The Making of European Law: Exploring the Life and Work of Michel Gaudet†

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ABSTRACT
This article studies the emergence of European law by exploring the life and career of Michel Gaudet, a French jurist who, behind the scene and out of the political spotlight, played a central role in fostering the European legal order in the 1950s and 1960s. As director at the legal service of the European Communities executives, Gaudet significantly contributed to the legal revolution that quasi-constitutionalized the European Treaties in the mid-1960s. Yet, he remains one of the least known figures of the early history of the European integration. Relying on his rich personal archives and on interviews with members of his family, this article investigates his personal and professional life experiences, with the aim of understanding how these experiences shaped his ideas, and influenced his thinking and actions in the legal field. This allows us to better understand the background and ideological outlook of one of the most influential figures behind the making of the European legal order, and consequently the intellectual roots of this legal transformation of Europe. It also affords us a unique glimpse into the social and intellectual world of the first generation of civil servants who shaped the new European institutions in the 1950s and 1960s.

INTRODUCTION
At the end of the summer of 1952, a little-known jurist from the French Conseil d’État left the office of Jean Monnet somewhat startled. This jurist was Michel Gaudet. Recommended to the new president of the High Authority (HA) by his friend and colleague from the Conseil d’État, Maurice Lagrange, the 37 year old Gaudet had immediately fallen under the spell of the man, who over the last two years had been busy putting Europe onto an uncharted path with the European Coal and Steel Community (ECSC). Monnet, for his part, was less impressed by Gaudet,

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† This article has a long history since its first draft in 2011. We have benefited tremendously from the comments of Wolfram Kaiser, Antonin Cohen, Antoine Vauchez, Mikael Rask Madsen, Bill Davies, Alexandre Bernier, Ann-Christina Knudsen, Alexandra Kemmerer and Karen-Gram-Skjoldager. But most importantly, our utmost sincere thanks go to Michel Gaudet’s family members, who opened the doors of their summer house, Saragosse, to us in August 2012 in order to discuss the legacy of their father and grandfather. Their hospitality, openness and spirit were truly remarkable and greatly facilitated the work that led to this article.

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who had a youthful look and manner about him that did not seem adequate for a position of legal adviser at the HA. Nevertheless, two weeks later, he hired Gaudet and the French jurist moved with his family to the small town of Luxembourg.

Despite these timid beginnings, Gaudet soon became a central figure in the HA’s Legal Service and later served as director-general of the Legal Service of the Commission of the European Communities (EC) from 1958 to 1969. During this period, the legal order of the ECSC and the EC was established, and Gaudet stood as a crucial player behind the successful attempt to define European law as something fundamentally different from international law, which was widely considered inefficient and moribund in the wake of the Cold War. On the basis of two key doctrines that gave European legal norms direct effect inside the national legal orders and primacy above national legal norms (launched in two seminal judgments by the European Court of Justice (ECJ) in respectively 1963 and 1964), the European legal order was instead designed to fit an expected federalisation of the EC. The role of Gaudet and of the Legal Service in the history of European integration has long remained overlooked. However, recent sociological and historical research has explored the professional role of Gaudet in the ECSC and the EC. Yet, little is known about the personal journey and broader legal thinking of an individual, who in the shadow of more prominent political figures, crucially contributed to the legal foundations of what today has become the European Union.

This article, in a biographical study, explores how the different experiences that shaped the life and career of Michel Gaudet influenced his thinking and actions in the legal field. This allows us to better understand the ideas and ideological outlook of one of the most influential figures behind the making of the European legal order and,

1 Michel Gaudet, ‘Un regard de Jean Monnet’ in Témoignages à la mémoire de Monnet (Fondation Jean Monnet pour l’Europe 1989). According to Michel Gaudet’s recollection, this meeting took place in late August; however, the diary of his wife, Françoise Gaudet, places the encounter on 27 September (Diary of Françoise Gaudet (on file with the Gaudet family)).
2 Gaudet was appointed legal advisor of the High Authority’s Legal Service on 4 November 1952. The legal service of the HA did not have a director but worked instead as a team. See Gérard Bossuat, Interview with Michel Gaudet (10-26 January 1998), HAEU INT 603 [this interview and all the HAEU INT interviews referred to in this article are part of the Historical Archives of the European Union’s Oral History collection and are available at <http://archives.eui.eu/en/oral_history/#AllInterviews>] and Note sur l’organisation du Service Juridique (15 May 1953), Historical Archives of the European Commission [HAC], CEAB 1.000969. Once the Treaties of Rome were signed, one common Legal Service was established for the European Communities’ executives, and structured into three branches. Michel Gaudet became director (term used in 1959) or director-general (term used from 1960 onward) of the European Economic Community (EEC) branch while Robert Krawielicki took charge of the ECSC branch and Theo Vogelaar of the Euratom branch. In 1967, following the merger of the EC’s executives, the three branches of the Legal Service were merged and placed under Gaudet’s leadership, until his resignation in 1969. See Commission Européenne, Secrétariat Général, Haute Autorité CECA : inventaire des dossiers, 1952-1967 (vol. 2, Office des publications officielles des Communautés européennes 1999) 299.
consequently, the intellectual roots of this legal transformation of Europe. Moreover, the exceptional richness of the personal archives on which this study is primarily based affords us a unique glimpse into the social and mental world of the first generation of civil servants who shaped the new European institutions in the 1950s and 1960s.\(^5\) In this way, this article contributes to the new trend of international historians to use individual life experiences to transcend the national frame and flesh out the social world of new transnational spaces and experiences in the 20th century\(^6\) — a trend which has also gained traction in the field of European integration history.\(^7\)

In order to reveal the full complexity of Gaudet’s experience, a sequential narrative of his life seems the most effective methodology. By unfolding the successive chapters of his life, the intertwined nature of his career and personal story, of his ideas and practical decisions will be best unveiled.\(^8\) Through this one case, and the biographical methodology applied to it, it will be possible to bring to light various nuances often lost in traditional historiography. These include particularly the role played by fundamental ideas as motivating factors for the individuals involved in European unification, as well as the link between those ideas and the actual practice of integration both institutionally and politically.

**COMING TO EUROPE: EARLY PERSONAL AND PROFESSIONAL PATHS**

Monnet’s initial scepticism towards Gaudet was not surprising: the French jurist was not the obvious choice for a position as legal adviser at the High Authority. A few months shy of his 38th birthday, he had never been involved in the European movement and knew very little about Monnet’s brainchild, the ECSC. His career, although successful, had lacked direction and focus. Why then was he eventually chosen by Monnet, what prompted him to embrace the European project and what kind of skills and ideas did he bring to the HA? To answer these questions and to acquire an initial understanding of his personality and worldview, this section examines Gaudet’s personal and professional backgrounds before his arrival at the High Authority in October 1952.

Michel Gaudet was born in Paris on Christmas’ Eve 1915 to a Catholic bourgeois family, the second and last child of Maurice Gaudet and Suzanne Ganivet. Although strictly

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8 To some extent, this goes against recent attempts by post-modernist historians to deconstruct the biographical genre by highlighting fragmentation and incoherence as well as compartmentalising different dimensions of a person’s life. These methodological tools are certainly inspired to avoid the pitfalls of the traditional cradle to grave approach that may overemphasise the coherence of a person’s life. However, if the aim is to reveal the development of a person’s worldview and ideas, chronology is essential. It is by placing a person in the flow of time, in evolving historical contexts, that it is possible to fully grasp how a worldview is constituted and how ideas develop. For an example of a well-argued post-modernist critique, see Birgitte Possing’s, ‘Portraiture and Re-portraiture of the Political Individual in Europe. Biography as a Genre and as a Deconstructive Technique’ in Ann-Christina L. Knudsen and Karen Gram-Skjoldager (eds) (n 6).
speaking a few years too old to belong to the so-called 45er-generation, ie individuals born between circa 1920 and 1935, Gaudet can certainly be associated with this group. By contrast with the members of the Jahrhundertgeneration (individuals born around 1900 to 1912), who seem to have been too influenced by the troublesome inter-war period to fully involve themselves in the European integration process after 1945, members of the 45ers found it easier to embrace the integration project. Significantly younger at the end of the Second World War (Gaudet was 29) but however deeply marked by it, the 45ers were prone to endorse the European Communities as a fundamental means of bringing peace to the continent. This profile corresponds quite well to Gaudet, who over time developed a relatively coherent thinking on the challenges and opportunities of his generation. In his correspondence with law professor John Mitchell, a man who shared a similar generational experience as his own, he expressed his intimate awareness that their peer group was indeed living during a unique period of history and had an opportunity—to bring the European nations closer together to avoid future conflicts.

Although it was completed entirely in France, Gaudet’s general education prepared him well for an international career. Anxious to give her young children the best education possible, Suzanne Gaudet hired a strict Irish nanny, Miss Moran, to teach them English from an early age. Gaudet consequently became fluent in English. After spending his high school years (1929-32) at the Catholic Institution Sainte-Marie, then at the renowned Lycée Janson de Sailly, Gaudet studied public and private law at the Sorbonne (1933-36) and also received a degree from the l’Ecole libre de sciences politiques (1937), a dual education common at the time. While he gained at the Sorbonne the fundamentals of French public and private law, he developed at “Science Po” an interest in the practical application as well as in the general role of law in society.

