# European Legal Cultures

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ognizes neither the novelty of the community system nor the conditions of a potentially successful continued expansion. [...]

# SOCIO-LEGAL CONTOURS OF THE PROJECT EUROPE

## 68 The Transformation of European Legal Cultures*

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[...]

**INTEGRATION CONCEIVED AS THE INTEGRATION OF LEGAL CULTURES**

The key concept for a legal–sociological theory of integration is that of 'legal culture' – that is, the values and attitudes about law, the interpretation of law, behaviour vis-à-vis given norms in general and the law in particular, the level of legal knowledge among the general public, the social structure and status of the legal professions, etc. It is no longer disputed that legal culture is both a *cause* and *effect* of law: on the one hand, it shapes the essential basic ideas of a national legal order, while on the other hand it is constantly exposed to legal influences. For example, the English legal system has been shaped by the long intellectual tradition of the Common Law, but Margaret Thatcher's three terms in office as prime minister also produced extensive changes in England's legal culture.

It is this case-specific interaction which makes for the relatively great effectiveness of law in the modern state: on the one hand, legal–cultural impulses and their transformation into legal policy, on the other hand government control that at individual points reshapes behaviour and attitudes about the law. Orienting oneself on the legal–cultural context is a necessary condition for successfully establishing any norm, whether as a legislator, judge or administrative jurist, or as a lawyer

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negotiating a contract. If such orientation is not successful, as for example in the expanded Federal Republic of Germany, law fails as a means of integration.

From this perspective, the concept of the European Community as a *legal* community is *a priori* a precarious one, since neither the transformation of legal–cultural values into law nor the orientation on the legal–cultural context when establishing centralized legislation follows the national–state model described here.

EC law is not the product of a 'European legal culture' for the simple reason that no such legal culture exists – or at best, one can speak of a 'European legal culture' only in a very abstract sense. A closer look around Europe reveals a broad spectrum of valuations of and behaviours regarding the law (just consider the widely differing attitudes towards sexual equality, abortion, tax obligations and environmental protection). Comparing countries in terms of the structure and social role of the legal professions, legislative and judicial styles and legal–political discourse reveals what is perhaps a higher degree of variety than can be found in any other single region of the world. Also, EC law receives few impulses from the various European legal cultures, due to a variety of factors: the widely acknowledged 'democracy deficit' of the European Community, the insignificance of border-transcending legal–political forms of expression for individual social movements, and the high degree of secrecy maintained when preparing Community legal instruments. European law is created in relative isolation, far from any legal–cultural expressions in the individual European societies. Unlike within the national context, a proximity of law and legal culture cannot be established with an 'evolutionary theory'.

However, such proximity of law and legal culture *could* be achieved if the norm-setting EC institutions (the EC Commission with its committees, the Council of Ministers, the European Court of Justice) were more closely oriented towards the legal–cultural realities of the Member States. Just as the actors in the national legislative process have countless possibilities for contact with legal–cultural forms of expression and patterns of interpretation, EC-specific information channels could be created which would make it possible to integrate control mechanisms into the legal–cultural environment in a careful and targeted manner. In fact, there exist a whole series of 'sensors' which deserve attention as sources of legal–cultural information: comparative studies in the preparation of legislative measures; committees with representatives of the specialized national departments; 'package sessions' with the representatives of the affected administrations which are regularly held in each Member State; seminars and public hearings held 'in the field', with the participation of citizens' organizations and movements; debates and question times in the European Parliament; citizens' petitions to the Parliament; complaints lodged with the individual Directorates-General.

However, apart from the committee sessions (which, it must be admitted, are held very frequently), the quantitative significance and qualitative scope of these institutional interventions in the legal–cultural preconditions of an EC measure appear to be very slight. [...]

