to the promise of attaining the finest teaching and learning experience commensurate with the intellectual ability of both teachers and participants. Thus, the program requires scrupulous preparation ahead of the class of the reading assignments. Scrupulous preparation does not simply mean a cursory reading of a text with a yellow highlighter arbitrary applied to a sentence here or there, which participants may think looks important. Each text should be read once, reflected upon, read again (only then should the highlighter come out) and discussed with other participants of the class if possible. Total Law™ participants will have assigned at the beginning of the course the preparation for each class, it will be systematically the following work: "pro-active" reading of the unit specific to the topic of the class and answering the questions included in the unit.

The *Teaching Materials* thus constitute a key element of the Total Law™ method. They correspond to specific teaching units, each corresponding to a specific theme addressed during class. They include case law, scholar work and questions and will be made available at the beginning of June 2011 via the e-learning site of the Summer University.

Team Teaching is also a core feature of the advanced course offered.

Gone are the days where any one person could claim to be an "expert" in the law of the European Union. Anyone making such a claim is more likely to be a 'Jack of all trades and Master of none.' In fact, most professors and practitioners focus these days on only parts of the subject. That is inevitable.

So today, one is forced to choose between superficial 'survey courses' or deep specialized courses which, however, taken together bring about a fragmentation in understanding of the systemic and synthetic features of European law. There is no perfect solution to this problem. But we have done our best. This course is taught by a team. In putting together the team, Professor Weiler has eschewed the Old and Famous and have preferred the Young and Famous or the Young and to be Famous. Experience counts for an awful lot, but it is surprising how little intellectual development there is once one starts teaching. Sure, a teacher will learn new cases, study new treaties etc. But how many will be willing or able to revisit the very way they understand law? That is why he preferred to build this course around a

group of scholars who are at the very cutting edge of European legal education. He has also chosen them because of the different experiences they will bring to the classroom. Different legal families, different national backgrounds, different professional experiences (in academia, in government, in the Institutions of the European Union) and different approaches to the problems at hand. In this respect participants will enjoy the fruits of deep and distinct specializations.

THE CEU TEAM

Marie-Pierre Granger (DEA, PHD) [Course Director] currently works as Associate Professor at the Department of Public Policy of Central European University in Budapest (Hungary). Prior to that, she was an Assistant Professor at CEU Legal Studies Department, and Lecturer at the University of Exeter (UK). She also teaches short courses in various European universities. Her teaching and research expertise lies in the fields of EU law, European integration and governance, judicial decision-making, and comparative constitutional and administrative law. She is the editor of the Francovich follow-up dossier on State liability under EU law, available at http://www.francovich.eu.

Petra Bárd [Guest lecturer] is Head of the Criminal Law Department at the National Institute of Criminology and a Member of the Center for Ethics and Law in Biomedicine (CELAB) established at the Central European University where she participates in European Union financed research projects mainly in the field of biobanks. She lectures EU law, EU human rights law and EU constitutional law at the Legal Studies Department of the Central European University and the Ecole supérieure des sciences commerciale d'Angers (ESSCA). She is Vice-Chairperson of the think tank Hungarian Europe Society. In her writings she primarily addresses European constitutionalism, human rights in the European Union, the rights of persons living with disabilities, and judicial and police cooperation in criminal matters.

THE TOTAL LAW™ TEAM

Joseph H.H. Weiler [Course director] is University Professor, Joseph Straus Professor of Law and European Union Jean Monnet Chair at NYU School of Law. He serves as Director of The Straus Institute for the Advanced Study of Law & Justice, The Tikvah Center for Law & Jewish Civilization, and The Jean Monnet Center for International and Regional Economic Law and Justice. He is also Director of the J.S.D. Program at the Law School. Prior to his NYU appointment he was the Manley Hudson Professor of Law and Jean Monnet Chair at Harvard University. He is a Fellow of the American Academy of Arts and Sciences. He is a WTO and NAFTA Panel Member. He is a founding editor of the *European Journal of International Law,* of the *European Law Journal* and of the *World Trade Review.* He writes in the fields of International Law, the Law of the European Union, and Comparative Constitutional Law.