These crucial formative years took place in a very challenging period of French history, at a time when new political ideas, like those of the Front populaire or fascism dominated public life. Coming from a Catholic bourgeois family, Gaudet got involved in the Équipes sociales [Social Teams] during his university years. This association had been founded in the aftermath of the First World War by Robert Garric, a French champion of social Catholicism, and was particularly dynamic in the 1930s. Singling itself out by its innovative methods of inter-education and team work, the social activist

9 Seidel applies this concept to the first European civil servants, which was initially coined by A.D. Moses to underline the defining importance of 1945 for the Germans born between 1918 and 1930 (A. D Moses, ‘The Forty-Fivers. A Generation between Fascism and Democracy’ (1999) 17 German Politics and Society 94. See Katja Seidel (n 5) 210.
10 John Mitchell (1917-1980) was professor of Constitutional Law at Edinburgh University, where he founded the Centre of European Governmental Studies in the Faculty of Law in 1968, a first in the United Kingdom.
12 Miss Moran also taught English to the next generation of Gaudets. Interview with the Gaudet family (Saragosse, France, 21-22 August 2012).
13 Based on his ‘Livret scolaire’ and on the recollection of the family, the young Gaudet was a talented student with a particular aptitude for history and English. He was however somewhat turbulent and as a result had to change school. He also received private courses at home for a year due to a knee injury. (‘Livret scolaire’ (on file with the Gaudet family) and interview with the Gaudet family (Saragosse, France, 21-22 August 2012)).
group aimed to enable undergraduates to share their knowledge with each other and with workers in order to break the traditional grouping of students along the lines of political and religious convictions or class status.\(^{14}\) Looking back in a later interview, Gaudet found that his participation in the \textit{Équipes sociales} had been significant in shaping his outlook on social activism and dialogue between people with different backgrounds.\(^{15}\) It was also here he met his future wife Françoise Milon in March 1935.\(^{16}\)

Gaudet’s social experience further expanded during his years in military service, both before and during the Second World War. In October 1937, Gaudet joined the French army for his two years of mandatory military service. He was dispatched to various parts of France,\(^ {17}\) and came in contact with young soldiers with very different social and educational backgrounds. Gaudet later fondly remembered this ‘grand brassage’ of people and ideas.\(^ {18}\) The European political context was however quickly deteriorating. Despite the signature of the Munich Accords between the European Great Powers, the tension in Europe kept growing, and in September 1939, when Gaudet completed his military service, the war was looming. He was immediately re-enrolled as an officer in a tank regiment (\textit{15e Bataillon des Chars de Combat}) at Nancy. On 18 May 1940, he was wounded on his elbow, temple and right hand by shrapnel while his tank (the \textit{Tunisie}) was attacked by a German tank in Northern France.\(^ {19}\) Evacuated to a nearby hospital, he was taken prisoner that same evening.\(^ {20}\) He then spent the next 15 months in captivity, at Oflag IV-D, a German prisoner-of-war camp for Allied officers, mostly French, near Dresden. There he benefited from a so-called \textit{écurie}, a tutoring initiative preparing young officers for the entrance exams to French public administration.\(^ {21}\) At the request of the Red Cross, Gaudet, enfeebled by slow to heal wounds, was released from captivity mid-September 1941 and sent back to Lyon in the Free Zone to get intensive medical care. After surgery and some rest, he was then able to hastily take the entry exams of the \textit{Conseil d’État}, the French institution dedicated to provide the government with legal advice and to act as the administrative court of last resort.\(^ {22}\) This choice of a legal career was made before the war, and it was by no means foreign to his family; Gaudet’s father was an


\(^{16}\) Interview with the Gaudet family (Saragosse, France, 21-22 August 2012).

\(^{17}\) Verdun, Angoulême, Versailles (école des chars) and Nancy.

\(^{18}\) Anne Rasmussen, interview with Michel Gaudet (Paris, 23 September 1991, Entretien 1).

\(^{19}\) Stéphane Bonnaud, \textit{Hommes et matériels du 15e BCC Chars B au combat} (Histoire & Collections 2002) 77-80, 84-86.

\(^{20}\) Diary of Françoise Gaudet, May 1940 (on file with the Gaudet family).

\(^{21}\) This ‘écurie’ was run by Philippe de Montrémy, a young inspecteur des Finances, and Roger Grégoire, who had joined the \textit{Conseil d’État} in January 1939. Martine de Boisdeffre, ‘La préparation au concours du Conseil d’État dans les camps de prisonniers en 1940-1945’ (1987) 38 Etudes et documents du Conseil d’État 279.

\(^{22}\) The \textit{Conseil d’État} then held its seat in Royat. In 1941, two entrance exams were specially organized since a record number of 12 positions were opened that year due to the expulsion of the Jewish members.
advocate at the Cour de Cassation and at the Conseil d'État. On 29 January 1942, Gaudet was received as a second-class auditor at the administrative claims division (service du contentieux). Having thus secured an adequate income, he married Françoise Milon on 9 April 1942.

Working at the Conseil d'État made it very difficult to escape the political polarization that French society experienced during the war. The Conseil d'État not only openly supported the fascist philosophy of Vichy, the so-called national Revolution, but an unusual high number of its members also held important positions in the administration between 1940 and 1944 and facilitated, for example, the French legislation regarding Jews. While the Conseil d'État was wholeheartedly behind Vichy until the summer of 1942, a gradual movement away from the regime took place the last two years before the liberation. When Gaudet entered the Conseil d'État on 14 May 1942, the most controversial period of the Vichy years was essentially over. In the Conseil d'État, the young Gaudet quickly formed a bond of professional and private friendship with maître des requêtes, Maurice Lagrange, who had just returned to the Conseil d'État in April 1942 after having served in public office since 1938, working on the reform of the rules underlying the public civil service. This friendship, while later decisive for the European career of Gaudet, raises questions, for Lagrange was openly supportive of the Vichy regime's ideology and worked purposely from 1940 to 1942 to formulate and implement the laws expelling Jews from all public offices resulting in the exit (and later death) of a number of prominent members of the Conseil d'État itself.

According to his own recollection, but unconfirmed by primary evidence, Gaudet was asked by the Conseil d'État's vice-president, Alfred Porché, to enter the Pétain Cabinet. Arguing that he had recently returned from captivity and just gotten married, he declined the offer and managed to remain at his current position. However he was given a less exposed function in the Secours national, a humanitarian program originally initiated by Albert Kahn in 1914, to help war victims. Reactivated in October 1939 for the same purpose, the organization had been placed a year later under the Pétain's authority as a major propaganda effort of the Vichy regime, and was led by Georges Pichat, former vice-president of the Conseil d'État. Robert Garric acted as commissioner-general of the Secours national, and

23 In addition, his maternal grandfather was a lawyer at the Paris Court of Appeal. His paternal grandfather ran a textile business.
25 Diary of Françoise Gaudet (on file with the Gaudet family).
26 Marc-Olivier Baruch, Servir l’État français. L’administration en France de 1940 à 1944 (Fayard 1997) 37. See also at 325 the letter from Lagrange to Pétain from 6 July 1942, in which he declares his sincere support to the latter. Considering the extent of his role, Lagrange was lucky to escape the purge of the collaborators inside the Conseil d’État with a simple ‘blâme’ for receiving the highest order of Vichy France.
following his lead, many members of the Équipes sociales assumed responsibilities within the Secours national.28 This vast organization not only ran all humanitarian and social services in France during the war, but also came to serve as a propaganda tool of Vichy. However, the deeds and political convictions of the many individuals involved were often complex and ranged from outright collaboration to resistance.29 After France’s Liberation, the Secours national was placed under the Raoul Dautry’s leadership and renamed Entraide française.30 Gaudet continued to participate in its caritative activities until the end of the war, especially during the Alsace campaign in 1944-45.31

On the basis of the evidence we have, it is not possible to fully document Gaudet’s political views and activities during the war.32 While he worked for two institutions with problematic links to the Vichy regime and even befriended Lagrange, he seems to have avoided compromising positions and also cultivated links to prominent members of the Resistance, such as Michel Debré33 or Jacques Lucius. We can probably conclude that Gaudet, who was just starting his career and his married life, did not take any heroic stance or action against the Vichy regime, but, like many others, focused on his job and navigated the difficult war years without endangering himself or his family.

After the war, Gaudet’s career took a new direction. Jacques Lucius, a member of the Conseil d’État who knew Gaudet from the Entraide française, became Secrétaire général du protectorat de la France au Maroc in October 1944,34 and later asked him to come along to Rabat as legal adviser. Gaudet immediately accepted the offer and, like Lagrange, specialized in colonial matters. Gaudet and his family35 spent just under three years in Morocco, from December 1945 to 1948; however, in his own later reflection, this short episode very much shaped him as a person and as a jurist.36 Contrary to the integration model applied in Algeria where the French simply transferred their own mechanisms of governance, the protectorate of Morocco offered to

28 Jean-Pierre Le Crom, Au secours, Maréchal!: l’instrumentalisation de l’humanitaire, 1940-1944 (PUF 2013) 107. The Commissariat général also included Michel Debré (secrétaire until his resignation in March 1943) and Hubert Leroy-Jay, both from the Conseil d’État. The Commissariat was initially located in Royat until its transfer to Paris in early 1943. Gaudet returned to Paris with the Conseil d’État in June 1942.
30 Armaments Minister from September 1939 to June 1940, Raoul Dautry withdrew from political life during the German occupation of France. Purges also took place in the Secours national. Robert Garric was appointed to a new position within the organization. Jean-Pierre Le Crom, Au secours, Maréchal!: l’institutionnalisation de l’humanitaire, 1940-1944 (PUF 2013) 291-96.
32 The interview with the family did not bring any significant information about Gaudet’s thinking during the war. We sincerely appreciate the openness of the Gaudet family on this sensitive point.
35 The Gaudets had at that point one son, Pierre-Pascal, born in 1943. Their second child, Marie-France, was born in Morocco in 1947.
Gaudet a more interesting system of cooperation from which he could draw a concrete experience of how two different types of societies could function together. Since 1912, the Moroccan legal system incorporated many elements of the French law, yet respected the Koranic law; the legal adviser had therefore to find ways to integrate both traditions. Gaudet was fascinated with Morocco, and the time spent there gave him a significant international experience of working with people with dissimilar legal and cultural backgrounds. This experience would prove valuable both for himself and for his growing family in the small duchy of Luxembourg, which, in the early 1950s, probably felt as foreign and provincial to a Parisian bourgeois family as Morocco did.

A EUROPEAN MELTING POT: THE LUXEMBOURG YEARS

When he returned from Morocco in April 1948, Gaudet resumed his functions at the Conseil d’État, and was promoted to maître des requêtes in September 1948. After a quick spell as legal advisor in the cabinet of Lionel de Tinguy du Pouët, at the Ministry of Finance and Economics and later at the Ministry of the Navy (Marine marchande) from October 1949 to July 1950, Gaudet served as commissaire du gouvernement at the Conseil d’État until 1952. Here we can identify the first sign of openness to international cooperation that would later characterize him. In a case before the Conseil d’État in 1951, he went against the doctrine of the Conseil on the application of an international treaty. According to the existing practice, the Conseil could not interpret international treaties but had to send them to the Foreign Ministry for interpretation. Gaudet questioned the doctrine in his submission, and he argued that the Conseil could interpret international law independently. The French practice of letting the Foreign Ministry decide how international treaties and international law should be interpreted in the French national legal order would later become a major battlefield in the reception of European law, because the ECJ developed a case law that relied on the national courts to apply European law without political interference.