Even the other legal–cultural sensors, whose practical utilization is less familiar, do not appear capable of compensating for the deficit of information about the administrative practice of the Member States, about the most adequate control measures in a given social context, about the readiness to obey of the group being addressed, about the potential resistance of the interest groups, about the legal–policy priorities of the national judges, and so on.

If the implementation of EC law depends on orderly administrative enforcement and effective legal protection being assured at the national level (Article 5, EEC Treaty), then it makes a *considerable* difference whether in one country (Italy) knowledge of EC law remains very limited, administration is inefficient and corrupt, judicial procedures are long and slow, and the population is sceptical about all government activity; while in another country (Denmark), the administration enjoys a high degree of confidence and complaints are almost never directed to the courts but regularly go to the ombudsman where every attempt is made to resolve conflicts in a pragmatic manner; in a third country (Germany), administrative action is extensively juridified and conflicts – even those of a political nature – quickly end up in the courtroom; in a fourth Member State (Belgium), arbitration offices have been established for resolving disputes between citizens and the administration which do not attempt to mediate in accordance with legal standards (and thus, of course, not in accordance with EC legal standards either); and finally, in a fifth Member State (France), the supreme administrative court the Conseil d'état claimed until recently that *it* held the power to validly interpret EC law and thus deliberately ignored the obligation to submit EC-law issues to the European Court of Justice. This list of legal–cultural differences adduced by legal scholars could be extended with a great many other examples from a legal–sociological perspective. In any event, the national particularities in Europe are far more pronounced than any casual talk about the 'European legal community' would suggest.

EC law *has* attempted to take the political, legal and legal–cultural differences of the Member States into consideration. [...] Nevertheless, there remains a considerable regulatory deficit which is due to the heterogeneity of the European legal cultures, a regulatory deficit which – in contrast to the political and legal barriers to integration – is largely invisible. It is a contradiction to the ideal of the 'European legal community' when social norms and values in individual Member States make it impossible, for example, to equalize salaries for men and women, when the protection of environmental interests provokes street demonstrations in one country but only yawns in another, when the obligation of bus drivers to use a

tachograph is taken with widely varying degrees of seriousness, or when the possibility of lodging complaints on the basis of EC law are not exploited due to a general cultural indifference to judicial procedures. Even the finest, most detailed, juristic labours are useless if a specific regulatory goal has little or no relevance in one legal culture, the selected form of control finds inadequate enforcement and implementation structures in a second legal culture while, in a third legal culture, problems in that regulatory area are traditionally settled *without* legal intervention. This problem of more or less differing social interpretive patterns and implementation structures which, even within individual Member States, frequently leads to regional or sectoral disparities, can within the framework of the Community of Twelve only be reduced through a reciprocal convergence of the legal cultures – a theme to which both cultural sociology and legal sociology can make a contribution.

## THE CULTURAL AND LEGAL–CULTURAL CONVERGENCE OF EUROPE

The theory of the *educative effect* of the law, which has always been implicitly linked with law-making, asserts that there exists a readiness on the part of social actors to adapt themselves to the respective legal requirements and offers. According to this theory, control through law is also possible even without taking into consideration the legal–cultural environment and – as in the EC context – its multiplicity. There is a broad distribution of EC documentation centres, collections of EC law for science, the economy and the citizen, university chairs and law courses devoted to EC law, as well as an extensive presence of the EC in the media. This flood of information may have the long-run effect of washing away other legal–cultural traditions. It might also occur a good deal more quickly than the reception of Roman law in the closing phase of the European Middle Ages, or of modern law of continental or Anglo-Saxon origin in the countries of the Third World. But even if one were willing to accept – contrary to all empirical evidence on the reception of law – that new laws only need to become known and 'learned' in order to be accepted, we would still have to reckon with a considerable cultural delay – a 'cultural lag' entailing unavoidable legitimation problems. The crisis in autumn 1992 was one of the integration and convergence theories. The crisis of the related juristic assumptions about a 'quick and ineluctable convergence' of the European legal cultures still lies ahead of us.