José M. de Areilza is Professor of European Union Law and Dean of IE Law School in Madrid, Spain. Between 1996 and 2000 he was Advisor on European Affairs at the Spanish Prime Minister's Office. During 2002, he advised the Spanish Government Representative at the European Convention. His research focuses on European institutions, flexibility and EU-Member States competences and he has published extensively on these issues. He is the Editor of the weblog BlogEuropa.eu and a Member of the Board of Directors of the Madrid

Bar Association. He has been a Visiting Professor at William & Mary School of Law in Williamsburg, USA. In 2007 he was awarded a Jean Monnet Chair and in 2009 he became President of the Center for European Studies at IE University.

Kieran St C. Bradley is Director of Administrative and Financial Law of the European Parliament Legal Service. He has previously served as a *référendaire* at the European Court of Justice, and as an administrator on the secretariat of the European Parliament's Committee on Legal Affairs. In Spring 2000, he was the first 'Distinguished Lecturer on European Law' at Harvard Law School, and he has also taught courses on EC law at various other universities and higher level educational institutes, such as the Autonomous University of Barcelona, the East-West Forum (Academy of European Law, Fiesole), the College of Europe (Natolin Campus, Warsaw). He has also taught at the National University of Singapore, at the University of Melbourne, Australia and since 2005 at the Central European University in Budapest, Hungary. In 2003-2004, he served on both groups of legal experts advising on the drafting of the Constitution for Europe. He has published extensively in a number of areas of EC law, particularly institutional law.

Karine Caunes is Jean Monnet Research Fellow within the Center for International and Regional Economic Law & Justice at NYU School of Law. She is Coordinator of the Total Law program. She holds a Doctorate in Law from the European University Institute (Florence) and is specialized in legal theory and EU law, fields in which she has published several articles. She taught in various academic institutions such as Sciences Po Paris, the European Inter-University Center for Human Rights and Democratization in Venise, the University of Paris Ouest Nanterre La Défense, the University of Ljubljana, and the European University Institute where she was research assistant to Professor Wojciech Sadurski. She was also Visiting Scholar at Columbia University. She participated to various research projects mainly on European industrial relations and social affairs and on the relationship between the European Union and the Member States. She was consultant for the French government during the French presidency of the European Union. Lastly, she was the founding mother of the *European Journal of Legal Studies* and is now *Associate Editor of the European Journal of International Law.*

Damian Chalmers is Professor and Jean Monnet Chair in EU law at the London School of Economics and Political Science. Prior to that he was a lecturer at the University of Liverpool, and was for 4 years on the Management Committee of the AIRE Centre. He is currently head of the European Institute at the *London School of Economics and Political Science*. He was formerly editor of the *European Law Review* and *EU Jurist*. He has over forty publications and is the author (with G. Monti & G. Davies) of European Union Law (2010, 2nd Edition, CUP).

Miguel Poiares Maduro is Professor and Director of the Global Governance Programme at the European University Institute and Visiting Professor at Yale Law School. He was Advocate General at the European Court of Justice (October 2003- October 2009). He has taught at many other institutions in a visiting capacity, including the Centro de Estudios Constitucionales (Madrid), Chicago Law School and London School of Economics. Until October of 2003 he was a Professor at the Law School of the Universidade Nova de Lisboa with whom he still collaborates. He is also an external Professor at the College of Europe. He

is a Doctor of Laws by the European University Institute (Florence) and was the first winner of the Rowe and Maw Prize and winner of the Prize Obiettivo Europa (for the best PhD thesis at the EUI). He has been Fulbright Visiting Research Scholar at Harvard Law School. He is co-editor with Francis Snyder of the Hart Publishers Series Studies in European Law and Integration. He belongs to the editorial or advisory board of several law journals, including the European Law Journal and the Common Market Law Review. He has published articles, in several languages, on issues of EU law, constitutional law, human rights law and international economic law. He has been honoured by the President of the Portuguese Republic with the Order of Sant'Iago da Espada for literary, scientific and artistic merit and in 2010 he was awarded the Gulbenkian Science Prize.