There is no evidence suggesting that Gaudet had given any serious attention to the development of European integration until the day Lagrange asked him to meet

37 ibid. The terms ‘integration’ and ‘cooperation’ have obviously here a very different meaning than in the European context.
38 As per the Conseil d’État’s regulations, Gaudet had to reintegrate this institution to be promoted as a maître des requêtes first, then as a commissaire du gouvernement.
39 Gaudet accepted this position out of friendship to de Tinguy du Pouët, also a member of the Conseil d’État. This very short experience does not seem to have had a strong influence on Gaudet.
40 On the Commissaire de gouvernement and how it compares to the ECJ’s Advocate General, see Ami Barav, ‘Le commissaire du gouvernement près le Conseil d’État français et l’avocat général près la Cour de justice des Communautés européennes’ (1974) 26 Revue internationale de droit comparé 809.
41 Michel Mangenot (n 33) 9.
Jean Monnet. The latter had enrolled Lagrange during the ECSC negotiations to draft the Treaty of Paris’ institutional provisions, but when Lagrange became advocate general at the new Court of Justice, Monnet needed another jurist with expertise in French administrative law. Lagrange first suggested Raymond Odent, who declined the offer for family reasons, and, as a second choice, Gaudet. The meeting with Monnet made a strong impression on Gaudet, as his wife observed in her diary: ‘Michel a tout de suite été conquis par Monnet, et par cette perspective de faire quelque chose de nouveau dans un cadre plus large’ [Michel was immediately won over by Monnet and by the prospect of doing something new in a broader context]. In Gaudet’s own recollections the meeting takes the special significance of a conversion experience to the European cause. Monnet, however, was less impressed and told Lagrange that Gaudet looked too young for the position. Back in Paris the Gaudet family was seriously disappointed with the rebuff. Ten days later Monnet apparently reconsidered his decision, and on 13 October the Gaudet couple drove to Luxembourg to meet the two other (German) members of the High Authority’s Legal Service, Robert Krawielicki and Walter Much. On 30 October, the Conseil d’État accepted to release its jurist to the High Authority and the Gaudet family—now with three children between the ages of four and nine—moved to Luxembourg.

While Monnet’s vision and personality played a crucial role in Gaudet’s conversion to the European project, the unique circumstances of living in Luxembourg also contributed to strengthen his commitment to European unification. Because Luxemburg remained at that time fairly isolated from the major European cities, the High Authority’s civil servants developed the habit of socializing together after the long hours of work. This socialization process was enhanced for Michel Gaudet by the fact that his wife shared his enthusiasm for the European vision proposed in Luxemburg. The Gaudets enjoyed Sunday walks on the Chaussée de Lorraine with other families of the HA and were renowned for their hospitality. During the holidays, they often invited colleagues and friends to a small country chateau, ‘Saragosse’, located 230 kilometres south of Paris, which Gaudet had inherited before

43 Diary of Françoise Gaudet (on file with the Gaudet family). See also François Duchêne, interview with Michel Gaudet (Paris, 15 April 1988), HAEU INT 500; Anne Rasmussen, interview with Michel Gaudet (Paris, 16 October 1991, Entretien 2).
45 Diary of Françoise Gaudet (on file with the Gaudet family).
47 Diary of Françoise Gaudet (on file with the Gaudet family).
49 Yves Conrad and Myriam Rancon, Interview with Jean-Jacques Beuve-Méry (Uccle, Belgium, 3 March 2004), HAEU INT 703; Anjo G. Harryvan and Jan van der Harst, interview with Max Kohnstamm (Fenffe, Belgium, 30 May 2005), HAEU INT 741. For a detailed account of his life in Luxemburg, see Gérard Bossuat, interview with Michel Gaudet (10-26 January 1998), HAEU INT 603.
the war. Various testimonies and private letters of visitors attest to how the Gaudets fostered an atmosphere of stimulating discussions and reflections about Europe.\footnote{See, for example, Saragosse's Guestbook (On file with the Gaudet family); Michel Dumoulin and Corinne Schroeder, interview with Manfredo Maciòti (Ixelles, Belgium 6 July 2005), HAEU INT 728.} Because their three school-aged children lived with them in Luxembourg, Michel and, perhaps in particular, Françoise Gaudet also participated actively in the creation of a European school in Luxembourg in 1953-54. To them this school not only solved the educational problem of the euro bureaucrats' children, but it also promoted the pacifistic ideals underlying the European project.\footnote{Anne Rasmussen, interview with Michel Gaudet (Paris, 28 October 1991, Entretien 3); Gérard Bossuat, interview with Michel Gaudet (10-26 January 1998), HAEU INT 603.} The Gaudet's children were encouraged to participate in this ‘European spirit’ by spending time abroad and by befriending youngsters from other nationalities.\footnote{Nevertheless, Gaudet's children did their post-secondary education in France, married French citizens and mainly pursued their careers in France.} For many years the children of Winrich Behr spent their summer holidays at Saragosse.\footnote{Interview with the Gaudet family (Saragosse, France, 21-22 August 2012).} Given that Behr had served on the German General Staff as an officer during the war,\footnote{Katja Seidel (n 5) 54.} this was a potent example of private French-German reconciliation. Somehow, with the Gaudets, the European project became a family endeavour.\footnote{This is very clear from the diary of Françoise Gaudet (on file with the Gaudet family).}

Catholicism continued to deeply underpin the Gaudets' personal life. Françoise Gaudet engaged herself in \textit{L'Action catholique des milieux indépendants} [Catholic Action of Independent Milieus], originally founded in France by Jean Monnet’s sister, Marie-Louise Monnet, in 1931. This led to a number of Catholic activities in close collaboration with her, such as the creation of the \textit{Mouvement International d’Apostolat des Milieux Sociaux Indépendants} [The International Movement of Apostolate in Independent Social Milieu] (MIAMSI), in 1964. In addition to this, Françoise Gaudet, together with Jeanne Daum, the wife of Léon Daum (one of the nine members of the High Authority), set up a small ecumenist circle of employees and their families in the European institutions in Luxembourg.\footnote{Diary of Françoise Gaudet (on file with the Gaudet family).} Michel Gaudet was a devout Catholic,\footnote{For example, the morning of the signature of the Treaties of Rome, the Gaudet couple attended mass at the Vatican. Anne Boerger, interview with Paul Monnory (Paris, 21 May 2013).} but his approach to Christianity was open-minded, spiritual and active. He lived his faith within the Christian humanism tradition, focusing more on social issues than on dogma. He was involved in the \textit{Semaines sociales de France} [Social Weeks of France], a laic association created in 1904 to share the social teachings of the Catholic Church.\footnote{Anne Boerger, interview with Jean-Jacques Beuve-Méry (Uccle, Belgium, 27 May 2013). For a recent book exploring the connection between ecumenical movements and European integration, consult Lucian Leuştean, \textit{The ecumenical movement and the making of the European Community} (OUP 2014).} Gaudet’s faith strictly remained in the private sphere, but it arguably informed his attitude towards reconciliations with Germany in the wake of the war and his support for European integration.\footnote{Anne Boerger, interview with Jean-Jacques Beuve-Méry (Uccle, Belgium, 27 May 2013). For a recent book exploring the connection between ecumenical movements and European integration, consult Lucian Leuştean, \textit{The ecumenical movement and the making of the European Community} (OUP 2014).}
Professionally, Gaudet quickly thrived at the HA. Sharing the office with Krawielicki, with whom he quickly became close friends, Gaudet would, as we shall see below, become a key figure in shaping the role of the Legal Service in the HA. Through his position as legal adviser, he obtained privileged access to the president. Even after Monnet resigned from the presidency in 1955 and until his death, Gaudet belonged to the inner circle of devoted followers. He also kept Monnet informed about his ongoing work in the HA and later in the Commission. The respect was mutual. When Monnet needed legal advice, for example, to set up his Action Committee for the United States of Europe, he turned to Gaudet. In addition to nurturing a close relation to Monnet, Gaudet also began building his own network in the legal world, both in Europe and in the United States. Helped by his excellent English, he became deeply influenced by American lawyers and by the legal traditions of the United States. He drew on Monnet’s American network, which included such notables as George Ball, Robert Bowie, Donald Swatland, but also developed his own connections. His friendship with Eric Stein, a law professor at the University of Michigan fascinated by European law from the mid-1950s onwards, and later with John Mitchell, professor of Constitutional Law at Edinburgh University, helped cement an Anglo-Saxon outlook, unique among the French legal elite. It would deeply shape Gaudet’s approach to European law as we shall see below.

Inside the new European administration of HA, the Legal Service was given a central function. French law professor Paul Reuter, Monnet’s first legal advisor during the Paris treaty negotiations, had suggested providing the HA with legal expertise to assist the internal formulation of policies. This also reflected Monnet’s experience with the role lawyers played in American firms and public institutions. It meant that the Legal Service assumed an ultimate control in the administrative realm over the final shape of documents and decisions. Representatives of the Legal Service participated in all major meetings and discussions not only inside the HA, but also in the Council of Ministers and the Assembly. Finally, the Legal Service played a key role in developing the HA positions once the legal cases began rolling through the ECJ, since the HA was the defendant in most cases. While the Legal Service had collegiate leadership, Michel Gaudet and Robert Krawielicki soon emerged as informal

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60 The documents contained in Fondation Jean Monnet pour l’Europe, Archives Jean Monnet [FJM, AJM] AMK C 30/3 (correspondence Monnet/Gaudet) demonstrate the close attachment of Gaudet to Jean Monnet. He was among the faithful friends who visited Monnet till the end of his life. See Eric Roussel, Jean Monnet (Fayard 1996) 912.


62 New York lawyer, partner at Cravath, Swaine, Moore, Swatland was the High Authority adviser for its financial transactions with the American government and finance market.


64 Julie Bailleux, Penser l’Europe par le droit (Dalloz 2014) 227.

65 Gérard Bossuat and Myriam Rancon, interview with Gérard Olivier (Paris, 4 December 2003), HAEU INT 714.
leaders. The Legal Service also counted important personalities such as Walter Much and Nicola Catalano, who joined the service from 1953-56, later represented Italy in the negotiations of the Treaties of Rome in 1956-57 and became a judge at the ECJ from 1958 to 1962.

Albeit intellectually stimulating, working under Monnet’s leadership was certainly not an easy task. Monnet favoured a small, highly qualified, non-hierarchic and flexible administration. He also preferred to retain power for the president, thereby undermining the chance for collegiate decision-making in the HA. This approach—combined with his highly personal leadership style, which included extremely long working hours and a very heavy workload—resulted in what one of the employees, Edmond Wellenstein, kindly has characterized as ‘creative chaos’. When Monnet was replaced by René Mayer in 1955, the HA finally developed into a more traditional administration with formal staff regulations with the advantages this had in terms of a smoother operation. In the small Legal Service, which was initially constituted by only six jurists from 1953 to 1955, and then grew to nine from 1956 to 1958, the workload occasionally became unbearable. In spring 1954, both Krawielicki and Gaudet fell seriously ill with flu. As a result Gaudet made clear to Monnet that the Legal Service could not fulfil its task unless the advertised reinforcements were appointed. However, the Legal Service was not reinforced before early 1956, and only after Krawielicki had suffered from a major heart attack in Monnet’s office.

