

## ADDRESS BY MICHEL GAUDET

Director General, Joint Legal Service, European Community

before the

FELLOWS OF THE AMERICAN BAR FOUNDATION

Chicago

February 20, 1960

I am deeply grateful for the honor you have extended to me. I have the greatest appreciation for this Fellowship. But if I have the pride for it, I know the merit is not mine. Ever since my compatriot de Tocqueville wrote some 130 years ago his famous book on the "Democracy in the United States", we all know what the lawyers mean for the United States. And thank to you I have been learning these past weeks what the Fellows of the American Bar Foundation mean to the American lawyers. Granting this award to me represents more than a gracious gesture to a fellow lawyer from across the sea. I realize that, in honoring me, you are honoring the European Community to which I belong. I feel it an appropriate answer to the interest you are showing in its development to tell you a few words about it.

Before doing so, I should like to turn specially to the charming ladies gathered here this evening. I have nether as yet had the pleasure of addressing a so gracious assembly in this country. I hope to make law a matter of interest to you this evening. But anyhow I can't forget that since you, ladies, exercise on equal basis with us your voting rights and lay down the law for the lawyers, you are entitled to share all the information on the worldwide problems which we have, men and women of our generation, to face together.

As to you, gentlemen, I know that I owe you some precise information on our European Community. I can still hear one of your distinguished members telling me that a prominent British lawyer had remarked after some legal meeting that "American lawyers have a nasty taste for knowledge". I have experienced since that this is almost an understatement.

As a lawyer of the European Community, I have special reasons for thanking the American legal profession represented so brilliantly here tonight by learned judges and leaders of the Bar. The past work of American lawyers in shaping and guiding a great Federal system has been a constant contribution to our own efforts and many distinguished members of your bar have given unsparingly of their time to advise us in carrying on the peaceful revolution by which we are transforming the face of Europe.

#### European integration

The purpose of that revolution is to bring about this integration of Europe. European integration, as we conceive it, is a close approach to federalism. It is an attempt to settle, under the rule of law, the economic rivalries and the political antagonisms which have so long divided our European continent.

Less than fifteen years ago World War II had left the western European countries sick with horror and hate. Cities were in ruins. Whole populations were starving. Economies were paralyzed. In certain of our countries, the social and political fabric had been torn to tatters. At the same time, big economic markets proved to be absolutely necessary in a world of mass production and lightning communication. An era of vast political units was opening. European countries could no more afford to quarrel among themselves when they had to face, together with the United States and the British Commonwealth, the problems raised by the growth of the Russian and Asiatic powers.

Many Europeans thought that a bold and vigorous move toward integration was essential. We could no longer afford to settle for half measures. We had already had long experience with the classical methods of trade agreements, military and political alliances, international organizations. All such techniques were useful but they were not enough. Mere cooperation between sovereign nations was limited by the need for diplomatic compromise or by the lack of compromise. Mere cooperation had proved insufficient either to create prosperity or assure peace.

If Europe were to avoid the tragedies of the past, if a real change were to occur in Europe, we had to take the first step toward integration. We had to make a beginning, a break-through. That beginning took the form of an undertaking to pool both men and resources and to develop common governmental policies. Through this means we sought to create close mutual bonds of confidence and common interest. By establishing a common market, administered by common institutions, we would take the first long stride forward the creation of a united Europe.

We moved first in the area of coal and steel. Under the inspiration of one of the wisest of my compatriots, whom many of you know - Jean Monnet - the French Government proposed to create a Community having jurisdiction over French and German coal and steel, but open to any European country that was prepared to undertake the obligations of membership. While Great-Britain, though interested and friendly, could not see her way clear to joining, Belgium, West-Germany, Italy, Luxembourg and The Netherlands accepted the French proposal. The Treaty was signed in 1951 and came into operation 1952.

The European Community had been started. In spite of our four official languages, in spite of disappointments, in spite of the failure of the proposals for a European Defense Community and the continuing reluctance of the United Kingdom to join with the six nations who had assumed membership, the Community has maintained its momentum. It has moved from a concept through the

4

pilot-plant stage of coal and steel, until now we are building a Common Market embracing all commodities and at the same time are pooling our plans and resources for the common development of atomic energy. As an economic achievement, the Common Market will consist of more than 170 million consumers. It will be the world's second producer and its larger trader. As a political achievement, the European Community will provide an enduring basis for Franco-German reconciliation, and a springboard for new steps in the development of European unity.

### The Common Market

You, Americans, have become so accustomed to your own great common market that you may perhaps wonder at the meaning it can have for us Europeans.

But let us indulge in fancy for a moment and try to imagine a non-federal America.

If we were to drink delicious California wine in Chicago, we would have to pay a duty on it. Duty would also have to be paid on steel shipped from Chicago to California. But perhaps California would prohibit or limit that import altogether in order to protect its own burgeoning steel industry. During times when agricultural income was low, Middle Western States, such as Illinois, might place a quota on the import of automobiles from Detroit because they could not earn the foreign exchange to pay for luxury items. To greater or lesser extent, depending on the level of economic activity, capital would be restricted in its movements from one state to another. Workers could not move freely across state lines. In some states non-citizen workers would be admitted only after the closest investigation of each particular application. The corporate clients you are counseling would be required to limit their activities to the state in which they were registered. And you leaders of the Bar would not be permitted to appear in the courts of another state, even when introduced by local counsel pro hoc vice.

1

This sounds fanciful - and, fortunately for you and the whole Free World, it is fanciful. Yet in the beginning it was not certain that you would escape the economic fragmentation with which we in Europe are so familiar.