Imola Streho [Course director] is Associate Professor at Sciences Po, Paris, where she is Program Director of the Master European Affairs. From 2002 till 2008, she was a *référendaire* at the European Court of Justice in Luxembourg. She is a Doctor of Laws by the Law Faculty of the University of Paris 2 (Panthéon-Assas) where she taught from 1999 to 2010 at the *Institut des Hautes Etudes Internationales.* She has held visiting appointments at the College of Europe (Natolin campus), the Central European University in Budapest, Instituto Empresa Law School in Madrid, Catolica University Law School in Lisbon, the National University of Singapore and the University of Melbourne. From 2000 to 2002, she was a visiting researcher at Harvard Law School and NYU School of Law where she was the Executive Director of its Jean Monnet Center. She holds a diploma from the College of Europe. She writes in the field of EU law.

The 2011 edition of the Advanced European Union Legal Practice will take place from July 4 till July 16, 2011.

The examination is scheduled for Saturday, July 16, 2011 (until 2 pm)

Enrollment Options

Option 1. CEU Diploma in Advanced European Legal Practice

Law students near completion of their law degree, law graduates and legal professionals who, at the time of enrollment, register for the examination, will receive a CEU Certificate of Participation, and, if they pass the examinations, a CEU Diploma in Advanced European Union Legal Practice and a CEU transcript with transferable credits. Students are advised to check on credit transferability at their home institution prior to applying to this program.

Option 2. CEU Certificate of Participation

Law students near completion of their law degree, law graduates and legal professionals, who choose, at the time of enrollment, not to take the examination, will receive a Certificate of Participation. Such participants will not receive credits.

This summer course is financed through tuition fees (790 EUR), and will not be able to offer any scholarships or tuition waivers. (An Early Bird discount fee of 730 EUR is available for tuition payment made before April 30, 2011.) The fee includes participation in the summer course, some administrative costs, an orientation program and welcome pack, access to the

CEU Library and IT facilities, reading materials, printing quota, and some social activities. Participants are also expected to cover their travel and accommodation expenses.

* For CEU Legal Studies Students ONLY: A number of **currently enrolled** CEU Legal Studies students (Comparative Constitutional Law and Human Rights streams only), who have completed 5 CEU Legal Studies credits related to EU law during the course of academic year **2010-2011**, will be eligible to attend the Summer course with a tuition waiver, and if they pass the final exam, to graduate with a 'CEU LLM/MA in Human Rights/Comparative Constitutional Law with specialization in European Law'. Note that the regular CEU stipends do not cover the selected CEU students' participation in the summer course. Those must provide for their own accommodation and subsistence expense for the duration of the course. For further information, contact Prof. Granger, at grangerm@ceu.hu.

COURSE SYLLABUS

The 2011 edition will focus on the *European Union and the individual*. This transversal theme will ensure the coherence of the program and will be tackled through the five main dimensions of European integration: *The Political, The Law, Community, The Market, the World*. These are the five main clusters of the new Total Law program which will be implemented for the very first time at the CEU Summer University.

Each of the five Total Law lecturers for this year: Prof. Weiler, Prof. Maduro, Prof. Chalmers, Dr. Caunes and Mr. Bradley, will focus on one of these clusters and teach two morning sessions from 9.30am till 1pm. Please find a general description of the clusters and the challenges they aim to address below. All the teaching materials, including case law, scholar work and questions, will be made available at the beginning of June 2011 via the e-learning site of the Summer University.

Main Course Clusters

1. The Political

The European Union has its own political system with a stable set of legislative, executive and judicial institutions. By the end of 2009 this political system had just under 8,000 laws on its books and its judiciary had handled over 15,000 cases. Yet what opportunities and challenges does this pose? Are we to approach this political system in the same way we approach national political systems and, therefore, by the standards of domestic public law? What model of democracy is suitable for it? What sort of political communities should it serve? How is it to relate to national political systems, their processes of self-government and their traditions? Importantly, what is the relationship of EU law to this political system? How is it to constrain it and regulate it, instilling values central to good government and human dignity whilst also imposing the appropriate checks and balances? Is EU law to be seen as something that civilises the rapaciousness of EU politics or is it to be seen in a more ambivalent light that enables and constitutes unacceptable political practices? What is the particular relationship of political actors to EU law? Is it something that is susceptible to manipulation and can therefore lead to unintended political consequences?