The development of the ECSC from 1952 to 1958 was not particularly successful. The Community evolved quite differently both politically and institutionally from what had been expected at the outset. The basic dilemma was that the plans for the coal and steel sectors outlined in the Treaty of Paris did not match the development of the two sectors and the international market after 1953. This led to a realignment of the interests of national governments with the result that they withdrew support to significant parts of the ECSC. As a consequence, although a common market was established, key policies such as merger control were not fully developed due to the
resistance of (several) member states. This considerably weakened the HA vis-à-vis the Council, and it had important consequences for the development of the ECSC’s legal system. The ECJ was caught between a treaty text that had to be adapted to the new realities of the coal and steel sector and the fact that national governments asserted a pervasive control over the Community and informally over the two sectors.74

In the ECSC—where the treaty framework did not provide all the necessary tools for the HA to address the changing conditions of the coal and steel sector—it was crucial to convince the ECJ to adopt an interpretative style that allowed the HA considerable discretion in its choice of policy means to achieve the objectives of the treaty. This was the key challenge of the Legal Service, and it was closely connected to the more philosophical question of determining the ECSC’s legal nature. If the ECJ considered the ECSC to be merely an international organization, it could be expected that it would display a cautious interpretative style, emphasizing the letter of single treaty articles over the general (political) objectives of the treaty. This would offer little flexibility for the HA in developing policies. A federal and constitutional understanding of the ECSC in contrast might enable the ECJ to adopt a teleological style of interpretation that would emphasize the objectives of the treaty, and thus allow the HA leeway in terms of choosing the precise means to pursue and further its policies. However, in a situation where national governments exercised a wide-reaching direct and indirect control over the Community, the constraints on the HA and the court were significant.

Already in his inaugural address as president of the HA in August 1952, Monnet, in a speech drafted by the renowned Italian federalist Altiero Spinelli, emphasized the federal nature of the ECSC.75 At the opening of the ECJ, Monnet repeated his federal ambition and characterized the ECJ as a prospective European supreme court.76 Gaudet followed in the footsteps of Monnet.77 In April 1955, in the immediate aftermath of the first judgements by the ECJ, Gaudet expressed his disappointment to the American representative to the ECSC, Robert Eisenberg, that the Court had based its rulings on a narrow textual reading of the Treaty, and that he had hoped it would assume a role similar to that of the United States Supreme Court.78

77 Our analysis undermines the recent interpretation by Julie Bailleux, Penser l’Europe par le droit (Dalloz 2014) 230-50, who, on basis of a more restricted source base, has argued that Gaudet was initially pragmatic in his approach, and that he only later developed a federal approach to European law. The documentary evidence we have identified clearly suggests that Gaudet was converted to the European cause by Monnet in 1952 and at the very latest promoted a federal and teleological interpretation of the Treaty of Paris from April 1955 onwards.
78 Letter from Robert Eisenberg to Eric Stein, 18 April 1955, Bentley Historical Library, University of Michigan, Ann Arbor, Mich, Eric Stein Papers [ESP], Box 18.
In a private letter to Donald Swatland in December 1957, Gaudet elaborated on his views now also referring to the Treaties of Rome. He rejected the Court’s main approach, which consisted of performing a comparative reading of national legal traditions as legal sources to construct a new European legal order. As he explained to Swatland, ‘[...] in order to mark out the rule of law to be applied in the Communities, the Court must usually start from the Treaties, their spirit and common sense, and not from an honest blend of the various national statues of the member states’. Instead, he preferred a teleological methodology based on the supposedly federal spirit in the treaties. The ECJ should let itself be guided by the aims and spirit of the treaties instead of developing dogmatic textual interpretations. The task of the Legal Service was, consequently, in Gaudet’s words:

to give a full description of the facts, explain as clearly as possible their meaning in connection with the development of the Community, study the consequences that may result for the Community and European integration from the choice between the various possible interpretations of the Treaty.

For Gaudet, winning individual cases mattered less than convincing the Court of Justice to adopt the approach he advocated. Likewise, the parallel to the American constitutional experience and the American Supreme Court was clearly what Gaudet had in mind.

Inside the Legal Service Gaudet sided with the federalists like Catalano; however, other legal advisors like Much were more sceptical towards a federalist interpretation of European law. The positions adopted by the Legal Service before the ECJ generally reflected a teleological reading of the Treaty in Paris in order to defend and consolidate the competences of the HA. However, at this point in time, there was not attempt to push the court towards a more overall interpretation of the would-be federal nature of the Treaty of Paris. In any case, the Legal Service had only limited success in promoting its interpretation before 1958. The case law of the ECJ remained focused on technicalities and rarely ventured into doctrinal territory. Small steps forward occurred, for example, in November 1956 when the ECJ in its judgment in the joined cases 8-9/56 finally paid heed to the Legal Service’s arguments, and it discreetly granted the HA implied powers by the means of the famous ‘effet utile’ principle. But no fundamental breakthrough for a federal interpretation of the Treaty of Paris was achieved before 1958. For Gaudet, the conservative nature of the court reflected the composition of its bench. Similarly, the opposition to a federal and constitutional interpretation of European law remained widespread among the legal academic elites of the member states. The participation of the Legal Service members in various conferences aimed at informing national lawyers about the European law,

79 Letter from Michel Gaudet to Donald Swatland (31 December 1957), FJM, AJM AMK C 30/3/20.
80 ibid.
81 ibid.
and the effort to build a network of jurists interested in community law failed to dent this opposition. 83

The broader context of European integration also gave little reason for optimism. In 1951-52, a European Defence Community (EDC) treaty had been negotiated and an additional treaty for a European Political Community was prepared to bring all integration initiatives, including the ECSC, under a common constitutional framework. However, in August 1954, the French National Assembly rejected the EDC and consequently also the broader plans for a constitutional treaty. This fundamentally weakened the ECSC, which now resembled a limited technical union in coal and steel with limited political perspective. As a result, Monnet left the HA presidency to pursue a relaunch of European integration by means of the new transnational Action Committee for the United States of Europe. In 1955, a proposal by the Benelux governments for a common market and a community for atomic energy (EURATOM) led to a new round of negotiations among the six ECSC member states. Although Monnet was not formally involved this time, he had advised the Belgian foreign minister Paul-Henri Spaak in relation to the EURATOM proposal. Moreover, through Spaak, who would lead the negotiations on the two proposals in the next two years, Monnet’s associates were given strategic positions. Monnet’s right-hand man Pierre Uri helped draft the so-called Spaak report in spring 1956, which formed the basis of the intergovernmental conference to draft two new treaties from June 1956 onwards. Gaudet also worked behind the scenes in close connection with Pierre Uri and Jean Monnet. 84 In January 1957, at Spaak’s request, he joined the committee that had been established to draft the treaty texts – the so-called groupe de rédaction. 85

The intergovernmental conference, however, was marked by a much less ambitious approach to the institutional and legal mechanics of integration than had been the case in the first half of the 1950s. The notion that the various integration initiatives should be based on a single constitutional framework was abandoned. Instead the new initiatives were framed by separate treaties and formed independent communities. Moreover, a functional approach was employed to design the institutional and legal system. Institutional forms and legal principles should merely reflect the requirements needed to carry out the objectives. The much heralded supranational principle of the ECSC was toned down. This pragmatic approach was deemed necessary by the governments and negotiators to ensure the ratification of the new treaties by the French National Assembly. However, the enthusiasm for supranational or federal experiments was also tempered by what most governments considered to be an unsatisfactory experience with the ECSC. Finally, in light of the far-reaching and open-ended nature of the common market, a consensus emerged among the

84 In June 1956, Gaudet helped, for example, draft the first and unofficial treaty dispositions. (‘Note au dossier Conférence Intergouvernementale de Bruxelles’ (28 June 1956), Luxemburg National Archives, 7717; See also ‘Note concernant les discussions entre MM. Jean Monnet, Gaudet, van Helmont et Kohnstamm’ (3 September 1956), FJM, AJM AMN 1/2/9).
85 Letter from Michel Gaudet to Georges Berthoin (2 February 1957), FJM, AMG, Diverse correspondance from 1955-69. Gaudet’s involvement with the groupe de rédaction can be documented by his handwritten editing of the institutional articles (Archives of the Legal Service of the European Commission, Brussels).
governments to empower the Council of Ministers by turning it into the key legislative body, while, at the same time, limiting the role of the HA (tellingly renamed the Commission). In addition, the Court of Justice and Assembly, shared by the three communities, were not strengthened.

The political context seriously constrained the work of the groupe de rédaction when drafting the two treaties. Moreover, the committee was split between a federalist part, which included Gaudet, Catalano and the Luxembourg legal counsellor Pierre Pescatore, and a more conservative part that counted the French representative and Gaullist, Jean-Jacques de Bresson, and legal counsellor of the Dutch foreign ministry, Willem Riphagen. The outcome was an institutional and legal design of the treaties along the lines of international law, allowing national governments and administrations to largely control the two Communities. The federal influence was felt in the more subtle legal details, where the groupe de rédaction inserted or strengthened constitutional elements in the treaties. However, as we shall see below, international law was arguably too fragile a basis for developing a common market. So by strengthening the constitutional elements in the treaties, the groundwork had been laid for an alternative federal and constitutional interpretation of the treaties, which the ECJ could justify by pointing to the ambitious nature of the common market project. 86

The challenge of how to create the necessary legal underpinning for a common market in the Treaty of the European Economic Community (EEC Treaty) seriously concerned Gaudet during the negotiations. From his perspective, it would only be possible to establish a common market between six states, if it were based on a set of common rules—a droit communautaire—uniformly interpreted and applied. If this were not achieved, the understanding of European law would differ from country to country. 87 The call for a droit communautaire was arguably implied in the mission of the court outlined in article 164 EEC to ‘ensure the observance of law and justice in the interpretation and application of this Treaty’. However, given the political constraints, it was difficult to translate these general principles into a legal system that ensured a uniform interpretation and application, as well as an efficient control of enforcement of European law in the member states.

The attempted solution was two-fold. Dealing first with the system of enforcement, the negotiators only focused on designing a public enforcement system. The groupe de rédaction assigned to the Commission the task of monitoring possible infringements of European law by the member states, with the possibility that the Commission or other member states could raise an infringement case under respectively article 169 EEC or article 170 EEC. But there would be no sanctions against infringing member states. This mechanism offered, it was believed, sufficient legal guarantee to protect the interests of the individual citizens. Consequently, the public enforcement system was not supplemented by an alternative system based on private litigation. 88

87 ‘Uniform application; common rules’ Gaudet’s handwritten comments on Ch.Del. 50 memorandum (November 1956), Archives of the Legal Service of the European Commission, Brussels.
The second discussion in the groupe de rédaction concerned how to ensure the uniformity with regard to the interpretation and application of European law in the member states. The first proposal to address these complex issues came from Catalano, who, inspired by Italian constitutional law, proposed to transform the preliminary reference mechanism outlined in article 41 of the Treaty of Paris into a genuine mechanism of judicial review. According to article 41 ECSC, national courts could send questions concerning the validity of European law to the ECJ. Catalano now proposed to include questions concerning the interpretation and application of European law. This bold move was contained, however. In the end, the preliminary reference mechanism was updated to include questions of interpretation, but the application of European law in the national legal order remained the exclusive domain of the national courts. The evidence suggests that the negotiators were not fully aware of the potential of the new preliminary reference mechanism. Its weaknesses were obvious because the ECJ’s ability to ensure the uniformity of interpretation depended completely on the cooperation of national courts. It was consequently difficult to envisage an interpretation of the mechanism that turned it into a system of judicial review for private litigation. However, as we shall see below, this was exactly what happened.

