

# Table of Contents

Foreword	vii
<b>1 In Search of the Special Nature of Community Law</b>	<b>1</b>
1. Outline of the Inquiry	1
1.1 The Identity of Community Law	1
1.2 The Relevance of the Hypothesis of the Special Nature of Community Law	2
1.3 The Significance of the Court's Case Law	4
2. The Concept of the Community Legal Order	6
2.1 The Indivisibility of Community Law	6
2.2 Elements of the Community Legal Order	9
3. The Autonomy of Community Law	11
4. Methodological Observations	12
4.1 Community Law and National Law	12
4.2 Relevance of National Constitutional Law	14
4.3 Law Beyond the State?	17
4.4 A Functional Approach?	19
5. Outline of the Study	21
<b>2 Community Law as Supranational Law</b>	<b>23</b>
1. A New Legal Concept?	23
1.1 Rise and Decline	23
1.2 Theoretical Significance for Community Law	24
2. Etymological Explanations	26
3. The Word 'Supranational' in the Community Treaties	27
3.1 The ECSC Treaty	27
3.2 The EEC Treaty	30
3.3 'Supranational' as a Formal Description	31
4. The Paradigm of Supranational Law	32
5. Supranational Law as a New Category of Law	33
5.1 The Community Model	33
5.2 Community Law and National Sovereignty	36
5.3 Political Assumptions	40
6. Supranational Law and Pre-federal Law	42
6.1 The Theory of State Unions	42
6.2 The Federal Perspective	47
7. Supranational Law as a Specific Community Law Notion	50
8. Supranational Law: a Misleading Paradigm	54

## TABLE OF CONTENTS

<b>3</b>	<b>Community Law and Sovereignty</b>	<b>59</b>
1.	Outline of the Problem	59
2.	Community Law and the Sovereignty of Member States	62
2.1	From Market Integration to Policy Integration	62
2.2	The Treaty on European Union	65
3.	The Concept of Sovereignty: Past and Present	66
3.1	Some Historical Elements	68
3.2	Sovereignty and the State	71
3.3	Questions and Paradoxes	73
3.4	Theoretical Consequences	78
4.	Constitutionalised Sovereignty	82
4.1	Nation, People and State	85
4.2	Constitutional Autonomy	89
4.3	The Principle of Democracy	91
4.4	Inviolability of Sovereignty	93
5.	Sovereignty and Supranational Organisations	95
5.1	Democratic Deficits	95
5.2	Defensive Function of Sovereignty	97
5.3	Decline of Statehood	101
5.4	Sovereign Control over Supranational Organisations	103
6.	The Criterion of 'Negative' Statehood	106
<b>4</b>	<b>Community Law and the Constitutional State</b>	<b>109</b>
1.	Sovereignty and the Special Nature of Community Law	109
1.1	Outline of the Problem	109
1.2	Constitutional Restriction of Sovereignty	110
1.3	Conventional Restriction of Sovereignty	114
1.4	Methodological Problems	115
2.	People, State and Democracy in the European Union	119
2.1	The Question of the 'Pouvoir Constituant'	119
2.2	The Absence of a Common State Concept	123
2.3	The Structural Character of the Democratic Deficit	124
3.	The European Union as an Organisation of Sovereign States	131
3.1	The European Union and its Negative Statehood	131
3.2	Community Law and National Constitutions	136
3.3	Vital Interests	139
4.	The Judicial System of the European Union	141
4.1	The Court of Justice	141
4.2	National Constitutional Courts	146
5.	Constitutional Restriction of Sovereignty?	149
5.1	The Denaturing of Community Law	149
5.2	Constitutional Ideology	150
5.3	The Fallacy of Divided Sovereignty	156

## TABLE OF CONTENTS

6.	Conventional Restriction of Sovereignty?	159
6.1	The Member States as 'Pouvoir Constitué'	159
6.2	Sovereignty and the Institutional Law of the EU	160
6.3	Sovereignty and the Substantive Law of the EU	162
7.	Tertium Non Datur?	165
<b>5</b>	<b>Community Law as a New Legal Order</b>	<b>167</b>
1.	The Concept of Legal Order in Community Law	167
1.1	Background	167
1.2	Legal Order as a Paradigm of Community Law	168
2.	Community Law as a Legal Order	170
2.1	The Concept of Legal Order	170
2.2	Legal Order and Autonomy	172
2.3	State and Legal Order	173
2.4	Theoretical Problems	175
3.	The Paradigm of Separated Legal Orders	177
3.1	Case Law	177
3.2	Theoretical Problems	178
4.	The Paradigm of the 'New' Legal Order	180
4.1	Case Law	180
4.2	Theoretical Problems	183
5.	The Paradigm of the Integrated Legal Order	186
5.1	Case Law	186
5.2	Theoretical Problems	187
6.	The New Legal Order	189
6.1	An Inadequate Paradigm	189
6.2	The Hypothesis of the Autonomy of Community Law	190
7.	Conclusion of Chapters 2 to 5	191
<b>6</b>	<b>The Unity of Community Law</b>	<b>193</b>
1.	The Significance of Substantive Community Law	193
1.1	Functional Character of the EC	193
1.2	Structure of Community Substantive Law	195
2.	The Concept of Internal Market and Community Law	198
2.1	Historical Background	198
2.2	The Concept of Internal Market in the EC Treaty	199
3.	The Organisation of the Internal Market	200
3.1	Scope and Nature of the Organisation	200
3.2	The Meaning of 'Market Organisation'	203
3.3	The Internal Market as the Foundation of Community Law	205
4.	The Unity of the Internal Market	207
4.1	The Concept of Market Unity	207
4.2	Consequences of Market Unity	208
4.3	Market Unity in the Case Law of the Court	210