The Total Law approach to addressing these questions considers a number of dimensions.

First, the European Union political system cannot be understood in abstract, ahistorical terms. We examine the historical context that shaped the evolution of its institutions, the ideologies and assumptions behind these institutions, their particular powers and decision-making processes. We also look at the wider justifications for this political system, in particular the visions of political community underpinning different understandings of the institutions and the institutional balance.

Secondly, the relationship between the European Union political system and the remit of its policies is explored.. This is, on the one hand, a question about the constraints on its power and its relationship to national political systems: the circumstances when power should be centralised for the European project at the possible expense of local self-government and tradition. It also goes, however, to how we characterise the European Union. A lack of competencies in redistributive, fiscal and cultural policies shapes the values and ties we can expect it to realise. It also goes to how we characterise it as a political system. Federal systems are evaluated by the range and quality of law-making powers enjoyed by federal authorities at the expense of local authorities. Does it make sense to compare the European Union to federal systems and, if so, to what type of federation.

Thirdly, we look at the power held by non-majoritarian institutions in this system. The holding of office and competition for office lie at the heart of politics and democratic politics respectively. If we were to think of office as the government of the European Union, who would sit in this government, how would they be accountable and how could they be kicked out? We look at how governmental roles are dispersed between different institutional actors and the consequences of this fragmentation. We also look at how some of the central powers enjoyed by governments within political systems are discharged by the European Union: notably agenda-setting and quasi-legislation. Agenda-setting is deciding what law-makers decide. A powerful role which is traditionally enjoyed by election winners, this is not the case in the European Union. We look at the other processes used to structure and legitimate agenda-setting within the European Union. Quasi-legislation is particularly rife within the European Union. We look at how this has led to fine distinctions between delegated and implementing legislation, a burgeoning underworld of supranational administration and tensions between this and representative institutions.

Fourthly, politics is concerned with law-making. European Union law-making has been marked in recent years by a move towards a bicameral system, comparable to that in Germany and the United States, where two legislative institutions, the Council and the Parliament, have similar law-making power. We look at the extent to which comparison is worthwhile or whether the Union situation is dominated by its own particular intricacies and the implications of these. Another feature is the growth of informal mechanisms to regulate behaviour within the institutions and between the institutions, most notably the emergence of the trialogue. We look at the effect of these on the balance of power and on EU democracy. The final feature to emerge in recent years is the emergence of national parliaments as both channels of influences for EU law-making and as constraints on the legislative process. We will look at the effectiveness of this and its implications for how we characterise the EU law-making process.

The final dominant feature of any benign political system is a commitment to political virtue and democracy. Formally, the Union commits itself to a number of forms of democracy. However, its practices have come under scathing attack with the German Federal Court not believing it to be a representative democracy. We consider what model(s) of democracy should be sought by the European Union: whether it should replicate national models of democracy or whether it is desirable for it to commit itself to a distinct model more strongly built around ideas of deliberation, participation and association, and, if so, what reforms would need to be made to its current practices and procedures.

2. *The Law*

The Union has its own legal order. However, what does it mean to talk of a European Union legal system which is only partial in scope, and must complement and compete with national and international legal systems? What mechanisms does it deploy to build up and safeguard its own authority and autonomy and establish its concepts of legal subjectivity? Without a judicial system of its order, what system of administration of justice is used to secure this legal order? How does it operate in a multi-level legal system that can neither be adequate described as federal or international? Is it possible to identify an underpinning constitutional settlement which serves to justify and direct this system? Total Law considers these questions under the umbrella of a number of themes.