Altogether, Gaudet appreciated the ambitious scope of the EEC Treaty, with its common market, and the prospects this entailed for the integration process. Yet, he feared that the existence of three Communities, two of which were decidedly less federal than the ECSC, might very well undermine the timid progress he detected in the most recent cases law of the ECSC Court of Justice. The court might accept three parallel conceptions of European law or even return to a strict interpretation by the letter of the Treaties. For Gaudet the great task ahead was to make the case that ‘there is something federal, if not a federal State, in our Communities.’

**EUROPE’S PLACE IN THE WORLD**

The three or so years following the signature of the Treaties of Rome proved to be, in many ways, a time of personal reflection for Gaudet. His contribution at the Val Duchesse negotiations had reinforced his position as a top European legal expert, and by the time the Treaties of Rome were signed, Gaudet had become a sort of star-jurist with significant authority and leverage. This did not go unnoticed by Jean Rey, the new European Commissioner in charge of legal affairs, who offered him the position of Director-General of the EEC Commission’s Legal Service, a position that he assumed from January 1958 onwards. While Gaudet was looking forward to the challenges awaiting him in Brussels, he was also anxious about the impact that the new communities would have on the development of European law. There was

90 Letter from Michel Gaudet to Donald Swatland (31 December 1957), FJM, AJM AMK C 30/3/20.
91 Letter from Michel Gaudet to Eric Stein (18 March 1958), ESP, Box 6/Gaudet.
92 Letter from Michel Gaudet to Jean Rey (21 January 1962), FJM, AMG, Correspondence with Jean Rey.
93 Letter from Michel Gaudet to Jean Monnet (27 March 1957), FJM, AJM AMK C 30/3/12. See also, Letter from Michel Gaudet to Jean Monnet (18 December 1958), FJM, AJM AMK C 30/3/30.
indeed a great deal of work to be accomplished in order to realize the ‘ever closer union among the peoples of Europe’ heralded in the preamble of the EEC Treaty. Gaudet’s immediate to-do list included first and foremost setting up the Legal Service and establishing it as a central player at the Commission. Before examining his legal work at the Commission, however, it is worth pausing for a few moments and pay attention to Gaudet’s more general pre-occupations, which framed and guided, to a certain degree, his action in Brussels.

In spring 1959, a bit more than a year after settling into his new position, Michel and Françoise Gaudet undertook a six-week-trip to the United States, which triggered a bout of reflections about several subjects. It reinforced the American constitutional experience as a main reference for Gaudet. Sponsored by the Ford Foundation and mainly orchestrated by his friend Eric Stein, this unofficial *voyage d’étude* [study trip] gave him an opportunity to travel extensively across the States, to visit some prestigious universities and to meet with many personalities—especially lawyers—from public administration, private businesses and academic circles. This trip was the first time he set foot on American soil, and what he discovered in the States was probably a real eye-opener. This American experience not only influenced his legal thinking, but it also sparked a broader reflection on several interrelated subjects, in particular on the leading role of the West in the context of the Cold War, on the need for a strong transatlantic relationship, on education and the extent to which all these challenges rested on human morality and faith. Although these themes are merely incidentally linked to his work at the Commission, they nevertheless deepen our understanding of Gaudet’s broader vision and perspectives on Europe and on the world, ie what could be called his frame of reference.

In the early 1960s, Gaudet felt anxious about the potential decline of the West in a fast-changing world. The Cold War was of course on his mind but so were the transformations of the world order precipitated by the decolonisation process. Mankind was at a crossing point, ‘about to open a new age of turmoil and disasters or to make a decisive progress towards its unity’. For Gaudet, the West had a crucial role to play in leading the world towards its unity and a better future. Fearing that the Free World was not doing enough to keep up with this fast-changing world, he urged the West to ‘wake up’ and focus its thinking, planning and acting on three intertwined endeavours: building a strong Atlantic community; promoting high quality education; and integrating Europe (as well as the other parts of the world). These themes underpinned his on-going activity in the legal field, giving him a sense of urgency and a reason to succeed.

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94 The trip took place from April 14 to May 28 1959. Michel Gaudet, ‘Note sur un voyage d’étude aux États-Unis’ (19 June 1959), FJM, AMG AMK C 30/3/35.
95 Letter from Michel Gaudet to Eric Stein (20 November 1961), FJM, AMG, correspondence with Stein.
96 Letter from Michel Gaudet to Eric Stein (25 April 1961), FJM, AMG, correspondence with Stein.
97 He seemed especially concerned in 1961, but his preoccupations with the world periodically resurfaced in his correspondence during the whole decade. Early 1961, Gaudet also suffered a severe case of appendicitis. The forced rest after the surgery kept him away from work and might have given him an opportunity to think more freely. Letter from Michel Gaudet to Eric Stein (27 February 1961), FJM, AMG, correspondence with Stein.
Since Europeans could not face alone the challenges of the changing world, Gaudet—as others at the time—pleaded for a strong Atlantic cooperation. Considering that NATO was too focused on the defence issues to constitute the proper framework for a closer cooperation, he supported the creation of an Atlantic community, including Western Europe, the United States and the British Commonwealth. This Atlantic community would be governed by institutions able to make transnational law and policies and to assure parliamentary and judicial controls. He never went very far with this idea, but his efforts to deepen transatlantic relationships, both at a personal and institutional level, never died out.

Gaudet also felt strongly that the West should invest substantial efforts into education. This might seem quite remote from the legal issues and European integration, but, for Gaudet, it was a vital component of the ‘bigger picture’, and a key element in building a better society and in leading the world. Only a sound education could indeed prepare the new generations for the challenges of their times. So for the French jurist, father of three young people about to start their post-secondary education, it was crucial that the West address this philosophical (and religious) issue. His reflections merely outlined the ideological basis for education and never went into the specifics of what a successful education should be, but here again, Gaudet felt particularly attracted by the American experience. Referring to the cherished legacy of frontier experience, which combined a ‘strong sense of individualism with a built-in awareness of a need for solidarity within the community’, Eric Stein argued that education (as the system of government) ‘must stress individualism coupled with a strong sense of social responsibility’. Those words resonated well with a man so eager to build a generous society with strong roots in social Catholicism.

Gaudet’s interest in education stemmed from his belief that education aims at transforming societies. This was also what the European Communities were trying to achieve. Since the world was fast changing, there was a pressing need to adjust the European societies to the new realities of the post-industrial age. For the French jurist, European integration was indeed a necessary part of this adjustment. As he expressed it quite clearly to Stein: the Rome Treaties was ‘designed both to respond’

99 Michel Gaudet, ‘Note sur un voyage d’étude aux Etats-Unis’ (19 June 1959), FJM, AJM AMK C 30/3/35.
100 Letter from Michel Gaudet to Eric Stein (20 November 1961) responding to Letter from Eric Stein to Michel Gaudet (13 November 1961), FJM, AMG, Correspondence with Stein. Gaudet also discussed the idea of an Atlantic community with Monnet (see Letter from Michel Gaudet to Jean Monnet (8 February 1961), FJM, AJM AMK C 30/3/56; Letter from Michel Gaudet to Jean Monnet (29 December 1961), FJM, AJM AMK C 30/3/63).
101 The importance of the collaboration between Americans and Europeans is emphasized in his last letter to Eric Stein. Letter from Michel Gaudet to Eric Stein (20 August 1999), ESP, Box 19/Gaudet.
102 After two years of legal training, his son decided to become a Dominican monk and studied philosophy and theology; both his daughters studied law in Paris in the second half of the 1960s.
103 Letter from Eric Stein to Gaudet (13 November 1961); Letter from Michel Gaudet to Eric Stein (23 October 1961), FJM, AMG, Correspondence with Stein.
104 Letter from Michel Gaudet to Eric Stein (20 November 1961), FJM, AMG, Correspondence with Stein.
105 Letter from Eric Stein to Michel Gaudet (13 November 1961), FJM, AMG, Correspondence with Stein.
to the evolution of the European society into the post-industrial stage, ‘and to stimulate it, and that [was] its true importance’. Feeling that he was participating in an ‘urgent attempt towards change and unity’, Gaudet almost had a sense of mission when it came to this. The main inspiration behind his work at the Commission was his strong conviction that people had to be united. This was the goal he tried to achieve by promoting a European legal order. Europe was at a historical crossroad, experimenting with revolutionary changes, and this gave the Europeans a unique opportunity ‘of renewing legal thought and legal methods’. He strongly believed that institutional and legal structures should be the driving forces in the integration process. Such a view was deeply rooted in the pride he took in his profession. Gaudet had actually an almost romanticised outlook on prestigious professions: engineers built Belgium and orchestrated the technological transformation of societies, while (royal) lawyers built France and organized societies. This vision of the role of law in shaping societies also influenced his approach to the European project. For him, lawyers were to be the architects of Europe, as they provided the necessary tools for the concrete realization of the unification ideal. He viewed law as a dynamic organizational instrument in a continually evolving undertaking. It is not surprising therefore that he encouraged the European judges to interpret the treaties ‘as a living instrument and in a constructive way’. This perspective on law was reinforced by the tradition of his maison d’origine, the Conseil d’État, where jurists were more attentive to societal developments in their interpretation of the law than the practitioners of civil law for whom law was written in stone.

THE BREAKTHROUGH OF EUROPEAN LAW

In the following decade, Gaudet had ample opportunities to act on his broader understanding about the role Europe should play in a rapidly changing world. Building a strong European legal order was in his view crucial for facilitating the establishment of the common market, which constituted the core response of the EEC to adjust European societies to the post-industrial age.

The EEC Treaty outlined a transitional period of three phases, from 1958 to the end of 1969, in order to establish the common market with all its associated policies.

