

WALTER HALLSTEIN AND EUROPEAN LEGAL INTEGRATION

Jacopo Volpi¹

ABSTRACT

This article tries to reconstruct the figure of Walter Hallstein, as an emblematic representative (practical and theoretical) of the fundamental directions taken, over the decades, by the development of European integration. Thus, we attempt to analyze some essential elements of his theoretical-legal conception, to emphasize the critical links with the ideological dimension of the Union's structure. First, we provide a brief comparison with other theorists of European integration. Second, we trace, specifically, some fundamental thematic elements that emerge from internal reflection on Hallstein's writings. Third, we highlight the similarities with the theoretical positions of that complex of doctrines attributable to the so-called German 'ordoliberalism'. Considering these analytical passages, we try to argue the profound connection of Hallstein's perspective with some founding paradigms of the architectural structure of the EU, which see the centrality of law as one of their key elements. The perspective of the German politician and jurist sees the legal dimension as the indefectible requirement for a solid and structured European integration (even if this does not exclude the importance of politics and economics). The centrality of law is what reveals the relevance of Hallstein's positions to understand, on a genealogical level, and from a philosophical-political profile, a good part of the historical and institutional developments of the EU.

Keywords: Walter Hallstein, European Integration, Ordoliberalism, Legal Theory and European Union

Summary: I. Walter Hallstein: a complex figure, between politics and doctrinal analysis – II. Altiero Spinelli and Hans-Peter Ipsen: different conceptions of European integration – III. Hallstein's political path and legal reflection – IV. The 'European Community' and *integration through law* – V. Hallstein's vision, ordoliberal theories, and some conclusions

I. Walter Hallstein: a complex figure, between politics and doctrinal analysis

It can be said that a prominent role in the construction of the legal order of the European Communities can be attributed, depending on the different phases, to multiple political and institutional actors. There is no doubt, however, that a decisive influence in the first 'season' of European integration was played by an eminent

¹ *PhD in European Legal and Economic Order (Theory and History of Law), Magna Græcia University of Catanzaro. Affiliated Scholar (Cultore della materia) in Philosophy of Law, University of Parma. E-mail: jacopo.volpi11@gmail.com – jacopo.volpi@unipr.it*

politician, professor, and public figure: Walter Hallstein (1901-1982). Hallstein, in fact, contributed significantly, and on several levels, to the architectural development of the European order. First, through the articulation of the idea of the European Community as a ‘Community of Law’, which would find practical expression in the case law of the Court of Justice itself. Second, on a more general level, by determining and directing, directly and indirectly, the overall development of the European reality.

Hallstein’s vision will be one of the ‘winning’ perspectives (despite the contrasting opinions on the topic²), and will characterize, in a hidden way, the development of European institutions. This is unlike other readings or interpretations – such as those, for example, of Altiero Spinelli or Hans-Peter Ipsen. Spinelli’s and Ipsen’s interpretations apparently seem to have a prevailing importance, but they will not exert, from a *juridical-institutional* point of view, the real influence sometimes claimed (a different argument applies when looking at a broader horizon: in this case, the implications are more varied). However, a quick comparison will be made with authors such as Spinelli and Ipsen. This will allow us to understand why Hallstein’s vision takes on the characteristics of an almost ‘ideal-typical’ conception for the practical and conceptual articulation of the European Community legal and political order.

At first glance, the image that portrays Walter Hallstein’s political and legal trajectory seems alien to a complete historical-philosophical determination, appearing controversial and difficult to characterize. In his time, Corrado Malandrino highlighted a substantial obliteration of Hallstein’s thought. At the national level, in Germany, his image was essentially framed in the somewhat overly stylized figure of the “Christian Democrat collaborator of Adenauer in the Federal Foreign Office and author of the anti-communist *Hallstein-Doktrin*”³. In the studies of political doctrines and in the history of European integration, “his ideas, the positions he took, and the kind of Europe he actually wanted to create are no longer precisely remembered”⁴.

The legal thought of Hallstein⁵ has therefore been the subject of contrasting analyses in the literature⁶. On the one hand, its lack of originality has been highlighted, for example by tracing its theoretical perspective back to the (neo)functionalist conception of Jean Monnet⁷. On the other hand, however, the German jurist has been regarded as an emblematic figure of the traditionally federalist ideology, “based on slogans such as ‘United States of Europe’”⁸. “Slogans” which, all things considered, “were part of the ideal baggage of the

² See W Wessels, *Walter Hallstein’s Contribution to Integration Theory: Outdated or Underestimated?*, in W Loth, W Wallace, W Wessels (eds.), *Walter Hallstein: The Forgotten European?*, foreword by J Delors, Sir E Heath and H Kohl, translated by B Ruppert (London: Macmillan 1998) 229–254, 229 ff.

³ C Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio. L’Europa federale di Walter Hallstein (1948–1982)* (Bologna: Il Mulino 2005) 14 (my translation).

⁴ *Ibid.* (my translation).

⁵ Among the various works: W Hallstein, *United Europe: Challenge and Opportunity* (Cambridge, Mass.: Harvard University Press 1962); Id., *The European Community: A New Path to Peaceful Union* (India: Indian Council for Cultural Relations 1963); Id., ‘Some of our ‘Faux Problèmes’ in the European Economic Community’ (1965) 21 n. 1 *The World Today* 10–24; Id., *Der unvollendete Bundesstaat* (Düsseldorf-Wien: Econ Verlag 1969) (Italian translation: Id., *Europa. Federazione incompiuta* (1969), Italian translation by B Bianchi, foreword by G Petrilli (Milan: Rizzoli 1971); English translation: Id., *Europe in the Making*, introduction by GW Ball, translated by C Roetter (New York: Norton & Company 1973)); Id., *L’integrazione economica come fattore di unificazione politica* (Brussels: Servizio pubblicazioni delle Comunità Europee 1961). See, also, the speech given before the European Parliament, in the session of June 1965, entitled *Primacy of Community Law over Municipal Law of the Member States*. For an overview: W Loth, W Wallace, W Wessels (eds.), *Walter Hallstein: The Forgotten European?* (n 2).

⁶ Highlights in W Wessels, *Walter Hallstein’s Contribution to Integration Theory* (n 2) 229.

⁷ C Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio* (n 3) 17.

⁸ *Ibid.* 17–18 (my translation).

founders of the community experience, who saw precisely in the final horizon of the United States of Europe the general aim of European integration”⁹. From this perspective, its importance has been valued, also from a theoretical-doctrinal perspective, for understanding various developments in the European Community (and then, European Union) in the 1980s and 1990s¹⁰, while at the same time emphasizing the historical localization of his ideas¹¹. In a further sense, Hallstein “has been seen as the proponent of a particular concept with a vaguely idealistic flavour, *Sachlogik*, a sort of logical-objective force driving European integration [...] towards ever broader and more advanced goals”¹², in a manner analogous to the economic-political interpretation of Ernst B. Haas and his notion of *spill-over*¹³. In this sense, his modest originality was highlighted, once again.

In any case, the reconstructions of Hallstein’s thought must be considered here instrumentally regarding the precise *idea* of the Union that Hallstein proposed, and, consequently, the concept of law that underlies it and supports its theoretical framework. From this perspective, we will attempt to understand the contribution that Hallstein’s work may have provided to the conceptualization of the idea of law and legality implicit in the institutional dynamics in the European political context.

In this light, it is useful to bear in mind that, like other visions or perspectives, the primary *purpose* towards which Hallstein’s effort seemed directed was, precisely, the satisfaction and guarantee of peace¹⁴. Peace was configured as the *τέλος*, the general goal to be achieved to structure a legal-economic order that was consistent with the spirit of the member states and with the social needs that emerged following the Second World War¹⁵. In this sense, Hallstein underlined: “Since the end of the First World War onwards, the mechanism of the so-called system of European states has been losing its balancing force, while after the Second World War the outlines of a new order have become increasingly clear”¹⁶. The reasons for the crisis of the system of states born from nineteenth-century politics lay in the failure to overcome “in the twentieth century the only truly decisive test: that of knowing how to maintain peace”¹⁷. It was therefore urgent to consider the opportunity of new institutional formulas, which would also respond to the renewed needs and unprecedented challenges emerging in the field of world politics¹⁸.

In any case, we do not wish to dwell excessively on the historical contextualization of the German politician and jurist here. Rather, it is, specifically, his theoretical-legal contributions that we intend to briefly examine. This does not imply, of course, devaluing or minimizing the institutional role that Hallstein played in European political history. However, we place this role in the background, seeking instead to derive from the Mainz jurist’s theoretical contributions a guiding vision of the characteristics of ‘legality’ within the Union.