The first is that of constitutional pluralism. The twin pillars of the EU legal order are sovereignty and constitutionalism. If both the EU law and national legal orders claim sovereignty these assertions do not take place within a vacuum but within a framework where each invokes the language of constitutionalism to justify its authority and to place curbs on the other legal order. We look at how this has led to some of the central doctrines of the EU law, the patterns of competition and cooperation between the Court of Justice and national constitutional courts. It also considers what implications it has for how we understand sovereignty today and whether the relationship has to a dominant strand of European Constitutional Reason that structures both EU law and national law but also transcends them.

The second theme is the hermeneutics of EU Law. As an autonomous legal order, EU law must, on the one hand, reason like a legal order but, on the other, do so in its own distinct way. We look at the patterns of reasoning and interpretation identified with EU law. It compares them with those in comparative, international and constitutional law. It considers not only the legitimacy of the reasoning deployed in EU law but also what it tells us about the 'nature of the beast', namely how we are identify the EU legal order: be it as quasi-federal, composite or international.

The third theme goes to the limits of EU law. Formally, this addresses the competences of the Union as well as the subsidiarity principle, which goes to when, even acting within its own powers, the Union legislature should legislate. However, at a more deep-seated level, it goes to the constitution of EU law, and why EU law has been allowed to regulate certain issues but not others. This touches on the authority of EU law. As challenges to EU law will always involve some practical dispute, this theme looks at those fields where national courts and national governments are particularly sensitive about self-government. It considers whether this goes to the type of ties and ideas of community that are associated with the nation State, and, if this is so, what place that grants the Union to develop its own set of ties and justifications for intervention.

The fourth theme considers the system of administration of Justice within EU Law. All legal orders have to be administered. However, whilst the Union has courts of its own, it does not have its own judicial order. Instead, it has to rely, in part, for its administration on national courts. This begs questions about the division of duties between national courts and the Union Courts and the formal handling of the relationship, most notably through the preliminary reference procedure. However, the administration of justice is not to be viewed simply as a formal, technical process. There are questions that go to the quality of the administration of EU law. Who are the judges that administer, develop and interpret EU law: their composition, modus operandi, and accountability? There is, finally, the more general issue of whether EU law's system of administration of justice delivers the benefits in term of effective and efficient protection of citizens' rights that should be expected from it.

The final theme is that of the autonomy of EU law. This goes most specifically not just to EU law's relationship with national law and domestic political institutions but also to its relationship with the Union's own political institutions. This theme focuses particularly therefore on the issue of judicial review and what mechanisms are available to ensure that at both a domestic and at a Union level political actors are governed by and responsive to the rule of law.

3. Community

EU law is not simply a formal institution. It creates ties between citizens and delivers benefits for particular groups. The idea of community lies, therefore, at the heart of EU law. This has been made particularly explicit with the establishment both of EU citizenship and of the area of freedom, security and justice. EU law therefore provides for membership rights for EU nationals within domestic societies as well as governing equal opportunities, immigration and asylum, and criminal justice. However, what form of community or communities does it serve to institute? In particular, does it make sense to associate EU law with the establishment or presence of a European community or communities, and, if so, what form do these take? What is the basis for inclusion in these communities and how does EU law deal with those who are excluded? Alongside this, EU law can also disrupt or destroy communities. Most obviously, concerns are raised about the forces of the single market and economic liberalisation destroying local communities? How does EU law deal with this? Should it, moreover, be deferential to the idea of national or local community? There may be many types of local community which are highly egregious (e.g. racist or xenophobic communities). Should it be the job of EU law to curtail these?

We address, first, how the question of community is treated generally in EU law: whether it is the basis for the Union project and, if so, what type of community EU law should seek to institute. We look at whether the idea of community should be a single or plural one and whether it should replicate the national model (if there is such a model) or not. It looks also at its relationship to ideas of national community, and whether it is precisely the Union's difference that should it as a community so that it stands alongside the national one but also seeks to curb the latter's pathologies and excesses. These questions will be treated in general terms but they will also be analysed through the prism of EU citizenship. For the interpretation of this institution more than any other embodies EU law's possibilities and tensions here.