106 Letter from Eric Stein to Michel Gaudet (21 November 1963), FJM, AMG, Correspondence with Stein.
107 Letter from Michel Gaudet to John Mitchell (3 January 1976), FJM, AMG, Correspondence with Mitchell.
108 Gaudet also pleaded for the integration of other parts of the world; he took an interest in the tentative efforts of Latin-American countries to unify, finding it fascinating and hopeful that their legal experts also favoured supranational approach as well as common rules and institutions as a path to economic integration. However, after a conference in Bogota in 1967, he felt more pessimistic about the chances for success of the South American unification. Letter from Michel Gaudet to Eric Stein (8 May 1967), FJM, AMG, Correspondence with Stein; and Letter from Michel Gaudet to John Mitchell (17 February 1967), FJM, AMG, Correspondence with Mitchell.
109 Letter from Michel Gaudet to John Mitchell (14 November 1967), FJM, AMG, Correspondence with Mitchell.
111 Anne Boerger, interview with Jean-Jacques Beuve-Méry (Uccle, Belgium, 27 May 2013).
112 These words are reported by Robert Eisenberg and concerned the Treaty of Paris. Letter of Robert Eisenberg to Eric Stein (18 April 1955), ESP, Box 18.
Gaudet played an essential role in this extremely dynamic but also conflict ridden first period. In important respects the EEC developed much more positively than could realistically have been expected when the Treaties of Rome were negotiated. The customs union was finalized before time by 1967. In addition, key policies of the common market were gradually being established, including an external commercial policy, a competition policy, the free movement of labour and the right to establishment. Other policies such as transport, tax aid and harmonization of national legislation related to the common market faltered to a large extent during this period, but valuable experiences were gathered that would inform the later wave of reforms in the 1980s, eventually leading to the Single European Act in 1986. Finally, a European flagship project, the common agricultural policy, was established and constituted from the mid-1960s — a veritable European public policy.

The political and institutional development of the project proved more conflictual and suffered to some extent from the same tensions present in the ECSC. The EEC Commission under the German President Walter Hallstein and the European Parliament pushed for the full implementation of the EEC treaty, but also desired to take additional steps in a federal direction through institutional reform. For Hallstein, this should happen through the strengthening of Commission’s and of the European Parliament’s powers. A professor of international, private and civil law, Hallstein also championed the development of a strong legal foundation for the Communities. As head of the German delegation during the Treaty of Paris negotiations, he had boldly advocated the establishment of a European supreme court, and he conceived of both the Treaty of Paris and the Treaties of Rome as constitutional in nature. In his 1960 speech at the 29th Congress of the International Law Association in Hamburg, for example, he urged jurists to abandon the classical international law, and embrace instead a federal interpretation of the Treaties of Rome. Only by doing so, did he argue, could the development of a European legal order underpin the dynamic nature of the common market project. European law was thus a crucial element in the federalist project promoted by the Commission.

Against this federalist project stood first and foremost France and its president since 1958, Charles de Gaulle. Not only did de Gaulle vehemently oppose any step towards increased competences of the supranational institutions, but he also harboured the ambition to curb the Commission and transform the EC into an intergovernmental organization. While the other member states supported the institutional status quo, none were willing to implement the EEC treaty in its entirety. Although they accepted tariff dismantlement, they merely favoured partial trade liberalisations, preferring instead to maintain segmented national markets in order to protect employment. Only by the mid-1980s could an agreement be found for further liberalization in the framework of the single market.

The outcome of the struggle between these political forces was complex, but decidedly in favour of the national governments. After a French boycott of the Council

113 Address by the President of the European Economic Community Professor Dr Walter Hallstein to the 49th Congress of the International Law Association (Hamburg, 8 August 1960), Archives of Walter Hallstein, 337.

114 For the best historical analysis of the EC during the 1960s, consult Piers Ludlow, The European Community and the Crisis of the 1960s: Negotiating the Gaullist Challenge (Routledge 2007).
of Ministers in 1965, the so-called Empty Chair Crisis, Hallstein had to step down as Commission president. And although the Treaties of Rome had not been revised, France managed to insert an informal national veto right. With the crisis of 1965, the federal ambitions of the Commission and of the European Parliament were curbed. Yet, carefully nurtured in the Legal Service, the legal component of the project survived.

Under Gaudet’s leadership, the Legal Service played a central role in the policy making and administration of the EEC Commission, just as it had done in the HA. Gaudet had initially feared that the existence of three Communities might undermine his objectives with regard to the development of a coherent European legal order, and consequently he immediately moved in order to ensure that the Legal Services of the three executives (the HA, the EURATOM Commission and the EEC Commission) could act in a unified and independent manner. The three Legal Services were coordinated by an administrative Council of Commissioners led by the Belgian member of the EEC Commission, Jean Rey, and thus maintained an independent role vis-à-vis the other administrative departments. The functions of the Legal Service of the EEC ranged from supervising the Directorates-General in all legal matters to enforcing uniformity and coherence across fields in order to minimise possible mistakes. To provide this guidance, the Legal Services attended all meetings between the Commissioners and among the chefs de cabinet, and in the process gained a considerable general influence. In addition, the Legal Service represented the Commission in all legal matters, in particular before the ECJ. Public speeches were also checked by the Legal Service to ensure a uniformity of views towards the public.

The Legal Service’s structure and administration were non-hierarchic and flexible, with small teams of two to three officials working together. The large majority came from the practice of state law. Young and recently employed, legal councillors were trusted with important dossiers and were quickly expected to plead before the Court of Justice. In order to secure a backbone of experienced staff beyond those who continued from the ECSC, Gaudet and Kravielicki head-hunted four young law clerks from the ECJ and a member of the Legal Service of the ECSC’s Council of Ministers. According to interviews with several of his employees, Gaudet provided an open-minded and stimulating leadership, and despite his strong inclination for

115 The Court of Justice decided on 10 May 1960 in Cases 27/59 and 39/59 Alberto Campolongo vs. ECSC High Authority [1960] ECR 391 to interpret the three Treaties as a coherent whole, thereby removing Gaudet’s greatest concern.


120 Michel Dumoulin (ed) (n 118). Jean-Claude Séché mentions the inspiration from the Conseil d’État (Yves Conrad and Myriam Rancon, Interview with Jean-Claude Séché (Brussels, 8 June 2004), HAEU INT 720.
legal solutions that strengthened the Communities, he remained tactful in dealing with the member states. 121

Nicknamed the 11th commissioner, Gaudet’s influence and status were at first similar to the famous general-secretary, Emile Noël, at least until the mid-1960s. 122 While the two had a deep respect for each other at the personal level, it was only natural that their functions led to some degree of competition. 123 Gaudet defined what was possible for the Commissions in terms of law, while Noël, with his eminent network of contacts in the Council of Ministers, clarified the political room of manoeuvre for the Commission vis-à-vis the member state governments. One of the reasons for Gaudet’s prominence was the emphasis Hallstein gave to the legal development of the EEC. Both men shared the ambition to create a solid legal order of a constitutional nature as the foundation for the EC, but Gaudet believed that an open confrontation with national governments over the political development of the Communities was unwise. Hallstein was a reserved man, but the evidence suggests that Gaudet had a good working relationship with him. This was also true with regard to Jean Rey, Gaudet’s direct superior. Rey clearly respected the French jurist and generally offered him autonomy to run the Legal Service without interference. Rey continued to support Gaudet after he became President of the Commission from 1967 to 1970. 124

Despite the prominent role of Gaudet in the Commission, his influence declined in the latter half of the 1960s until his resignation in 1969. 125 This is explained by two developments. Firstly, Gaudet’s role during the Empty Chair Crisis fundamentally weakened his status in the Commission. During the crisis, Hallstein’s leadership in the breakout and under the crisis was vehemently contested in the College of Commissioners. Commissioners such as Robert Marjolin opposed what they considered a dangerous push on the part of the Commission to expand its own competences at the expense of the member states. At the outbreak of the crisis in July 1965, Hallstein asked the Legal Service to carry out a legal analysis to assess whether it was possible to take France to court over its boycott of the Community. The opinion co-written by Gaudet underlined the legal weakness of such an approach, but also offered the clear political advice not to use a legal procedure to solve an essentially political conflict. This did not go down well with Hallstein. 126 Gaudet kept his position and was even nominated director-general of the unified Legal Service from

121 Michel Dumoulin (ed) (n 118) 224.
122 Veronika Heyde and Myriam Rancon, interview with Ivo Schwartz (Tervuren, Belgium, 16 January 2004), HAEU INT 682.
123 Yves Conrad and Myriam Rancon, interview with Giuseppe Ciavarini-Azzi (Brussels, 6 February 2004), HAEU INT 724; Yves Conrad and Myriam Rancon, Interview with Jean-Jacques Beuve-Méry (Uccle, Belgium, 3 March 2004), HAEU INT 703; Yves Conrad and Myriam Rancon, Interview with Jean-Claude Séché (Brussels, 8 June 2004), HAEU INT 720.
125 Yves Conrad and Myriam Rancon, interview with Jean-Claude Séché (Brussels, 8 June 2004), HAEU INT 720. For an opposite point of view on this see Conrad and Myriam Rancon, interview with Manuel Santarelli (Kraainem, 4 March 2004), HAEU INT 719.
1967 onwards, but he lost some of his clout in the College of Commissioners. Secondly, the merging of the three Communities (ECSC, EURATOM and EEC) in 1967 weakened the overall position of the Legal Service. Despite Gaudet’s best effort and desperate pleas to the new Commission President and trusted friend, Rey, its staffing was significantly reduced.\textsuperscript{127} For Gaudet, the nature of the Legal Service to exercise legal control and to intervene against the Directorates-General (DGs) had caused animosity and the wish by the Directors-General to clip its wings, and instead employ their in-house legal expertise. Be it as it may, the weakened status of Gaudet after the Empty Chair Crisis, combined with the reshuffling of resources between DGs caused by the 1967 merger, offered a golden opportunity for the DGs to free themselves from the dependency of the legal service with regard to legal advice and build their own legal units.\textsuperscript{128} It has been claimed that the next director-general of the Legal Service, Walter Much, was much weaker than Gaudet, and that the Service was only restored when Claus-Dieter Ehlermann took over in 1977.\textsuperscript{129} Arguably, the demise of the Service had already begun under Gaudet.

This rise and decline of the status of Gaudet inside the Commission notwithstanding, his influence on the development of European law from 1958 to 1969 was exceptional. Here we will have to limit ourselves to briefly exploring two related questions. Firstly, we shall trace the intellectual development of Gaudet’s legal thinking that paved the way for the breakthrough of a proto-federal interpretation of European law by the ECJ, and of the supranational institutions more generally. Secondly, we will analyse Gaudet’s efforts to create an infrastructure to underpin European law by promoting both a dialogue between national courts and the ECJ, and the establishment of a professional and academic field of European law.

For Gaudet it was a long intellectual road to walk from his December 1957 letter to Swatland to his position in the Van Gend en Loos case, in October 1962. This road took him from a sweeping, federal reading of the Treaty of Paris to an interpretation of the nature of European law that used the opportunities offered by the EEC treaty, and, crucially, was adapted to a political context little conducive to federalist advances. In a speech in September 1958, at the Luxembourg’s \textit{Faculté internationale de droit comparé}, Gaudet made perfectly clear that, just like the ECSC, the new Communities constituted in his view a step towards the gradual construction of a United Europe, and that the interpretation of the treaties consequently should take this into account. The European institutions were endowed with the competences and means to pursue a general communitarian interest. The development of a genuine and autonomous \textit{droit communautaire} was necessary in order to underpin the institutions and facilitate the establishment of the common market.\textsuperscript{130} It was this view

\textsuperscript{127} Gaudet felt that Jean Rey was withdrawing his support, a fact that deeply affected his morale. Letter from Michel Gaudet to Jean Rey (13 May 1968). This letter is only included in a folder entitled ‘Organisation Service Juridique Unifié’, kept in Saragosse by the Gaudet family. We thank them for providing us access to these precious papers.

