

***The Democratic Legitimacy of the European Court of Justice – Pushing Against the Limits of Legal Integration (Summary)***

This research examined whether or not the European Union fails to achieve its own ideals of democracy and transparency based on an investigation of the democratic legitimacy of the European Court of Justice. This research started off from the premise that the European Court of Justice plays a role in lawmaking at the European Union level, yet the Court is a non-majoritarian institution, lacking democratic accountability to the European public. This gives the Court the independence it needs to perform its function contained in Article 19 TEU of ensuring that in the application and interpretation of the Treaties the law is observed. But this also leads to suspicion since it gives the impression that lawmaking, generally conducted in the name of the population of a State, happens behind closed doors by unelected judges without the means of holding these judges accountable for their decisions. This suspicion has given rise to claims that the Court in its interpretation stretches the meaning of the law too far, and has exceeded its competence by supplanting the legislature in its role of legislating, and by contributing to extending the reach of European Union law into policy domains reserved to the Member States.

An inquiry into how democratic safeguards, such as the separation of powers and the rule of law, were built into the European Union's institutional structure has revealed that the European Court of Justice holds an exceptionally independent position within the horizontal and vertical separation of powers enacted in the European Union. This independence stems from a lack of institutionalised democratic checks and balances on its power by the legislative and executive branches of government or by the Member States. Coupled with a system of high consensus requirements complicating the adoption and amendment of legislation through political means, and the Court's task of ensuring that in the interpretation and application of the Treaties the law is observed, it has led to the creation of a system remarkably open to development by judicial lawmaking, meaning the furthering of European integration through the judgements of the European Court of Justice. Legal integration must not be considered an undemocratic process as such, yet since the European Court of Justice is a non-majoritarian institution, it is imperative to ensure that this process occurs in a democratically legitimate way, in respect of democratic standards such as the separation of powers and the rule of law. This is especially crucial when legal integration pervades those policy domains falling within the Member States' reserved competence, for which the legislative competence of the European Union was explicitly excluded in the Treaties, such as collective labour rights, education and public health.

It has been held in this research that legal integration may still enjoy democratic legitimacy, even in reserved policy domains, provided the Court adequately motivates its judgements, that its judgements

are the result of an interinstitutional dialogue, and that ex post review mechanisms such as judgements by national constitutional courts act as a check on the Court's power.

The examination of the motivation of the Court's rulings particularly focused on the Court's application of the principle of proportionality when assessing the compatibility of restrictive national measures in reserved policy domains with European law, since the application of this principle has the function of providing judicial decisions with predictability and objectivity, core elements of the rule of law, and as a consequence, with legitimacy. This examination revealed that the motivation of the Court's rulings can be criticised on four levels, seriously harming the Court's democratic legitimacy. First, the perception of neoliberal bias in the Court's case law concerning collective labour rights. Second, the Court's willingness to frame disputes in reserved policy domains in terms of primary European law. Third, the Court's rigid assessment of what constitutes an overriding reason of general interest. Fourth, the Court's inconsistent application of the principle of proportionality from one reserved policy domain to the next.

Despite the detrimental effects to the democratic legitimacy of the Court of inconsistent legal reasoning and controversial judgements, controversial judgements are also the Court's primary means of engaging in an interinstitutional dialogue with the European legislature. This demonstrates that the Court's rulings are nevertheless thoroughly embedded within the balance of powers at the European Union level and therefore enjoy democratic legitimacy. A system of ex post review of the European legal order through judgements by national constitutional courts serves as an additional control mechanism guaranteeing that the Court does not exceed its competences and respects the separation of powers and the rule of law.

In conclusion, legal integration is not an undemocratic process as such, simply because the Court can not be held democratically accountable for its policymaking. The Court's task of maintaining the separation of powers and the rule of law and ensuring the respect for the division of competences in the European Union is however a significantly more delicate endeavour when adjudicating in reserved policy domains. Since the Union lacks legislative competence in these domains, the Court's case law can be perceived as expanding the competences of the Union beyond those conferred upon it in the Treaties, through a non-democratically accountable process, thereby pushing against the democratic limits of legal integration. The Court must therefore continue to supply adequate motivation for its rulings in order to enhance its democratic legitimacy when adjudicating in these domains. Judgements in the field of public health, in which the Court developed a proportionality approach more considerate of national sensitivities, already show promise for the democratic legitimacy of future adjudication in reserved policy domains.