The second theme is the relationship between EU law and cosmopolitanism. If EU law is confined to a particular part of the world, it is also one of the most developed systems of international law which has granted unprecedented rights and standing to individuals in transnational settings. This has led to arguments that EU law is an expression of cosmopolitanism which should be dedicated to development of fundamental rights and solidarity. Through analysis of EU fundamental rights law and its relationship with citizenship, Total Law considers this and, even if this were not the case, the relationship between EU law ideas of community and broader notions of cosmopolitanism.

The third theme considers how EU law treats the question of marginalisation. An acid test of community is the quality of its treatment of outsiders. Most explicitly, these are non EU nationals. However, EU law characterises these in different ways. We explore EU law's treatment, therefore, of economic migrants, asylum seekers and refugees. However, there are also citizens who are formally members of a community but are, in practice, strongly marginalised within it, and denied many of its benefits. EU equal opportunities law has been at the forefront of Union attempts to grasp this nettle. Total Law looks at how it has

diversified beyond gender to include other headings such as race and ethnicity, religion and disability and at how EU opportunities law is identifying and countering marginalisation.

The fourth theme considered is the spatial dimension of community. Many communities are associated with a particular territory. The treatment of particular regions is therefore often associated with the treatment of particular communities. EU law's relationship with regionalism is therefore considered. To what it helps develop it separate from the nation State and to what extent it curbs self-government.

The final theme to be addressed is that of new forms of community. As new technologies emerge, this generates both new forms of tie (eg virtual community) and presents challenges for existing traditions. The relationship between community and EU law is a dynamic one. Using the example of data protection, Total Law considers to what extent traditional concepts of EU law can be used to support and regulate these communities and to what extent approaches have to start anew.

4. The Market

The idea of the market sits at the heart of the European Union. The central goal of the Treaty of Rome in 1957 was realisation of the common market. A similar project, the internal market, lay at the heart of the Single European Act in 1986. The single market still accounts for many of the Court of Justice's seminal judgments, and a dominant part of the EU's legislation: accounting for nearly 70% of its Directives. However, the single market cannot be seen free from its political implications. Market-making projects, be it the Zollverein in Germany or the commerce clause in the United States, have been central to stories of political integration. Law enacted to institute the single market both provide the justification for much of Union government and restrict local fiscal and regulatory capacity. The market, moreover, is an ideologically charged institution. It raises questions of social justice, the protection of public goods, such as the environment or public health. How are these tensions managed? A feature of markets, also, is that they create risks where EU law has deal with future uncertainties. How does EU law confront challenges where it is impossible to know a priori the consequences of action or inaction.

The first theme is the market and private autonomy. Economic freedoms - be they free movement of goods, workers, capital, services or establishment - grant private rights. There is, most notably, the right to trade between Member States but they also grant, albeit in a more indirect and limited way, a freedom to engage in economic activities from disproportionate public intervention. They impact, therefore, on national regulatory and fiscal autonomy, and how States can govern and tax. We explore this balance, the possible justifications for why different approaches are applied in different fields (e.g. tax and regulation) and their effect on States' capacity to protect non-market goods.

The second theme is that of markets and power. A perennial critique of markets is that they empower parties in asymmetric ways – rewarding those who are already powerful and marginalising those who are already weak. We look at the extent to which this is true and also whether EU law in this field can be seen as an attempt to constrain both State and private power and their abuses. In relation to the State we look at it in the context of the economic freedoms and EU State aids. We use EU competition law to consider the case of private parties. This is most explicit in EU law's regulation of monopolies, mergers and oligopolies but this theme looks at the extent to which it pervades EU law's approach to other anti-competitive practices.

Thirdly, we address the ideologies of the Single Market. Concerns about the economic liberalism of the single market have been particularly acute with regard to its effects on social rights. This theme addresses the relationship between the single market and the extent to which these are threatened by the single market project, but it also considers the vision of market citizenship projected by the single market whereby identification with the European Union is tied to the material benefits produced by it. It asked whether this is a sufficiently strong vision of the Human Condition to legitimate the Union.