\textsuperscript{128} Folder ‘Organisation Service Juridique Unifié’, (on file with the Gaudet family).

\textsuperscript{129} Letter from Eric Stein to Michel Gaudet (5 February 1979), ESP, Box 19/Gaudet. See also Yves Conrad and Myriam Rancon, Interview with Jean-Claude Séché (Brussels, 8 June 2004), HAEU INT 720.

\textsuperscript{130} Michel Gaudet, ‘La structure juridique de la C.E.C.A’ (Faculté Internationale de Droit comparé, 17 September 1958), FJM, AMG, Conférences. This speech is cited at length in Julie Bailleux, \textit{Penser l’Europe par le droit} (Dalloz 2014) 244-46.
that made him rather hesitant towards the widespread efforts by lawyers to seize the opportunities offered by article 100 EEC to harmonize national legislation with an impact on the functioning of the common market. Such jurists shared the belief that the harmonization of comparable national legislation would bring the European countries closer together.\textsuperscript{131} Yet, for Gaudet, whose 1959 trip to the United States had familiarized him with the American experience of harmonizing state legislation during the 19th century market-building, it was obvious that, given the member states’ resistance, harmonization would only work in the long term. Article 100 EEC did after all require unanimity.\textsuperscript{132} So, this was not the road to take if a proper European legal order should be established.

Instead, Gaudet started with what had deeply concerned him during the Treaties of Rome negotiations: ensuring that common rules (droit communautaire) existed and were applied in a uniform manner across the member states. This goal could not be achieved if national courts received European law in the same manner as they handled international law. The common tradition of the six member states might generally lead national courts to apply European law with immediate effect, but the uniform application could not be secured, because it could not be expected that national courts in different constitutional contexts would apply European law in a fully identical manner. Even more concerning, Germany and Italy did not give primacy to international law, which meant that subsequent parliamentary legislation in those countries could trump European law, and, in France, the Ministry of Foreign Affairs controlled the interpretation of international law despite the monist design of the French Constitution of the Fifth Republic. For Gaudet these problems needed to be solved if the Communities and the common market should become a reality. Just like Hallstein, Gaudet concluded that international law had to be left behind. His solution was to give all European legal norms—including treaty articles—that constituted proper ‘règle de droit’ direct effect and primacy vis-à-vis prior and posterior national law, even if this was not explicitly spelled out in the treaty. The ECJ should have sole authority to decide which European legal norms had direct effect in order to ensure the uniformity of interpretation. Private litigants could then enforce European law before national courts by means of the preliminary reference mechanism, and thus provide the much-needed alternative to the infringement procedure. The justification for such a teleological interpretation of the Treaties of Rome was the particular nature of the treaties and of the Communities’ institutions, as well as the far-reaching objectives of the common market.

In 1963-1964, in two seminal judgments Van Gend en Loos and Costa v. E.N.E.L. the ECJ followed the lead of Gaudet and of the Legal Service, and established what the court would go on to call a ‘new legal order’. The key reason for the breakthrough was most likely the addition to the bench, in 1962, of French jurist and Christian democratic politician, Robert Lecourt, and of the Italian professor of civil law, Alberto Trabucchi. This change tipped the balance inside the court in a more

\textsuperscript{131} Julie Bailleux, \textit{Penser l’Europe par le droit} (Dalloz 2014) 257-70.
\textsuperscript{132} Michel Gaudet, ‘Les problèmes juridiques’ (Lecture at the Centro internazionale di studi e documentazione sulle comunita europee, Università degli studi di Ferrara, 13 July 1959), FJM, AMG, Conferences.
pro-federal direction, and the two new judges were also instrumental in securing a narrow majority in the decisive case of Van Gend en Loos.\(^{133}\)

While both judgments arguably fundamentally recast European law, the Commission and the European Parliament drew the political consequence and saw the ‘new legal order’ as vindication of the special (federal) political nature of the Community, which they had worked to reaffirm until then. In close cooperation with Gaudet and the Legal Service, the Belgian member of the European Parliament and professor of law at the University of Liège, Fernand Dehousse, drafted a report published on 15 March 1965, which strongly endorsed direct effect and primacy of European law.\(^{134}\) When the report was debated at the European Parliament, shortly before the outbreak of the Empty Chair, Crisis Hallstein and the parliamentarians readily agreed to support this new constitutional theory of the EC. However, if European law could have strengthened the political ambitions of the Hallstein Commission and the European Parliament, the Empty Chair Crisis crushed any dreams of strengthening the supranational institutions and of quickly moving towards a federalization of the EC. With the defeat of the Hallstein Commission, the new European legal doctrine remained, yet became fatherless, robbed of the political dimension that gave it legitimacy and rationality.\(^{135}\)

Convincing the national legal elites and courts to embrace ‘the new legal order’ was a major challenge already before the Empty Chair Crisis destroyed the federal dream in the short-term. Yet it was a crucial challenge to address, because the preliminary reference system and the new doctrines depended on the active cooperation of national judges. Moreover, the establishment of European law, as a professional field and an academic discipline, would also be vital in order to avoid that the case law of the ECJ merely exist in a vacuum.\(^{136}\) To achieve these objectives, Gaudet wanted to establish an association of academics and professionals, which could support the development of European law.\(^{137}\) Already in 1958, Catalano and Gaudet had discussed such plans, but the initiative of the former to establish an association under the leadership of Italian Christian democratic politician, Antonio Segni, failed.\(^{138}\) Instead, the initiative came from the French Association de Juristes Européens (AJE).\(^{139}\) Established in 1954, the AJE worked purposely from 1958 to 1961 to form national associations in all the member states and to set up an umbrella organisation to coordinate them – the Fédération Internationale pour le Droit Européen (FIDE). Gaudet


\(^{134}\) ‘Exposé de M. Gaudet devant la Commission juridique’ (18 February 1965), HAEU, Archives of Fernand Dehousse, 494.

\(^{135}\) The effects of the Empty Chair Crisis on the development of European law have been overlooked in the otherwise interesting analysis in Antoine Vauchez, *Brokering Europe. Euro-Lawyers and the Making of a Transnational Polity* (CUP 2015) 133-46.

\(^{136}\) Letter from Michel Gaudet to Jean Rey (21 January 1962), FJM, AMG, Correspondance Jean Rey.


\(^{138}\) Aide-mémoire [December 1958], FJM, AJM AMK 30/3/29.

supported these efforts and was instrumental in setting up the German association in 1961. In December 1962, he also secured that the Legal Service handled exclusively the Commission’s relationship with FIDE. During the 1960s, FIDE became a sounding board for the Commission with regard to the development of European law, and, in return, it received funding of its activities. While FIDE and the national associations organized numerous conferences and seminars, in particular in the 1960s and 1970s, and rallied support for the ‘new legal order’, the European law associations never really became the influential agents in the member states that Gaudet had hoped. Instead, their importance was mainly felt at the European level, where they offered a transnational dimension in the emerging field of European law academia. From the 1970s, FIDE’s role in organizing the academic field of European law was progressively replaced by major law journals, university centres, and in particular the European University Institute.

If the main ambition behind FIDE was to convince national courts and legal elites to embrace European law, Gaudet personally was deeply involved in facilitating the acceptance of European law in his native France. However, given the Gaullist grip on the political system from 1958 to 1969, the French political and court system remained exceptionally sceptical about the ECJ and its new jurisprudence. At one level Gaudet worked hard to educate the French judiciary and legal elite about the nature and facts of European law. His worry was not necessarily that French courts would not apply European law, but that they were seemingly sceptical with regard to employing the preliminary reference mechanism. He gave frequent lectures in France about the nature of European law, and he diplomatically characterized French reluctance as caused by a lack of information. In 1965, he also helped organize the visit of the Conseil d’État and Cour de Cassation judges to Luxembourg in order for them to become more familiar with the ECJ. The Association de Juristes Européens was a very valuable tool for disseminating information about European law, prompting Gaudet to keep a close relationship with its leader, Maurice Rolland. Finally, Gaudet worked diligently with a number of French jurists inside and outside the high courts, to incite them to use the preliminary reference mechanism. He personally pressured, for example, members of the Conseil d’État, including the commissaire de government, Nicole Questiaux, in the famous Petitjean case, in order to convince the French court to send its first preliminary reference. He did not succeed. The French political system and judiciary remained sceptical of European law until the

140 ‘Note à l’attention de M. Rey. Objet: Désignation du Service Juridique pour assumer la coordination des relations avec certaines associations de juristes’ (19 December 1962), Archives of the Legal Service of the European Commission. 347.96 (100), Fédération internationale pour le droit européen.


Gaudet’s efforts to create support for European law had a fairly limited effect in the short-term, both at European and national levels. However, the reinvigoration of European integration in the 1980s leading to the formation of the single market and to the European Union in 1992 would eventually be based on a European legal order constructed on the basis of the two doctrines, which Gaudet had played such a central role in developing. As the rejection of the 2004 Constitutional Treaty by referenda in France and the Netherlands have demonstrated, the political and constitutional aspects of ‘the new legal order’ have remained, however, as elusive today as they were in the 1960s. Finally, Gaudet’s early attempts to construct a transnational academic discipline of European law helped create the foundations of EU legal scholarship today.

**THE TIMES ARE CHANGING: 1968 – 1970**

A certain mystery has long surrounded the circumstances of Gaudet’s departure from Brussels in the fall of 1969\footnote{145}{Michel Dumoulin (ed) (n 118) 226.}; some speculated that he resigned because he was soon to be replaced to conform to the national quota system or because he was allegedly losing his influence to his semi-rival Emile Noël.\footnote{146}{Yves Conrad and Myriam Rancon, Interview with Jean-Claude Séché (Brussels, 8 June 2004), HAEU INT 720.} New evidence indicates however that Gaudet left the Legal Service mainly for personal reasons.