⁹ C Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio* (n 3) 17–18 (my translation). See W Wessels, *Walter Hallstein’s Contribution to Integration Theory* (n 2) 233.

¹⁰ W Wessels, *Walter Hallstein’s Contribution to Integration Theory* (n 2) 231.

¹¹ *Ibid.* 233.

¹² C Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio* (n 3) 17 (my translation).

¹³ EB Haas, *The Uniting of Europe: Political, Social, and Economic Forces. 1950–1957* (Stanford, California: Stanford University Press 1968) (quote taken from Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio* (n 3) 17).

¹⁴ W Hallstein, *Europe in the Making* (n 5) 42–43.

¹⁵ C Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio* (n 3) 59.

¹⁶ W Hallstein, *L’integrazione economica come fattore di unificazione politica* (n 5) 5–6 (my translation).

¹⁷ *Ibid.* 6 (my translation).

¹⁸ Among these ‘challenges’, Hallstein cites “the defense against communism, the fight against poverty, the development of underdeveloped countries, Africa which is rising up, the stabilization of raw material prices, surpluses of agricultural products, economic fluctuations, the stability of currencies” (*ibid.* 5, my translation).

II. Altiero Spinelli and Hans-Peter Ipsen: different conceptions of European integration

Hallstein's thought takes on greater conceptual flexibility when examined from a comparative perspective, especially with the positions of two other important theorists of European unity: Altiero Spinelli and Hans-Peter Ipsen. These comparisons, in fact, offer the opportunity to highlight how the vision of European integration proposed by Hallstein is the one that has substantially prevailed from a historical-political point of view. Conversely, the theoretical perspectives of Spinelli and Ipsen, while fundamental in many respects, have proven to have less impact on the multifaceted supranational institutional reality. In short, the implications of Hallstein's juridical-political reflection have often found direct expression in various concrete manifestations, generative and constitutive of the general European order and its historical development.

At first glance, it might actually seem that there is substantial continuity among the various integration theorists and that internal differences are, all things considered, small. The political vision, the legal theory that underpins it, the finalistic perspective that pervades it (and the means to achieve those ends), would appear, broadly speaking, to be the same. Upon closer inspection, however, even within a common general direction, notable differences arise.

As is well known, one of the main supporters of European federalism was the Italian Altiero Spinelli¹⁹. The federalist trajectory of the Roman politician was oriented in a 'voluntarist' direction and in the spirit of a broader socialist framework²⁰. The pivotal moment, for Spinelli, was symbolized by a constituent political practice, attributed to an assembly. The democratic assembly, in its authentic, tangible and effective action, would have brought out the fundamental essence of the European people, through the decision-making process aimed at giving shape to political unity²¹. In this way, a European constitution seemed conceivable only once the idea of a democratic process, aimed at establishing a new common constitution, was seriously considered²². This constitution was to be superior to the constitutions of the individual nation states of the Old Continent. This Constituent Assembly would also have the task of deciding on the fundamental economic formulas that would characterize the future political structure of the (hypothetical) Federation²³.

¹⁹ See: A Spinelli, *L'avventura europea* (Bologna: Il Mulino 1972); Id., *Una strategia per gli Stati Uniti d'Europa*, edited by S. Pistone (Bologna: Il Mulino 1989). As regards secondary literature: A Chiti Batelli, *L'idea d'Europa nel pensiero di Altiero Spinelli*, foreword by G Arfè (Manduria-Bari-Rome: Lacaita 1989); E Santarelli, *Altiero Spinelli* (Florence: Leo S. Olschki 1994); PS Graglia, *Altiero Spinelli* (Bologna: Il Mulino 2008); U Morelli (ed.), *Altiero Spinelli. Il pensiero e l'azione per la federazione europea*, Conference Proceedings (Turin, December 6–7, 2007) (Milan: Giuffrè 2010); D Preda (ed.), *Altiero Spinelli e i movimenti per l'unità europea* (Padua: Cedam 2010); A Venece, *L'Europa possibile. Il pensiero e l'azione di Altiero Spinelli*, foreword by S Acquaviva (Rome: Carocci 2010).

²⁰ Recent critical studies have attempted to highlight its connection with some technocratic fronts: see A Somma, *Contro Ventotene* (Rome: Rogas 2021).

²¹ H Canihac, 'The Making of an Imagined 'Community of Law': Law, Market and Democracy in the Early Constitutional Imaginaries of European Integration' (2022) 18 n. 1 *European Constitutional Law Review* 2–29, 9.

²² In this perspective, "after the failure of the French National Assembly to ratify the European Defence Community (EDC), which would have forced the national states to have a common army and therefore, in perspective, a common policy (1954), [Spinelli] became convinced that the objective of a federal Europe would never be achieved if we did not move from a top-down policy to an action of popular mobilization" (G Gay, *Spinelli, Altiero*, in *Enciclopedia italiana*, V Appendix (1995) my translation (available online: [https://www.treccani.it/enciclopedia/altiero-spinelli_\(Enciclopedia-Italiana\)/](https://www.treccani.it/enciclopedia/altiero-spinelli_(Enciclopedia-Italiana)/), last access: September 19, 2025).

²³ In the *Ventotene Manifesto* (1941–1944), Spinelli's orientation, in terms of potentially adoptable economic models, was rooted in a socialist-utopian perspective. In the 1950s, however, his conception and horizons changed, undergoing a more 'pragmatic' twist: see H Canihac, 'The Making of an Imagined 'Community of Law'' (n 21) 10.

Spinelli's idea, therefore, was to articulate a plausible institutional discourse on a possible European union by valorizing and recognizing the centrality of the constituent moment, through the mobilization of a 'European people'²⁴. All this was possible provided that the people were fully aware of their own reformist capabilities, to be able to foster an evolutionary process that would find its outlet in a federation of states. Following a theoretical framework advanced in the literature, it can be said that: *a*) the *founding* moment resided, according to Spinelli, within a politically elected and democratically legitimized constituent assembly. *b*) The *goal* was to be found in the construction of a European Federation. *c*) The *means* (to achieve this goal) were a political process, and a consequent democratic deliberation, of a constituent nature²⁵. Spinelli's democratic-constituent perspective, however, does not represent the only historical expressive modality for the articulation and theoretical thinkability of the development of European integration. Alongside this vision there are at least two other trajectories, respectively depicted by Hans-Peter Ipsen and, indeed, by Walter Hallstein.

Ipsen would take the functionalist vision²⁶, based on faith in the principle of *spill-over* and the idea of establishing common and integrated sectors of economic convergence, to extremes. He would argue for the need to initiate a 'constitutional' process of an economic-functional nature. This process would pave the way for a sort of *sui generis* organism, not strictly comparable to a true federal state, but rather to a *coordinating organization* between sovereign states collaborating on specific economic sectors. From this perspective, for Ipsen, neither constituent processes nor, logically, representative assemblies aimed at initiating such processes were necessary.

What was the main consequence of this purely functional vision? The main effect was the assumption of the *centrality* of the *economic market*. From this perspective, it is difficult to deny the connections with the current European context and the jurisprudential legitimacy that has developed since the *Cassis de Dijon* ruling (1979, C-120/78)²⁷, later formalized with the *Delors' White Paper* of 1985 and the *Single European Act* (1986).

²⁴ Regarding the European constituent process, see S Dellavalle, *Una costituzione senza popolo? La costituzione europea alla luce delle concezioni del popolo come potere costituente* (Milan: Giuffrè 2002).

²⁵ H Canihac, "The Making of an Imagined 'Community of Law'" (n 21) 13.