The fourth theme draws on the insight that markets are too unstable to operate in a legislative vacuum. They require rules of the game to set in play stable market relations and institutions to govern these relations. It is for this reason that the Single Market has generated such significant legislation. These legislative regimes generate their issues. They raise issues over whether the regulation is too dense or too weak. They necessarily advance the competitive interests of some whilst disadvantaging others. They empower new actors such as regulatory agencies or standardisation bodies to take legally significant decisions. They draw their own balance between market benefits and protection of non-market goods. This theme therefore considers the main forms of regime for governing the single market: mutual accommodation; Union legislation; standardisation and pan Union agencies. It considers the benefits and challenges of each in the light of these contexts.

The fifth theme looks at the relationship between EU market law and risk taking the financial sector as a case study. A feature of markets is that they produce risks both in relation to the market place itself and in regard to non-market goods such as protection of health, the environment or the consumer. The uncertainty of these poses particular challenges for EU market regulation. This field looks at how EU single market identifies risk, how it responds when these ideas of risk are challenged, and what happens when its assumptions fail. It looks, in particular, at the relationship between market norms and expertise, the growth of regulatory cooperation and the relationship between commercial interests and the technical norms governing these fields.

5. The World

A capacity to enter international relations with States has historically been seen as central to Statehood. What does it mean, therefore, for the European Union to have its own foreign policy when it does not have many of the institutions and instruments traditionally associated with a foreign policy, and when Member States jealously guard their own foreign policy competencies? What does such a foreign policy, in turn, mean for the Member States' own foreign policies? What does it tell us about the European Union's identity, particularly its projection on the international stage? Alongside this, if the European Union's own domestic politics affects the shape and nature of its foreign policy, the Union's web of external regimes and commitments also impacts internally, shaping citizens' rights and the Union's own system of checks and balances. Total Law considers these issues under the umbrella of a number of themes.

First, we look at the Union's external competencies. We consider why it has deeply institutionalised and developed competencies in certain fields such as commercial policy or fisheries but weaker capacities in other fields such as defence policy. This is a formal question but it also goes to the rationale and mission for the Union's external policies. We consider whether the Union foreign policy is there simply to safeguard and enable exercise of the Union's domestic competencies, whether it exists to augment the Union's capacity in some further way, or whether it is there to put forward a particular vision based around European security and European values.

Secondly, we compare the Union's foreign policy with that of other non-unitary actors where central and local actors have to develop foreign policies in tandem. We compare this against a number of dimensions. These comprise the remit of the Union's competence and its power of external representation compared to those of States; the extent to which the present of a Union external competence pre-empts or limits that of a national competence and capacity; and finally the effect of a Union measure or commitment in this field on the internal division of powers between the Union and the Member States. We consider whether this allows us to know a little more about the Union's identity, in particular whether it should be seen and measured as an international organisation or more as a federal system, and, if the latter, what sort of federal system.

Thirdly, we consider the under-world of Union's external relations which constitute its dynamics as an international actor. We look at the systems of committees, representative processes and institutional relations that allow the Union to build up positions in international organisations and negotiations both in its own right and alongside those of the Member States. We look at some of the central international fora where the Union is prominent, in particular the WTO, the G20 and the Copenhagen Climate Change negotiations. We consider the implications of this for non-EU States; the position of the EU when it must work alongside national governments; the position of national governments within the Union processes; and the institutional checks and balances.

Fourthly, taking the example of the WTO, we consider the position of the Union as both a model and as an obstacle to multilateralism. We will therefore compare the WTO regime on services with that within the EU. The different levels of liberalisation will be compared as will the extent to which similar legal language is deployed. However, alongside this, we will look at how and when the EU flouts WTO law.

Finally, we will consider, using the example of the SWIFT agreement, the impact of EU external relations law on Union citizens and on domestic and Union democratic processes. We will ask whether, by building new transnational regimes between the Union and non EU States, institutional arrangements are being created which have significant democratic shortcomings. We will, in particular, consider the place of representative institutions, both the European Parliament and national parliaments, within these processes. We will also look at the extent to which other forms of democratic legitimation, notably citizen participation and democratic deliberation, are present in Union foreign policy.