As early as 1967, the jurist found it increasingly difficult to reconcile his familial responsibilities with the demands of his job, and he felt torn between Brussels and Paris where his three children were now studying. At the end of 1966, his only sister passed away at the early age of 53, leaving behind eight children and the aging parents, whom she had taken care of up till that point.\footnote{147}{Letter from Michel Gaudet to John Mitchell (12 December 1966), FJM, AMG, Correspondence with Mitchell.} Two years later, his brother-in-law also died unexpectedly.\footnote{148}{Andre Marchal (1907-68), Françoise’s brother-in-law and professor of economics at the Faculté de droit et sciences économiques in Paris. Letter from Michel Gaudet to John Mitchell (1 August 1968). FJM, AMG, Correspondence with Mitchell.} Moreover, his wife, Françoise, was considering a doctorate in geography, which required field work on glaciers, adding yet another layer of complexity to their family life.\footnote{149}{Françoise Gaudet received her doctorate degree in 1973.} The events of 1968 brought to the forefront again the question of education in a very personal way. During the occupation of La Sorbonne’s Law Faculty by students, Gaudet had to drive all the way from Brussels to get his youngest daughter, Catherine, who was studying law at the time, out of the university at the height of the crisis. On the way back to Brussels, the father and daughter discussed the motivations of the young generation involved in the 1968 events in Paris. Somewhat frustrated with the legal scholars seemingly so disconnected from the youth—who was questioning the ‘very meaning of law’—he...
aspired to play a greater role in his children’s education. By returning to Paris, Gaudet could assume his responsibilities as a father and as a patriarch to the younger generation of the family (23 of them under the age of 35).

Gaudet’s decision to leave the Commission was also guided by his own professional qualms and ambitions. After 17 years on the job, he dreaded becoming a sort of complacent ‘European mandarin’, and felt the pressing need to ‘reinvent’ himself. He admired the American elite, who easily moved from academia to government, or from law to management, and yearned for such a transition to ‘stimulate the humanist hidden in the expert and renew the need for boldness at the time where maturity inclines towards cautiousness’. Finally, Gaudet also regretted at times being confined to a position where, by the nature of his role as an adviser, he was never to be a decision-maker at the national or the European level.

Thus, when he received in October 1969 the offer to lead the Fédération Française des Sociétés d’Assurance (FFSA), Gaudet was ready to cross this professional bridge. Leaving the Legal Service after 17 years of hard and patient work was heartbreaking though, especially since de Gaulle’s departure and upcoming enlargement negotiations with Britain opened a new promising era. Although he quickly added a European dimension to his new professional occupations and remained in regular contact with legal practitioners and scholars, Gaudet never again contributed significantly to the development of European law. This chapter of his life was closed, and neither the opportunity to teach European law at Cambridge University, nor even a potential appointment as a judge at the ECJ in replacement of the Robert Lecourt convinced him to reopen it.

**EPILOGUE: INSIGHTS INTO GAUDET’S LIFE AFTER 1969**

It is not within the scope of this article to analyse Gaudet’s professional achievements in the two decades following his departure from the Legal Service. We ought however to highlight a few key points of the 18 years he spent pursuing, in other capacities, some of the same goals and ideas that had previously oriented his professional and personal life.

The unlikely leap from the European law to the French insurance sector seems a somewhat puzzling choice for a jurist passionate about Europe’s legal integration.

150 Letter from Michel Gaudet to John Mitchell (2 December 1968), Letter from Michel Gaudet to John Mitchell, (8 January 1970), FJM, AMG, Correspondence with Mitchell.

151 Letter from Michel Gaudet to John Mitchell (8 January 1970), FJM, AMG, Correspondence with Mitchell.

152 ibid.

153 ibid.

154 ibid.

155 Founded in 1937 as a professional syndicate, the French Federation of Insurance Companies brings together anonymous companies, branches of foreign companies and mutual insurance companies.

156 He was offered the Arthur Goodhart Professorship of Legal Science in 1972-73, but declined for familial and professional reasons. Letter from Michel Gaudet to Eric Stein (8 January 1972), ESP, Box 6/Gaudet.

157 When approached, Gaudet declined to submit his candidature. Adolphe Touffait eventually replaced Lecourt. Letter from Michel Gaudet to Eric Stein (13 December 1976); Letter from Michel Gaudet to John Mitchell (9 November 1976), FJM, AMG, Correspondence with Eric Stein and with John Mitchell.
Having to care for his extended family and pushing 55, Gaudet could have reintegrated into the Conseil d’État and probably continued a distinguished career.\(^{158}\) His decision to tackle this new challenge was, however, in line with his character, and there was actually some continuity between both positions. As he had embraced in 1952 the European project for the new solidarity it aimed to create among European nations, he now embarked in the insurance field because he perceived it as a crucial ‘mechanism of solidarity’\(^{159}\) capable of creating a fairer and better society. Besides, he was keen to help insurance companies adjust to the realities of the new Europe, and he quickly tapped in his expertise to add a European dimension to his new career by getting actively involved with the European Insurance Committee (better known under its French name of Comité Européen des Assurances).\(^{160}\) After chairing its Common Market Working Group from 1972 to 1978, Gaudet was elected chair of the Committee in 1978, a position he held until 1982. Organizing the European insurance market required intense efforts of harmonization and proved to be a complicated task, because this industry was tightly controlled at the national level. Given the prominence of the British insurance in that field, the inclusion of the United Kingdom in the common market further increased the complexity of the undertaking.\(^{161}\)

Gaudet remained at the head of the FFSA until 1981, when he had to step down due to his age (65). His professional activities did not stop at that point, however. In 1977, Jean Rey, who was then retiring from the presidency of the International Court of Arbitration at the International Chamber of Commerce (ICC)\(^{162}\) had convinced Gaudet to take over this voluntary position. The former European jurist’s profile matched well the job description since the Court of Arbitration resolves international commercial and business disputes, which often emerged due to differences in the linguistic, cultural or legal backgrounds of the parties.\(^{163}\) While it added new, demanding responsibilities to his already heavy workload, the job clearly fascinated Gaudet, who chaired the Court until January 1989.\(^{164}\) The worldwide institution handled more than 200 cases yearly and, in a context of increasing globalized trade, needed to improve its methods and services.\(^{165}\) Both its insurance and his arbitration occupations also required him to travel extensively across Europe and around the globe during this period, something that he and his wife enjoyed. If his busy schedule left little time to keep up-to-date with the ongoing developments of

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\(^{158}\) Instead, Gaudet had to retire from the Conseil d’État in 1973. Since he was now working in the private sector, he could not leave the Conseil d’État for more than three years (leave of absence for personal reason), as it was the case when he worked at the European Commission (public sector). Anne Rasmussen, interview with Michel Gaudet (Paris, 30 December 1991, Entretien 5).

\(^{159}\) ibid.

\(^{160}\) Created in 1953, it gathered the national insurance associations of some 19 countries.

\(^{161}\) Letter from Michel Gaudet to Eric Stein (10 October 1972), ESP, Box 19/Gaudet.

\(^{162}\) Jean Rey was appointed president of that Court after he left the European Commission in 1970.

\(^{163}\) Letter from Michel Gaudet to Eric Stein (7 April 1998), ESP, Box 19/Gaudet. Set up in 1923, the ICC International Court of Arbitration is a worldwide institution, but has its headquarters in Paris. For more details about Gaudet’s work at the Court, see Anne Rasmussen, interview with Michel Gaudet (Paris, 30 December 1991, Entretien 5).

\(^{164}\) In 1998, he was still an advisory member of the International Council of Commercial Arbitration.

\(^{165}\) Letters from Michel Gaudet to John Mitchell (24 October 1978 and 1 December 1980), FJM, AMG, Correspondence with Mitchell Correspondence with John Mitchell.
European communities, Gaudet continued, nonetheless, to debate European political and legal issues\(^\text{166}\) with scholars like Stein, and to showcase European integration as an example of how the world could be transformed for the better.

**CONCLUSION**

This article has demonstrated the richness and nuances that a biographical study of transnational bureaucrats might offer. While Michel Gaudet was perhaps only a minor figure in the history of European integration and remained a bureaucrat throughout his career, he played a central role in the federal ambition of the HA and of the European Commission in the first two decades of European integration. It was Gaudet who developed the legal component of this strategy, and he was in different ways very close to the two presidents who almost personified the strategy, Monnet and Hallstein. As we have been able to document, Gaudet, who before 1952 had showed no particular interest in European unification, was converted to the European cause at his first meeting with Monnet, and he always remained a devoted member of his entourage. Neither the ambitions of Monnet nor of Hallstein were fulfilled; the Empty Chair Crisis not only cost the latter his presidency, it also cemented the grip of national governments on the EC. Despite this defeat, the legal construction envisioned by Gaudet had a lasting effect on the development of the Community. In the 1970s and 1980s, the European Court of Justice, to some extent, took the mantle from the Hallstein Commission and promoted its own constitutional understanding of European law. And when the European integration was reenergized in the mid-1980s, the European legal order was de facto accepted by the member states as the only suitable basis for the internal market. The constitutional claim inherent in the legal order, which had been furthered by the ECJ, was however rejected not only by national high courts in a string of rulings in the 1990s,\(^\text{167}\) but finally also by part of the European electorate in 2005, when referenda in France and the Netherlands rejected the Constitutional Treaty.

What were the influences that shaped Gaudet’s legal thinking? On the one hand, his French education and experience in the *Conseil d’État* gave him the typical self-understanding of the French legal elite. He held the view that lawyers had built the French state, and that they could also now contribute to the building of Europe. In addition his experience working as a legal councillor in Morocco gave him important insights into working in a multicultural environment and practical lessons of how several legal orders could be brought to work together. On the other hand, a certain nanny—Miss Moran—played an important role in this story. Gaudet’s proficiency in English was extremely high, as his personal archive demonstrates. The linguistic skills made an orientation vis-à-vis the Anglo-Saxon world natural for him, and he was consequently ready to fully exploit the great possibilities for networking in the American political and legal elite, which his close relation to Monnet offered him. His American contacts, his six-week tour of the United States in 1959 and, in particular,

\(^{166}\) See in particular Gaudet - Stein 1979 and 1980 exchanges about the ECJ moving too fast in comparison with the other European institutions and members-states, ESP, Box 19/Gaudet.

\(^{167}\) The most famous example of this was the so-called Maastricht ruling of the German Constitutional Court. Bundesverfassungsgericht Maastricht [12 October 1993] BverfGE 89, 155.
his long-standing friendship with Eric Stein greatly influenced his legal thinking and his entire approach to European law. The notion that the European Court of Justice should assume the same responsibilities as the American Supreme Court, the teleological interpretation of the treaties, the lack of belief in harmonization of national legislation (that had been given a central role in the EEC Treaty) – all these elements can be traced back to the American influence. But the Anglo-Saxon perspective went beyond law: for Gaudet European integration was part of a defence of the West in the Cold war and an intricate part of what should become an Atlantic Community.

Beyond these insights into how Gaudet’s particular life shaped his worldview and thus his actions in the legal field, the article also offered precious insights into the private lives of the transnational, European elite that attempted to make a life around the new supranational institutions. For the Gaudet family, European integration became a way of life. Privately, the Gaudet couple worked diligently to foster reconciliation and the development of a European dialogue about a broad range of questions from school curriculum to ecumenical questions. The Catholicism of the Gaudets apparently played an important role in this engagement. Professional career, ideology and private life were thus one and the same in this case. How transnational elites employed in the international organizations of the 20th century built a private life, to what extent such a life reflected the political agenda of the respective international organisations remain underexplored themes in historiography. However, as this article shows it is a most promising new field of study.