²⁶ Functionalism can therefore be defined as an economic-legal doctrine which states that "international relations can and must develop according to an evolutionary, and essentially involuntary, logic, through causal relationships of communication and economic or technical interdependence, which give rise to a necessary *spill-over*, to a relapse into closer connections and relations"; consequently, the political sphere is "considered roughly in terms of a 'superstructure' that is produced deterministically by a deep structure of functional relationships, of a fundamentally economic and communicative nature" (M La Torre, "Civis europaeus sum". L'Europa e la sua cittadinanza' (2021) 1 *Materiali per una storia della cultura giuridica* 127–155, 148–149, my translation). Already in 1947, Norberto Bobbio was committed to highlighting the origin of the concept of functionalism, which he identified in a work by David Mitrany, entitled *A Working Peace System* (London: National Peace Council 1946): for Mitrany, in the opinion of the Turin philosopher, the unity between the European states was achievable by means of the "progressive and successive unification of economic and social activities (to give the simplest examples: communications, the postal service, maritime transport, etc.) and thus through the institution of international administrative offices which are the direct and responsible executors of these unified activities" (N Bobbio, 'Funzionalismo e federalismo' (1947) 2 n. 3 *La comunità internazionale* 353–359, 354, my translation). The superiority of the *functional method* lies, therefore, in the 'naturalness' of the processes it establishes, in opposition to the 'artificiality' of the formal method of a federal nature. On this topic, see also V Cannizzaro, *Il diritto dell'integrazione europea. L'ordinamento dell'Unione* (Turin: Giappichelli 2017) 2. Regarding neo-functionalism: W Sandholtz, A Stone Sweet, 'Neo-Functionalism and Supranational Governance' in Erik Jones et al. (eds.), *The Oxford Handbook of the European Union* (Oxford: Oxford University Press 2012) 18–33.

²⁷ See M Dani, AJ Menéndez, *Costituzionalismo europeo. Per una ricostruzione demistificatoria del processo di integrazione europea*, edited by L Mellace (Naples: ESI 2022) 64. For further information: M Dani, M Goldoni, AJ Menéndez, *The Legitimacy of European Constitutional Orders: A Comparative Inquiry* (Cheltenham: Elgar 2023).

The real turning point in the supranational integration process dates back to these years, where the neo- and ordo-liberal vision (in its various forms), which places the centrality of economic freedoms before the need to guarantee social rights, assumes a central value, a true *Grundnorm* of the entire political-economic structure²⁸. Precisely because European law is not shaped by a process of ‘popular’ origin, but arises by virtue of individual formations resulting from integration processes ‘from above’ and of an economic nature, it does not require democratic legitimation²⁹. The process of supranational (economic) integration rather resembles the emergence of international economic law (in the terms of a *non-state* law limited to certain areas or sectors of social life³⁰).

The other aspects, starting with the protection of individual rights, were the natural outcome of this basic theoretical approach. The peculiarity, however, was that citizens of the European Communities could not be primarily configured, according to Ipsen, as bearers of freedom rights or specific social rights. Rather, and primarily, they were configured as holders of ‘economic’ rights functional to the guarantee of the free market. They were, in essence, elementary economic actors³¹: entrepreneurs (producers of goods), or consumers (users of goods). Or better still, they were ‘market citizens’ (*Marktbürger*)³². Citizens, thus configured, were certainly holders of subjective rights, but these were aimed only at guaranteeing access to the four fundamental economic freedoms (free movement of people, goods, services, and capital), which were ‘counterbalanced’ by the general prohibition of non-discrimination, functional to the protection of these economic rights. From this perspective, Ipsen appears even more radical than other functionalists – such as Ernst B. Haas, who, for example, at least until 1966 and the famous ‘Empty Chair Crisis’³³ (a moment that was ‘fatal’ for Hallstein himself), advocated a possible transition towards forms of democratic articulation of the European Communities³⁴. Comparing Ipsen’s perspective with that of Spinelli, it is possible to observe, following a scheme proposed by Hugo Canihac, how there are many elements of difference. From a theoretical perspective, the divergences can be found both in the *genetic* element – the constituent democratic moment for Spinelli; the role of the market for Ipsen – and in the *means* – political-deliberative practice for the Italian theorist and politician, and economic processes for the German jurist – as well as in the *final outcome* – a European federal state for Spinelli; an international organism for Ipsen³⁵.

The brief analysis of the theoretical-political conceptions of Spinelli and Ipsen now allows us to focus on the legal thought of Hallstein, who, as far as the European vision is concerned, could be considered a sort of *moderate functionalist* (also in light of the different interpretative lines that we have outlined above – neo-functionalism, theoretician of *Sachlogik* and of the *spill-over* principle, federalist doctrinaire –, and which Hallstein tries to mix and skillfully combine). Perhaps for this very reason, his trajectory seems to be the one that has

²⁸ M La Torre, *Europa*, in M La Torre, G Zanetti, *Nuovi seminari di filosofia del diritto* (Soveria Mannelli: Rubbettino 2021) 135–154, 141 ff.

²⁹ On the problem of the relationship between forms of legitimation of power of an ‘ascending’ nature and forms of legitimation of power of a ‘descending’ nature, regarding the reality of the European Union, see S Dellavalle, ‘Il potere dell’Unione europea’ (2016) 6 *Teoria politica* 193–223.

³⁰ H Canihac, *The Making of an Imagined ‘Community of Law’* (n 21) 12.

³¹ M La Torre, *Europa* (n 28) 145.

³² *Ibid.*

³³ On the topic, see HH Götz, *The Crisis of 1965–66*, in W Loth, W Wallace, W Wessels (eds.), *Walter Hallstein* (n 2) 151–162.

³⁴ EB Haas, ‘International Integration: The European and the Universal Process’ (1961) 15 n. 3 *International Organization* 366–392.

³⁵ H Canihac, *The Making of an Imagined ‘Community of Law’* (n 21) 13.

most influenced the jurisprudential work of the Court of Justice of the EU³⁶, but also on the overall structure of the other European institutional bodies (Commission³⁷, ECB³⁸). Hallstein appears as a ‘moderate’ because, after all, he attributes to the *legal* and *juridical* moment a crucial role of *mediation*, and this determines a less radical nature of his theoretical positions regarding the European integration process. Ipsen’s economic functionalism does indeed seem to influence some fundamental political and judicial determinations of the supranational integration process, but the valorization of the legal dimension – which is specifically identified in Hallstein – cannot be ignored when the primary aim of the investigation is to adequately understand the developments of a united Europe, at least from the early 1960s up to Maastricht (1992), and even beyond. Emphasizing the centrality of the economic aspect in the European integration process is undoubtedly necessary. However, reducing the entire formative development of ‘Community’ institutions to the mere economic component is partially misleading. This component is incomprehensible without the ‘filter’ role that legal categorization has played³⁹. And Hallstein’s perspective and intellectual trajectory are in line with this process of valorization of the legal dimension.

III. Hallstein’s political path and legal reflection

Walter Hallstein earned his doctorate in 1925, defending a thesis in private international law, and, very early in 1929, was awarded a professorship at the University of Berlin. He subsequently became a full professor in Rostock before moving, in 1940, to the Johann-Wolfgang-Goethe University of Frankfurt⁴⁰. His thinking was fully integrated into German legal culture, following the method of the Historical School and the teachings of Friedrich Carl von Savigny⁴¹. He served in the *Wehrmacht* and was captured by the Americans in 1944. He was

³⁶ For a comprehensive analysis of the Court of Justice: H Rasmussen, *The European Court of Justice* (Copenhagen: GadJura 1998); G De Búrca, JHH Weiler (eds.), *The European Court of Justice* (Oxford: Oxford University Press 2001); H-W Micklitz, B De Witte (eds.), *The European Court of Justice and the Autonomy of the Member States* (Cambridge: Intersentia 2012); L Azoulai, R Dehousse, *The European Court of Justice and the Legal Dynamics of Integration* in Erik Jones et al. (eds.), *The Oxford Handbook of the European Union* (n 26) 350–364; SK Schmidt, R Daniel Kelemen (eds.), *The Power of the European Court of Justice* (London-New York: Routledge 2013). For an analysis of the legal reasoning of the Court of Justice: R-M Chevallier, ‘Methods and Reasoning of the European Court in its Interpretation of Community Law’ (1965) 2 n. 1 *Common Market Law Review* 21–35; J Bengoetxea, *The Legal Reasoning of the European Court of Justice* (Oxford: Clarendon 1993); M Kiiikeri, *Comparative Legal Reasoning and European Union Law* (Dordrecht: Kluwer 2001); G Conway, *The Limits of Legal Reasoning and the European Court of Justice* (Cambridge: Cambridge University Press 2012); S Sankari, *European Court of Justice Legal Reasoning in Context* (Groningen: Europa Law Publishing 2013).

³⁷ See: G Edwards, D Spence (eds.), *The European Commission* (London: Cartermill 1995); A La Spina, G Majone, *Lo Stato regolatore* (Bologna: Il Mulino 2000) 227–272; S Gozi, *La Commissione europea. Processi decisionali e poteri esecutivi* (Bologna: Il Mulino 2005); SK Schmidt, A Wonka, *European Commission*, in E Jones et al. (eds.), *The Oxford Handbook of the European Union* (n 26) 336–349.