## TABLE OF CONTENTS

5.	The Indivisibility of Community Law	211
5.1	The Community Character of Community Law	211
5.2	Conceptual Problems	213
<b>7</b>	<b>The Community as Common Public Authority</b>	<b>217</b>
1.	The Significance of Institutional Community Law	217
2.	The Nature of Community's Powers	218
2.1	The Concept of Sovereign Rights	218
2.2	Sovereign Rights and International Treaties	219
2.3	The Constitutional Draft Treaty	221
3.	The Origin of Community Powers	221
3.1	The Significance of National Constitutions	221
3.2	Derived or Original Powers?	223
4.	The EC Treaty and the Theory of Derived Powers	226
4.1	Overview	226
4.2	Legal Effect	227
4.3	Conceptual Objections	229
4.4	Legal Objections	230
5.	The EC Treaty and the Theory of Original Powers	232
5.1	The Case Law of the Court of Justice	232
5.2	Nature and Content	234
5.3	Sovereignty Revisited	236
<b>8</b>	<b>The Autonomy of Community Law</b>	<b>239</b>
1.	Outline of the Concept of Autonomy of Community Law	239
1.1	The Community Character of Community Law	239
1.2	The Development of the Concept of Autonomy in the Case Law	240
1.3	The Significance of the Concept of the Autonomy of Community Law	243
2.	The Concept of Autonomy: Possible Meanings	245
2.1	Autonomy as a Legal Status	246
2.2	Autonomy as a Quality	248
2.3	Possible Meanings of the Autonomy of Community Law	250
3.	The Concept of Autonomy of Community Law	251
3.1	Autonomy as an Inherent Characteristic of Community Law	251
3.2	The Existential Nature of Community Law	253
3.3	Community Law as a Creation <i>ex nihilo</i>	256
3.4	Conceptual Problems	257
4.	Community Law as a Self-referential System	259
4.1	The Essential Meaning of the Autonomy Concept	259
4.2	Autonomy and the Contents of Community Law	263
5.	Community Law and National Law	265
5.1	The Factual Dependency of Community Law	265

## TABLE OF CONTENTS

5.2	Autonomy as an Expression of Pluralism of Sources of Law	267
5.3	The Model of Competing Legal Orders	268
6.	Autonomy as an Objective Characteristic of Community Law	270
6.1	Autonomy as a Reference to the Special Nature of Community Law	270
6.2	Autonomy as a Method of Interpretation	272
<b>9</b>	<b>The Constitutional Character of Community Law</b>	<b>275</b>
1.	The Constitutional Nature of the EC Treaty	275
1.1	A New Paradigm	275
1.2	The Constitutional Charter of the Community	277
2.	The Concept of Community Law	280
2.1	The Neutrality of the Autonomous Nature of Community Law	280
2.2	Autonomy and the Principle of the Rule of Law	282
3.	Article 220 EC and 'The Law' in the Community	283
3.1	'Law' and Community Law	283
3.2	The Principle of the Rule of Law	284
3.1	The Autonomous Nature of the Law of the Community	287
4.	The Community System of Jurisdiction	287
4.1	The Community Monopoly of Jurisdiction	288
4.2	Autonomy of Interpretation	289
4.3	The Right to Judicial Protection	291
5.	The Constitutional Character of Community Law	293
5.1	The Problem of the 'Pouvoir Constituant'	293
5.2	The Role of the Court	294
6.	A Community of Law	296
6.1	Community Law as a New Category of Law	296
6.2	Mitigated Constitutionalism	296
<b>10</b>	<b>The Denationalisation of National Law</b>	<b>299</b>
1.	A New Paradigm?	299
1.1	The Model of Competing Legal Orders	299
1.2	The Concept of National Law	301
2.	The Member State as a Community Law Subject	302
2.1	The Concept of Member State	302
2.2	Foundation and Consequences of the Status as Member State	304
2.3	The Member State and the Community Interest	306
2.4	The Prohibition of Unilateral Actions and the Duty of Loyalty	307
3.	Community Law as an Expression of Constitutional Pluralism	310
4.	The Theory of the Autonomy of Community Law	312
4.1	Function and Significance	312
4.2	Limits	314

## TABLE OF CONTENTS

5.	The Changing Character of National Law	317
5.1	Autonomy and the Emergence of Non-national Law	317
5.2	The Concept of Autonomous Law and the Process of Globalisation	318
<b>11</b>	<b>The European Union and the Community Legal Order</b>	<b>319</b>
1.	Community Law and the European Union	319
1.1	Community Law in the Treaty on European Union	319
1.2	Community Law as European Union Law	321
2.	The position of the Community Legal Order	323
2.1	Community and Non-Community Law	323
2.2	Community Law as the Core of the European Union	324
3.	The Added Value of the European Union	325
3.1	The Two Track Model of the European Union	325
3.2	The Relationship between Community and Non-Community Law	326
4.	The European Union and its Community Legal Order	328
4.1	The Community Character of Community Law	328
4.2	The Incentive towards Constitutionalisation	330
	<b>Index</b>	<b>331</b>