³⁸ See: D Wilsher, *Ready to Do Whatever it Takes? The Legal Mandate of the European Central Bank and the Economic Crisis* in C Barnard et al. (eds.), *Cambridge Yearbook of European Legal Studies* (Oxford: Hart Publishing 2013) 503–536; S Baroncelli, *The Independence of the ECB after the Economic Crisis* in M Adams, F Fabbrini, P Larouche (eds.), *The Constitutionalization of European Budgetary Constraints* (Oxford-Portland: Hart Publishing 2014) 125–147; RM Lastra, *The Evolution of the European Central Bank* (2017) 35 *Fordham International Law Journal* 1260–1281.

³⁹ G Itzcovich, *Teorie e ideologie del diritto comunitario* (Turin: Giappichelli 2006).

⁴⁰ Hallstein, Walter in *Enciclopedia italiana*, available online: <https://www.treccani.it/enciclopedia/walter-hallstein/#> (last access: September 19, 2025); C Malandrino, “Tut etwas tapferes”: *compi un atto di coraggio* (n 3) 34–35.

⁴¹ W Hallstein, ‘Von der Sozialisierung des Privatrechts’ (1942) 102 n. 3 *Zeitschrift für die gesamte Staatswissenschaft* 530–544.

then sent to the United States. During his stay in North America, he taught various law courses, deepening his knowledge of American federalists. In that context, he grew, more generally, aware of the need to initiate a process of European integration worthy of the renewed historical demands. Once back home, he became rector of the Goethe-Universität in Frankfurt from 1946 to 1948. He also participated in the Hague Congress of 1948, presenting himself as a rather convinced European federalist, representing the opposite trend to the vision of Altiero Spinelli⁴².

Hallstein, therefore, collaborated and actively contributed to the process of reconstruction of Germany after the Second World War. He was well regarded within the European establishment. In fact, his figure demonstrated good relations with the Allies and was accompanied by a profile that was not too politically compromised and rather defined from a technical-legal point of view⁴³. He led the negotiations, on behalf of the German delegation, for the implementation of the *Schuman Plan*, and in 1951 he was appointed Secretary of State for Foreign Affairs in the Federal Republic of Germany⁴⁴ (a position he would relinquish only in 1958, coinciding with the contemporary and prestigious European appointment). His historically crucial election as (the first) President of the Commission of the European Communities was therefore not unexpected⁴⁵. The post of Commissioner was relinquished in 1967 – after almost ten years – following the famous, and already mentioned, ‘Empty Chair Crisis’ of 1966⁴⁶ and disagreements with Charles de Gaulle⁴⁷. The very fact that Hallstein played such a prominent role in the first phase of the supranational integration process gives to the German politician a decisive weight. Moreover, unlike other politicians of the time, he had a background as an academic jurist and, therefore, possessed a qualitatively significant doctrinal expertise. This background, in fact, emerges from many of his writings dedicated to the problem of the European federation and its integration process.

Hallstein did not aim at the creation of a basic international organization but hoped for the creation of a truly *democratic federal European state*⁴⁸ (although his positions did not have any direct links with traditional Europeanist doctrines⁴⁹). In fact, already in 1961, Hallstein spoke of European economic integration as a “*fact of political democracy*”⁵⁰, and, in 1965, he stated that the European system contained, *in essence*, “the features of a federal constitution: a structure that depends on co-operation between the higher entity and the constituent

⁴² H Canihac, *The Making of an Imagined ‘Community of Law’* (n 21) 14–15.

⁴³ *Ibid.*, 15.

⁴⁴ Hallstein, Walter in *Enciclopedia italiana* (n 40). See L Lahn, *Walter Hallstein as State Secretary* in W Loth, W Wallace, W Wessels (eds.), *Walter Hallstein* (n 2) 17–32.

⁴⁵ H von der Groeben, *Walter Hallstein as President of the Commission*, in W Loth, W Wallace, W Wessels (eds.), *Walter Hallstein* (n 2) 95–108.

⁴⁶ The so-called ‘Empty Chair Crisis’ would later find a solution in the *Luxembourg Compromise* (or *Luxembourg Accord*) of January 1966.

⁴⁷ Hallstein, Walter in *Dizionario di Economia e Finanza*, Enciclopedia Italiana 2012, available online: https://www.treccani.it/enciclopedia/walter-hallstein_%28Dizionario-di-Economia-e-Finanza%29/ (last access: September 19, 2025). See, also, W Loth, *Hallstein and de Gaulle: The Disastrous Confrontation*, in W Loth, W Wallace, W Wessels (eds.), *Walter Hallstein* (n 2) 135–150.

⁴⁸ H Canihac, *The Making of an Imagined ‘Community of Law’* (n 21) 19 ff. This should not lead to the impression of possible (but erroneous) overlaps. Spinelli, in fact, also advocated the formation of a federal state, but the perspectives of the two authors are evidently very different.

⁴⁹ Also, by virtue of a certain pragmatic inclination towards the interpretation of political doctrines: C Malandrino, «Tut etwas tapferes»: *compi un atto di coraggio* (n 3) 63 ff.

⁵⁰ W Hallstein, *L’integrazione economica come fattore di unificazione politica* (n 5) 16 (my translation and emphases added).

States”⁵¹. In this process, a crucial role was played by the legal component, to which Hallstein entrusted, almost entirely, the task of channeling economic forms and framing the flow of political decisions within a framework of stability. From this perspective, the definition of the European Community as a *Community of Law* (*Rechtsgemeinschaft*) is well known. This concept (of Savignyan and Gierkian origin⁵²) would be taken up, as is, by the European Court of Justice⁵³.

Indeed, according to Hallstein, the dynamics of Europe and its Community were very similar to the federal perspective. These dynamics brought together multiple instances, typically constitutional and federalist, and were connected to the more “classical” questions of the doctrine of the State in the European tradition⁵⁴. In Hallstein’s opinion, the European Community was, to all intents and purposes, a new legal order. Undoubtedly, it still had to demonstrate a certain technical maturity and had to be subject to a broader, general constitutional design. However, it represented a true source of law, not reducible to the casuistry of international law and its organizational products. Furthermore, the concept of a ‘Community of Law’ presented significant affinities with the various discussions of doctrinal and theoretical public law that took place between the two world wars. On the one hand, it was linked to the discussion surrounding the ‘*Rechtsstaat*’⁵⁵ (‘Rule of law’) and legal positivism⁵⁶. On the other hand, it was linked to the issues of international law and the possibility of achieving, through its instruments, a stable and lasting peace⁵⁷: “The longing for *peace* is undoubtedly the strongest motive for unifying Europe”⁵⁸.

However, the final goal that Hallstein aimed at must not lead to easy misunderstandings. Although he ideologically supported the prospect of building a European federal state, the German politician was far from configuring the structure of the then European Community as a reality of a fully *state-like nature*⁵⁹. Thus, for

⁵¹ W Hallstein, *Some of our ‘Faux Problèmes’ in the European Economic Community* (n 5) 12.

⁵² G Itzcovich, ‘Integrazione giuridica. Un’analisi concettuale’ (2005) 3 *Diritto pubblico* 749–785, p. 751.

⁵³ See A D’Attorre, *L’Europa e il ritorno del ‘politico’. Diritto e sovranità nel processo di integrazione* (Turin: Giappichelli 2020) 95–137. In a historical perspective: M Stolleis, *Europa, Comunità di diritto*, Italian translation by C Ricca (2012) 2 *Materiali per una storia della cultura giuridica* 293–306.

⁵⁴ H Canihac, *The Making of an Imagined ‘Community of Law’* (n 21) 12.

⁵⁵ See G Ridolfi, *Rechtsstaat. Percorsi nella cultura giuridica tedesca del XIX secolo* (Naples: Editoriale Scientifica 2017). For an overview, instead, of the concept of ‘rule of law’: AH Huq, *The Rule of Law: A Very Short Introduction* (New York: Oxford University Press 2024).

⁵⁶ In this sense, “the European Communities, as communities of law, can only exist thanks to an integrated circuit of institutions, including state institutions, which collaborate in the creation of a common legality: the community of law guarantees respect for the fundamental principles of the rule of law, first and foremost the subordination of public authorities, both Community and national, to a common law [diritto comune]. Therefore, in the case of violation by the States, common law [il diritto comune] must be able to impose itself and prevail” (G Itzcovich, ‘Integrazione giuridica’ (n 52) 751, my translation). To date, the process has been enriched by a perspective that is, in a certain sense, *bidirectional*, or even *multidirectional*. From this perspective, it is correctly noted that Community law is integrated not only “into state legal systems, but also state constitutional law is integrated into Community law; for legal integration to proceed, Community law must be open to the principles of the ‘constitutional traditions common to the Member States’”, but, equally, “to the main international treaties on the protection of human rights” (*ibid.*, my translation).

⁵⁷ See H Canihac, *The Making of an Imagined ‘Community of Law’* (n 21) 16–17.

⁵⁸ W Hallstein, *Europe in the Making* (n 5) 42–43.

⁵⁹ For an analysis of the ‘nature’ of the European Union, see: LF Pace, *La natura giuridica dell’Unione europea: teorie a confronto. L’Unione ai tempi della pandemia* (Bari: Cacucci 2021); L Mellace (ed), *L’ircocervo europeo. Un dialogo sul tortuoso cammino di una “strana creatura”* (2017) 2 *Ordines* 306–354. Of extreme interest is the essay by ML Jones, *The Legal Nature of the European Community: A Jurisprudential Analysis using H.L.A Hart’s Model of Law and a Legal System* (1984) 17 n. 1 *Cornell International Law Journal* 1–59.

instance, he will try to downplay the scope of the notion of ‘supranationality’⁶⁰. In this sense, Wolfgang Wessels noted: “Hallstein wants as much as possible to replace the concept ‘supranational’ with other concepts [...], precisely because this term ‘appears to some to imply that we are bent upon destroying national identities’”⁶¹. Distinguishing three theoretical forms (unitary, international, community) through which to conceive the modalities of relations between the Community and member states, Hallstein deemed it more appropriate to speak of the existence of a structure with a *federal vocation*: “a state is competent in all matters touching public policy”, while “our Community is competent only in certain limited spheres which are clearly laid down in the Treaty”⁶². This was, precisely, the ‘community model’. The European Community therefore exhibited, in Hallstein’s opinion, forms that could be described as *proto-federal* and *semi-state*. These showed, within their internal seeds, strong potential for development, which could have led, within a few decades – thanks to a synergy between economic processes, political practice and the guiding role of law – to the establishment of a true European federal state.

In this vein, Hallstein emphasized the fact that the Community presented various elements in common with federal realities, in that “its member-states transfer part of their national sovereign powers to a union to which they all belong but which has its own identity, different from that of any of its individual members”⁶³. Both the ‘unitary’ and the ‘international’ solutions were flawed on several fronts. The former repressed regional and peripheral powers. The latter, however, left individual national powers too intact, limiting itself to a mere organization of contractual “rights and duties”⁶⁴. The ‘community’ solution, on the other hand, appeared more appropriate, both lexically and at the political-institutional level, establishing a legal balance “between a central European authority, deriving its power from the parts of the national sovereignties transferred to it, and the separate national authorities of the member-states”⁶⁵. In this way, the theme of the European Community as a *Community of Law* (in its implicit connections with the concept of *Rechtsstaat*) emerged more clearly.

IV. The ‘European Community’ and integration through law⁶⁶

In what terms did the idea of *Rechtsgemeinschaft* evoke the concept of the ‘rule of law’? First, from a formal perspective, it was necessary to understand whether the rule of law was limited to an entity with legal personality required to respect existing laws (which it itself created), self-limiting its legal powers. Second, and from a substantive perspective, it was necessary to understand whether the rule of law was also aimed at guaranteeing the protection of fundamental subjective rights. For Hallstein, a Community of Law – such as the European Communities – configured both a *formal community* of the first type and a *substantive community* of the second type: the Community had to guarantee the identical and uniform application of the laws in the individual member

⁶⁰ W Hallstein, *Europe in the Making* (n 5) 39 ff.

⁶¹ W Wessels, *Walter Hallstein’s Contribution to Integration Theory* (n 2) 234.

⁶² W Hallstein, *Europe in the Making* (n 5) 39.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, 39–40.

⁶⁶ However, the role that Hallstein attributes to law is sometimes ambiguous. This is the case, for instance, where, while emphasizing the centrality of political processes, he fails to attribute to them the real transformative and reformative significance that is conceptually consequent, while at the same time conferring on certain social phenomena a character of partial or total inevitability (with reference, for example, to the theme of the development of science and technology). See W Hallstein, *L’integrazione economica come fattore di unificazione politica* (n 5) 7 ff.

states, within a framework of essential legal values to which a set of fundamental rights was attached. In this way, this legitimized a necessarily *hierarchical vision* of the Community order and its *supremacy* over the legal systems of individual nation states, so as not to create discriminatory thresholds between the various member states. But the Community was also required to establish *subjective rights* for European citizens⁶⁷, which it had the task of protecting through carefully planned and designed jurisdictional mechanisms⁶⁸.

One can see, therefore, how in Hallstein's vision the basic lines of what will be the 'community' structure of the decades to come were already well structured: an *autonomous order*, whose norms can produce *direct effects*⁶⁹ over individual national legal systems. An order, moreover, endowed with *primacy* (or supremacy)⁷⁰, with *hierarchically superior* and *exclusive powers*⁷¹, and aimed at safeguarding the *economic rights* of European citizens, thanks also to the assistance of a Court that would become the linchpin of the system⁷² (an idea

⁶⁷ With regard to European citizenship, see: M La Torre (ed.), *European Citizenship: An Institutional Challenge* (The Hague: Kluwer Law International 1998); J Pomoell, *European Union Citizenship in Focus: The Legal Position of the Individual in EC Law* (Helsinki: University of Helsinki 2000); A Weale, *Democratic Citizenship and the European Union* (Manchester: Manchester University Press 2005). See also: C Margiotta, *Cittadinanza europea. Istruzioni per l'uso* (Rome-Bari: Laterza 2014); L Mellace, *I diritti dei cittadini europei presi sul serio. Diritti e cittadinanza nella giurisprudenza della Corte di Giustizia dell'UE* (Milan-Udine: Mimesis 2025).

⁶⁸ H Canihac, *The Making of an Imagined 'Community of Law'* (n 21) 16 ff.

⁶⁹ The origins of the principle of 'self-executing' (see M La Torre, *Cittadinanza e ordine politico. Diritti, crisi della sovranità e sfera pubblica: una prospettiva europea* (Turin: Giappichelli 2004) 71 ff.) can be traced back to the historical phase of the ECSC'S operativity. This principle was embodied, above all, in the capacity of the High Authority – the principal autonomous institution of the Community – to adopt measures that were directly applicable and directly binding on private individuals (JHH Weiler, *Il sistema comunitario europeo. Struttura giuridica e processo politico* (Bologna: Il Mulino 1985) 53). On the principle of direct effects, see: S Prechal, *Directives in EC Law* (Oxford: Oxford University Press 2005) 97–106; M Dougan, 'When Worlds Collide! Competing Visions of the Relationship between Direct Effect and Supremacy' (2007) 44 n. 4 *Common Market Law Review* 931–963; S Prechal, *Direct Effect, Indirect Effect, Supremacy and the Evolving Constitution of the European Union* in C Barnard (ed.), *The Fundamentals of EU Law Revisited: Assessing the Impact of the Constitutional Debate* (Oxford: Oxford University Press 2007) 35–69; J Bengoetxea, *Is Direct Effect a General Principle of European Law?* in U Bernitz et al. (eds.), *General Principles of EC Law in a Process of Development* (Alphen aan den Rijn: Kluwer Law International 2008) 3–24; S Prechal, *Protection of Rights: How Far?* in S Prechal, B Van Roermund (eds.), *The Coherence of EU Law: The Search for Unity in Divergent Concepts* (Oxford: Oxford University Press 2008) 155–182; B De Witte, *Direct Effect, Primacy, and the Nature of the Legal Order* in P Craig, G De Búrca (eds.), *The Evolution of EU Law*, 3rd ed. (Oxford: Oxford University Press 2011) 187–227; D Chalmers, L Barroso, 'What *Van Gend en Loos* Stands for' (2014) 12 n. 1 *International Journal of Constitutional Law* 105–134; S Robin-Olivier, 'The Evolution of Direct Effect in the EU: Stocktaking, Problems, Projections' (2013) 12 n. 1 *International Journal of Constitutional Law* 165–188; J Jans, M Verhoeven, *Europeanisation via Consistent Interpretation and Direct Effect* in J Jans et al. (eds.), *Europeanisation of Public Law* (Groningen: Europa Law Publishing 2015) 71–132; R Schütze, *Direct and indirect effects of Union Law* in R Schütze, T Tridimas (eds.), *Oxford Principles of European Union Law*, Vol. 1: *The European Union Legal Order* (Oxford: Oxford University Press 2018) 265–310.

⁷⁰ See A Von Bogdandy, SW Schill, 'Overcoming Absolute Primacy: Respect for National Identity under the Lisbon Treaty' (2011) 48 n. 5 *Common Market Law Review* 1417–1453. See also: A Arena, 'Sul carattere "assoluto" del primato del diritto dell'Unione europea' (2018) 2 *Studi sull'integrazione europea* 317–340, 320 ss; G Bebr, 'How Supreme is Community Law in the National Courts?' (1974) 11 n. 1 *Common Market Law Review* 3–37.

⁷¹ See JHH Weiler, *Il sistema comunitario europeo* (n 69) 61 ff. See also: M La Torre, *Cittadinanza e ordine politico* (n 69) 69 ff. and 77. On the relationship between 'supremacy' and the principle of 'pre-emption', see: R Schütze, 'Supremacy without Pre-emption? The Very Slowly Emergent Doctrine of Community Pre-emption' (2006) 43 n. 4 *Common Market Law Review* 1023–1048; A Arena, *The Twin Doctrines of Primacy and Pre-emption* in R Schütze, T Tridimas (eds.), *Oxford Principles of European Union Law* (Oxford: Oxford University Press 2018) 300–349. On the principle of 'pre-emption', more generally: A Arena, *Il principio della preemption in diritto dell'Unione europea: esercizio delle competenze e ricognizione delle antinomie tra diritto derivato e diritto nazionale* (Naples: Editoriale Scientifica 2013).

⁷² L Mellace, *L'Unione europea tra destino comune e crisi permanente. Profili di teoria del diritto* (Naples: ESI 2021) 19 ff.

already present in Hallstein's own reflections⁷³). By constraining state powers, the concept of the Community of Law was also in line with the idea of the possibility of achieving forms of peace through the measures of international law.

Hallstein's vision of the European Community is thus extremely interesting from another perspective, which concerns not so much the theorization of the supranational order as an autonomous legal system, but rather the very function of *law* within the integration process. According to the German jurist and politician, law (including Community law) was to be the fruit of an 'incremental' process, arising in synergy with the progressive implementation of social and economic developments⁷⁴. In other words, the states and the European Community, in Hallstein's view, were intertwined within a complex organism, structuring themselves into a common fabric that saw law both as the *formalization* of what was emerging on the political and socioeconomic fronts, and as the *medium* through which to *constitute* (and advance) political-social reality. The "logic of integration"⁷⁵ embedded in social and economic practice facilitated the constructive movement of an increasingly united Europe: this was achieved, however, under the *direction of law*.

In this respect, Hallstein attempts to accentuate, from various quarters, certain implicit potentialities within the Community, which seemed capable of fostering a federal legal process⁷⁶. And it is here that the highly ideological vision of Hallstein's thought comes into play, and which has produced extremely decisive repercussions on the current conceptualization of European paradigms. In the opinion of the German jurist, in fact, the integrative process of a juridical nature would also gradually favour the affirmation of a *democratic perspective*. In the wake of the idea that juridical and economic developments can orient the political processes themselves⁷⁷, he considered the possibility of achieving a federal state without going through the obligatory path of a constituent phase. Juridical (-economic) integration would have brought about a 'natural' *democratization* of the European institutions. The latter, to respond to the natural needs of citizens, would have been forced, in the years to come, to prepare fundamental changes aimed at the democratization of the main institutions and various community bodies: *first and foremost*, the European Parliament⁷⁸. The demands for the affirmation, therefore, of a more

⁷³ Note, for example, what the German politician stated at the end of the 60s: "In setting up a European Court of Justice, our aim was very ambitious: to crown the constitutional structure of the Community with a Supreme Court which was a truly constitutional body. This European Court was to be like the Supreme Court of the United States in the days of its greatest glory under Chief Justice John Marshall. It was under his guidance that the broad outlines of the American Constitution were given content, form, and body by the US Supreme Court. We were not disappointed. The European Court of Justice, because of its independence, settled what was in dispute, defined what was vague, and clarified what was in need of clarification. Without its guiding hand, the Community could not hope to develop as it has developed and as it will develop. The decisions of the Court, to which I have just referred, are the apex of its achievements so far" (W Hallstein, *Europe in the Making* (n 5) 35).

⁷⁴ H Canihac, *The Making of an Imagined 'Community of Law'* (n 21) 19 ff.

⁷⁵ W Hallstein, *Europe in the Making* (n 5) 24.

⁷⁶ W Wessels, *Walter Hallstein's Contribution to Integration Theory* (n 2) 235 ff.

⁷⁷ "Economics and politics could not be divorced" (W Hallstein, *The European Community: A New Path to Peaceful Union* (n 5) 14).

⁷⁸ Regarding the European Parliament and its institutional configuration, however, Hallstein expressed some doubts, so much so that he underlined how, in this regard, "the way in which the now-merged European Community is at present organized leaves quite a lot to be desired from the parliamentary point of view", representing a democracy that is still "underdeveloped" (W Hallstein, *Europe in the Making* (n 5) 72). Indeed, "even if we examine merely the legal status of the European Parliament, we find that it has little, if anything, in common with that of national parliaments in the democracies. In a parliamentary democracy, parliament elects the government, makes the laws and controls the budget. Admittedly, there is a European Parliament, but it does not elect a government because there is no government, in the accepted sense of that term" (*ibid.*).

in-depth and pervasive rule of law, strictly consequent to the increasingly imposing economic functions performed by the Community, would have generated a *politicization* of the institutions, and the Community would have therefore progressively converted into a more democratic institutional structure. Guiding this process – and here lies the true peculiarity of Hallstein’s thought, as already partially mentioned – would have been, precisely, the law⁷⁹: it is the first germ of the future, very famous, concept of *integration through law*⁸⁰. The urgency of the federal purpose, and the greater emphasis and confidence in the formal capacity of the law to guarantee unitary processes of formation⁸¹, led Hallstein to identify the *legal dimension* as the essential instrument for ensuring *order* and *stability* in the heterogeneous unfolding of political and social factors.

The *power* of law was expressed through a series of essential dimensions. The structure of the European Community represented a *creation* of law, a *source* of law (it *constituted* law and was, at the same time, *constituted by it*), and, overall, a new *legal order*⁸². Furthermore, the dynamics of the Community had to deal with a crucial aspect: the articulation of the notion of a ‘European Constitution’, including the guarantee of certain fundamental values (social, economic, political). The concept of ‘constitution’ was to represent a (normative) *tool* for the process of building unity and, at the same time, a *reality to be recognized*, with a consequent shift from the sphere of ‘ought’ to that of ‘is’ (and vice versa) that generated many conceptual problems⁸³.

The legal Constitution found its essential characteristics in a series of elements: *peace, unity, equality, liberty, solidarity, well-being, progressiveness, security*, and, finally, assurance of an *economic-financial constitution*⁸⁴. These elements were configured as *objectives to be implemented*, and, simultaneously, as effective, already existing components *to be enhanced*. These aspects were linked together in a conceptual development that best embodies the integration *through* law mentioned above, and in which descriptive needs and prescriptive demands, theory and doctrine are combined and intertwined in a comprehensive attempt to ideologically and politically legitimize the community’s reality.

⁷⁹ Hallstein emphasized, in this sense, how the Community was, at the same time, a “creation of the law” and a “source of law” (W Hallstein, *Europe in the Making* (n 5) 30). “Creation”, because it is only thanks to the “majesty of the law” that it was possible to “achieve what centuries of ‘blood and iron’ could not”: only “unity by consent has a chance of surviving. That means not only equality before the law for all belonging to the Community but also a common legal system. For without a common legal system there can be no equality before the law”. “Source of law”, moreover, because “the association”, created by the Treaties, “had to be supplied with a motor to enable it to develop into its declared goal, the economic and social union of Europe” (*ibid.*). For further information on the role of the European Parliament: T Raunio, *The European Parliament*, in E Jones et al. (eds.), *The Oxford Handbook of the European Union* (n 26) 365–379; A Ripoll Servent, *The European Parliament* (London: Palgrave Macmillan 2017). See also: C Martinelli, *Il Parlamento europeo. Simbolo o motore dell’Unione?* (Bologna: Il Mulino 2024). For an interesting perspective, see: H Canihac, F Laruffa, ‘From an Ordoliberal idea to a Social-Democratic ideal? The European Parliament and the institutionalization of ‘social market economy’ in the European Union (1957–2007)’ (2022) 60 n. 4 *Journal of Common Market Studies* 867–884.

⁸⁰ See L Azoulai, “Integration Through Law” and Us’ (2016) 14 n. 2 *International Journal of Constitutional Law* 449–463.

⁸¹ “The goal of the political unification of Europe has not been, is not and will never be pursued with ‘economic’ instruments alone”; and economic integration “was neither conceived nor implemented as an end in itself” (W Hallstein, *L’integrazione economica come fattore di unificazione politica* (n 5) my translation). On the topic of European economic integration: D Adamski, *Redefining European Economic Integration* (Cambridge: Cambridge University Press 2020).

⁸² W Hallstein, *Europe in the Making* (n 5) 30 ff.

⁸³ We are referring, of course, to the problem of the naturalistic fallacy. See: GE Moore, *Principia Ethica* (1903) (Cambridge: Cambridge University Press 1996). For a first in-depth look: N Sinclair (ed.), *The Naturalistic Fallacy* (Cambridge-New York: Cambridge University Press 2019).

⁸⁴ W Hallstein, *Europe in the Making* (n 5) 42 ff. These principles also seem to recall the values now enshrined in art. 2 TEU (related to the so-called ‘European society’). On this topic, see: A von Bogdandy, *The Emergence of European Society through Public Law: A Hegelian and Anti-Schmittian Approach* (Oxford: Oxford University Press 2024).

If, in fact, a moment of *peace*⁸⁵ symbolized the golden goal, the goal that cannot be subordinated to any other goal, *unity* constituted the ‘watchword’ of the integration process. Unity was meant to ensure the elimination of “frictions”, or, at the very least, their channeling and disciplining, their domestication⁸⁶. In other words, such unity was meant to confirm the need to safeguard a solid and stable space of peace in Europe. Without the minimum conditions of coexistence guaranteed by peace, in Hallstein’s opinion, all major problems, even those of “foreign” policy, tend to transform into problems of “domestic” policy.

But unity necessarily brought with it the need for legal *equality*. This equality concerned both European citizens and Member States. If no citizen, in any part of the European territory, should be subjected to any form of discrimination in legal protection, similarly no Member State “takes precedence over another; there is no such thing as hegemony. History teaches us that the domination of one power over others does not work. When it was attempted, it seldom lasted long, and the attempt, as well as the subsequent failure, has always caused conflict and periods of uncertainty”⁸⁷. Thus, from the recognition of equality follows the equal relevance of the principle of *liberty*: freedom in the movement of people, and, hence, freedom of movement; likewise, freedom in the movement of goods, through the guarantee of freedom of establishment, the free movement of services, capital, and workers⁸⁸. In Hallstein’s vision, political liberalism and economic liberalism find complete overlap and are impossible to separate.

On the other hand, to avoid the risks of overemphasizing market dynamics and expanding individual (economic) freedoms beyond plausible limits, Hallstein highlighted the centrality of *solidarity* as a guiding criterion for ensuring equity and justice within the European space. This dimension of solidarity, for Hallstein, was framed, however, within a purely economic context. The problem of constraints on individual freedoms was traced back to the need to place interpersonal relationships within the framework of a *social market economy* (a theme that evokes various elements of the ordoliberal tradition, as will be briefly seen in the next and final paragraph), for which Hallstein expressed his full approval, probably in overly emphatic tones: even the “Community, like the Federal German Republic, practises a market economy, tempered with a sense of social responsibility. A market economy is not postulated as a kind of immutable dogma; it is merely the best economic system man has so far devised and tested”, and it is “part and parcel, as well as the tool, of a healthy, stable society which seeks to provide conditions in which all its members can lead satisfactory lives”⁸⁹. Since the market economy, thus envisaged, involves an incessant movement, a perpetual interplay of encounter and clash, conflict and dialectic, there is an urgent need for a *force* that ensures that the changes, displacements and adjustments that result from it do not unduly burden one with respect to the other: it is necessary to “guard against the danger of one section of society, or even specific individuals, being unfairly affected by the changes, variations and necessary adjustments resulting from the interplay of market forces”⁹⁰. And this force is precisely the *law*.

Confidence in the functioning of a stable and fair economic market, limited in its most extreme and conflictual forms, led Hallstein to recognize the importance of the requirement of ‘*well-being*’ for the European peoples. This requirement also had to guide politicians and institutional actors to reduce poverty, make general culture prosper, and ensure social progress⁹¹. The Community, in fact, found one of its essential features in the

⁸⁵ See also W Hallstein, *The European Community: A New Path to Peaceful Union* (n 5) 8 ff.

⁸⁶ W Hallstein, *Europe in the Making* (n 5) 43.

⁸⁷ *Ibid.*, 44.

⁸⁸ *Ibid.*, 44–45.

⁸⁹ *Ibid.*, 45.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, 46.

dimension of *progressiveness*⁹². The Community has a dynamic character, it is a becoming, a *continuous creation*, it is not a *state*, but a *movement*, a “process”⁹³, which rejects forced automatisms and embraces the political need to provide ever new solutions to new problems. All this, however, can be implemented and realized within a “kingdom” in which full *societal security* reigns. Societal security is embodied in the possibility of calculating the future and, consequently, in the capacity to ensure stability in interpersonal relationships. But it also embodies a *secure market*, which allows entrepreneurs to plan their activities with relative certainty, within a global framework that ensures a good level of economic growth. For this reason, according to Hallstein, in addition to the existence of an effective *legal structure*, it is also vital to establish forms of autonomous financing for the Community. In this way, the Community can steadily work to achieve the objectives necessary and useful to ensure fundamental European values, within the framework of a general *economic-financial Constitution*⁹⁴.

V. Vision, ordoliberal theories, and some conclusions

Hallstein’s conception, according to which the essential values of the Community took on an economic content to be supported through a rigorous system of legal forms, recalls some similar ideas. These ideas were theorized, starting in the 1930s⁹⁵, by some authors belonging to the complex and multifaceted current known as *ordoliberalism*⁹⁶. Ordoliberalism envisioned a market structured according to the classic matrices of liberal thought – efficiency, price stability, guaranteed equilibrium in the relationship between the laws of supply and demand. This market had to be characterized, however, by a specificity, represented by the importance of the legal dimension: the law had to be conceived as a fundamental instrument for safeguarding the market

⁹² “Integration is a process of political dynamics. What matters is ‘shared progress’ and not the static material norms that set the level of tariffs or prohibit discrimination», so much so that the “Treaty itself is based on evolution” (W Hallstein, *L’integrazione economica come fattore di unificazione politica* (n 5) 17, my translation). At the same time, however, the “vehicle of unification has become, so to speak, an automobile”, and lives on a process of apparently unlimited expansion (*ibid.*, 18, my translation). Thus, in Hallstein, one finds a certain ambiguity between the emphasis placed on voluntaristic dynamics and the observation of an automatic development of phenomena. Consequently, it is not easy to understand where one process ends and the other begins: see *ibid.*, 18.

⁹³ W Hallstein, *Europe in the Making* (n 5) 46.

⁹⁴ *Ibid.*, 49 ff.

⁹⁵ As regards the links between Hallstein and the main exponents of *Ordoliberalism*, one can usefully consult the reconstruction contained in C Malandrino, «Tut etwas tapferes»: *compi un atto di coraggio* (n 3) 40 ff.

⁹⁶ For an introduction to the ordoliberal theoretical-political and philosophical-economic vision, among the many possible references, see, at least: M Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, edited by M Senellart, translated by G Burchell (New York: Palgrave Macmillan 2008); A Somma, *La dittatura dello Spread. Germania. Europa e crisi del debito* (Rome: DeriveApprodi 2014) 174–210; F Forte, F Felice (eds.), *Il liberalismo delle regole. Genesi ed eredità dell’economia sociale di mercato* (Soveria Mannelli: Rubbettino 2016); A Zanini, *Ordoliberalismo. Costituzione e critica dei concetti (1933–1973)* (Bologna: Il Mulino 2022); L Mesini, *Stato forte ed economia ordinata. Storia dell’ordoliberalismo (1929–1950)* (Bologna: Il Mulino 2023). See also the monographic section dedicated to *Ordoliberalismo*, in *Filosofia politica*, n. 1 (2019) 3–136, as well as the recent work by O Malatesta, *Ordoliberalism, State and Society: A Political Theory of Social Order* (Abingdon: Routledge 2025). For further information: C Joerges, ‘Europa nach dem Ordoliberalismus: Eine Philippika’ (2010) 43 n. 4 *Kritische Justiz* 394–406; R Klump, M Wörsdörfer, ‘On the Affiliation of Phenomenology and Ordoliberalism: Links between Edmund Husserl, Rudolf and Walter Eucken’ (2011) 18 n. 4 *European Journal of the History of Economic Thought* 551–578; J Hien, C Joerges (eds.), *Ordoliberalism, Law and the Rule of Economics* (Oxford-Portland: Hart 2017); MA Wilkinson, ‘Authoritarian Liberalism in Europe: A Common Critique of Neoliberalism and Ordoliberalism’ (2019) 45 n. 7–8 *Critical Sociology* 1023–1034; Id., *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford: Oxford University Press 2021).

itself, ensuring its (ontological) *artificiality*. If possible imbalances arise (always plausible, given the nature of the economic market as a *social product*), the law will intervene to reorder and restructure those same imbalances⁹⁷. It was a kind of law, undoubtedly, purely functional (or ancillary) to the economic dimension, but, nevertheless, fully existent and operational, and *necessary* in its *instrumentality*.

For the ordoliberal, the error of nineteenth-century classical liberalism was “believing that the market was self-sufficient, without being actively connected to the rest of the social territory, that is, without being supported by effective and pervasive mechanisms of social integration”⁹⁸. It was believed and thought that the market did not need the state, and therefore, not even the law. For ordoliberalism, instead, it is necessary “to make the State an active entity with respect to the market, in the sense of a regulatory agency. The state must correct the anti-competitive distortions of the market and alleviate its dissonant and disintegrating effects on the social fabric through strong intervention”⁹⁹. The state must make itself independent of social conflict and pluralism and intervene where the economy needs to be restored.

In the post-World War II period, the ordoliberal vision presented itself not only as an economic theory, but, more precisely, as a true project of political order. Faced with a European reality torn apart by the tragedies of the Second World War, the integrative capacity of the economy took on a central role: it would be necessary and essential “to first tame the devils, civilize or re-civilize them, give them a stable context for action, make them a people, which they are no longer, also because they are divided from each other by a curtain more rigid and resistant than iron”¹⁰⁰. To this end, the only possible remedy “is to make them market actors, entrepreneurs, and consumers”¹⁰¹. Citizenship and sovereignty, as Hallstein himself argued, would arrive later and as a natural and ‘physiological’ consequence.

Likewise, the State, and, more generally, the organization of the European Communities (before that: the High Authority for the European Coal and Steel Community, the fundamental body of the ECSC), must establish a common (or single) economic market¹⁰², which it will then have to regulate and formalize through law. In the absence of an immediate political union, it is decided to create an economic union based on free-market capitalist principles. In this way, the *economic constitution* will be governed by independent authorities free from the parliamentary representation of the various states. It will be Hallstein himself who will state this in the meetings preceding the Treaty of Paris, establishing the ECSC: “La force et l’indépendance de la Haute Autorité sont la clé de voûte de l’Europe”¹⁰³. The horizon is that of the liberal vision. The vision is anchored, however, to a strong and formally structured *Legal State*¹⁰⁴.

⁹⁷ To continue along the lines of theoretical analogies, see Hallstein’s statement regarding the relationship between the legal sphere and the market: “The guiding principle of the European Economic Community, and its entire ‘philosophy’, are based on the market economy. The *leitmotiv* is the establishment of an undistorted game of competition within the no longer divisive space of the Community. To the extent that it exercises coercive action to this end, it is coercion against freedom itself. For freedom, too, is not ‘the natural condition of man’. Coercion is therefore directed primarily against the state powers that seek to limit this freedom, not against the European citizen, to whom new freedoms must be guaranteed” (W Hallstein, *L’integrazione economica come fattore di unificazione politica* (n 5) 14, my translation).

⁹⁸ M La Torre, *Europa* (n 28) 143 (my translation).

⁹⁹ *Ibid.* 144 (my translation).

¹⁰⁰ *Ibid.*, 145 (my translation).

¹⁰¹ *Ibid.* (my translation).

¹⁰² See: JHH Weiler, *La Costituzione dell’Europa*, edited by F Martines (Bologna: Il Mulino 2003) 307 ff.

¹⁰³ J Monnet, *Mémoires* (Paris: Fayard 1976) 480.

¹⁰⁴ A theme that recalls a famous essay by C Schmitt, *Starker Staat und gesunde Wirtschaft*, in Id., *Staat, Großraum, Nomos. Arbeiten aus den Jahren 1916–1969*, edited by G Maschke (Berlin: Duncker & Humblot 1995) 71–91.

Hallstein's theoretical trajectory and the Ordoliberal vision partially coincide on a strictly theoretical-legal level, but also, or so it would seem, on a historical-political level. The Ordoliberals would indeed play a crucial role in the early years of European integration, being present in many of the original Community institutions. Furthermore, they would influence the main political bodies and guide the development of the jurisprudence of the Court of Justice. Starting in the 1960s, law also becomes economics, and fundamental questions become the prerogative of judicial decisions.

We are still, partially, within this horizon. The market has evolved from being 'common' to 'single', and (after Maastricht) the European Central Bank has become the cornerstone of the Union's economic and legal system. This latter institution largely reflects ordoliberal credentials, as a politically 'neutral' technical-legal body, yet one that is in fact lacking democratic requirements, (also) by virtue of the ideological differentiation and autonomy of the 'economic' from the 'political'. It therefore seems that Hallstein's vision has certainly outlined many elements that will be further refined and elaborated in the decades to come.

Hallstein's vision provided a useful, temporary tool for legitimizing a certain historical situation¹⁰⁵. It proved to be functional in ensuring a general order of meaning that supported the community's political structures both *internally* and *externally*. Hallstein was very careful to maintain an intimate link between 'politics' and 'science', seeking to legitimize his own political perspectives by representing them in terms that were as 'scientific' as possible¹⁰⁶. His ideas had to be presented as scientifically founded and theoretically sustainable, otherwise the entire philosophical-political framework would have inexorably collapsed. The link between academia and the political-institutional context, moreover, was strengthened by Hallstein from a specific perspective as well: he worked tirelessly to keep dialogue alive in academic debates and to discuss future changes to the European order¹⁰⁷.

Furthermore, from a theoretical perspective, Hallstein's thought presented itself as the best representation of a general vision in which the concept of a 'community of law' symbolized the central element of the entire ideological and institutional architecture of a united Europe. Rather than being founded and articulated by *popular will* or mere *economic interest considered in isolation*¹⁰⁸, Hallstein's pro-European vision found in the idea of *law* the instrument for ensuring an *impersonal process of formation* of the supranational order. In this way, it responded to the needs of the more immediate 'present', ensuring the stable structure of the free market, while safeguarding the possibility, in a near future, of developing – perhaps somewhat utopianly – a European federal democracy. This has, up to now, facilitated the strongly "depoliticized" vision that is blamed – with some justification – on the current European order¹⁰⁹, and that Hallstein's thought, despite its internal contradictions, has partly contributed, theoretically, to legitimizing¹¹⁰.

¹⁰⁵ See W Wessels, *Walter Hallstein's Contribution to Integration Theory* (n 2) 233 ff.

¹⁰⁶ Hallstein evokes, in various parts, the urgency of appealing to the *facts* and the need for a faithful description of reality, although he does not hide the general 'political' intent that animates his scientific and doctrinal work: W Hallstein, *Europe in the Making* (n 5) Foreword.

¹⁰⁷ H Canihac, *The Making of an Imagined 'Community of Law'* (n 21).

¹⁰⁸ *Ibid.*, 27.

¹⁰⁹ And a philosophical approach can help us understand this multifaceted dimension of the EU. From this point of view, see: J Dickson, P Eleftheriadis (eds.), *Philosophical Foundations of European Union Law* (Oxford: Oxford University Press 2012).

¹¹⁰ On the other hand, there are those who have emphasized the usefulness of Hallstein's theoretical contributions especially starting from the discussions around the Maastricht Treaty (1992): see W Wessels, *Walter Hallstein's Contribution to Integration Theory* (n 2) 238 ff.