It seems almost certain that had the thirteen states drifted much further as a loose Confederation, you would have developed in America the same kind of small state-wide markets which we Europeans have found such an obstacle to progress and such a source of friction and conflict.

But your Founding Fathers were men of great perception. In the Constitutional Convention they met this problem head-on, as you know better than I. First - largely at the instance of James Madison, I believe - they wrote into the Constitution a provision that prohibited any state from imposing duties on imports or exports without the consent of Congress. Second, by delegation to the Federal Government of such powers as the power to tax, to coin money, and to govern interstate commerce, they paved the way for a high degree of central control over economic policy. Finally, they created a set of federal institutions to see to the carrying out of all the articles of the Constitution.

Within the limited frame of the European Economic Community we have adopted techniques in the same broad pattern to reach a similar solution. We have provided for the prohibition of duties between states; the adoption of common economic policies; the creation of common institutions. Under the Common Market Treaty the Member-States are forbidden, after a transition period, to impose any type of restrictions on the free movement of goods within the Community. And the Member-States have committed themselves to apply a common external tariff and to follow a common commercial polity toward the rest of the world.

But more than that, the States have undertaken to  
liberate the movement of labor, services and capital. Obviously,  
measures so revolutionary are bound to create economic dislocations,  
and in eliminating the tradition and practices of national  
protectionism that had developed over hundreds of years, the  
drafters of the Treaty recognized that a high degree of economic  
integration was necessary.

6

With this in mind, they provided in the Treaty for the  
development of unified policies by the Member-States covering a  
wide spectrum of governmental decision. The signatory states have  
thus committed themselves to work toward a common fiscal and  
monetary policy to establish common rules and regulations  
restricting cartels and monopolies and encouraging competition.  
These are all fields in which your American legal experience is  
proving of great benefit to us.

#### The Common Institutions

It is, however, in the development of the Institutions  
of the Community that your federal experience has been most  
beneficial. There was never any doubt in the minds of those  
who drafted the Treaty that, while we might undertake to eliminate  
tariffs and quotas by international agreement among the national  
authorities concerned, we could work out common economic policies  
and move toward integration only by creating common institutions  
empowered to make binding decisions. In building the Community,  
we were thus faced with problems closely related to the problems  
of federalism - even though the Community limited to the economic  
field, is not a federal state.

We recognized that, as in the case of any government of  
a truly democratic type, the powers should be divided, following  
the classical doctrine, among parliamentary, executive and judicial  
institutions. But we found it necessary to modify the usual scheme

1

7  
of governmental organization to take account of the fact that the scope of jurisdiction of the European Community is as yet limited to economic policies. These policies cannot be finally determined without consideration for the other policies of government such as foreign policy and national security, which remain under the exclusive sovereignty of the Member-States. Political authority is mainly vested still in the national governments. And it was essential that the institutions of the Community be so designed that they could work in close harmony with the governments of the Member-States.

As finally provided in the Treaties, the institutions of the Community are tailored to take account of these very special circumstances.

In each of the three Communities - the European Economic Community, which you know as the Common Market; the European Coal and Steel Community; and the European Atomic Energy Commission, which is commonly called Euratom - the day-to-day executive power is delegated to an independent body of a few members. Each of these members is appointed by common consent, and therefore with the confidence, of the Member-States, but no member may take instructions from any national government, and he has to approach his duties from the point of view of the Community as a whole.

These executive bodies, known in the case of the Common Market and Euratom as Commissions, and in the case of the Coal and Steel Community as the High Authority, are to assure application of the common rules. In addition they are to take all necessary measures to promote the accomplishment of the objectives of the Community in conformity with the provisions of the Treaties.

The three executive bodies are responsible for their actions not to the Member-States but to a single European Assembly which by a 2/3-vote of censure can force the members of the executive of any of the bodies to resign en bloc. Although the powers of the Assembly are limited, its political role in the development of European integration should not be underestimated.

1

The Assembly exercises inquisitorial powers not unlike those of your own Congress and both the Executives and the National Governments must explain publicly to the Assembly what they have done or failed to do. Today the members of the Assembly are appointed each year for the National Parliaments from among their own members but the influence of the Assembly will be greatly expanded if and when its members are elected by the people of the Member-States. A proposal for such direct election is about to be discussed in the Assembly.

Unlike your Congress, the Assembly today has no legislative power. The Treaties themselves serve not only as a Constitution for the Community, since they provide for the creation of institutions and the transfer of powers to those institutions, but also serve as codes of law, since they embody the basic rules of the Common Market. In applying these rules and adapting them to the circumstances of overlapping or conflicting national policy, the national governments themselves must necessarily play a decisive role. They perform this role through the medium of a Council of Ministers upon which sits a member of the government of each Member-State. This Council acts as an institution of the Community, guided by the objectives and the rules laid down. The executive bodies of the Communities - the Commissions and the High Authority - are always present at the meetings of this Council and take an important part in the debate. The major policy issues are discussed and determined here. Some decisions require unanimous consent of the Council of Ministers, but after a period of time set by the Treaties, most of them will be governed by a majority vote, thus rendering it impossible for a single Member State to veto a decision favored by the executive bodies and the other Member-States.

The provisions of the Treaties and the binding decisions of the Executives and of the Council of Ministers are the law of the Community, enforced within the Member-States by the national Courts as is the national law. But a special judicial power has



been vested in the Court of Justice of the Community, the seven judges of which are appointed by common consent of all the Member-States. This Court is the ultimate authority with respect to the interpretation of the Community law, the delimitation of the powers vested in the common institutions, and the definition of the obligations of the Member-States. Any Member-State, as well as the Executives and Council of Ministers, can bring another Member-State before this Court for what is alleged to be a violation of the Community law. Any Member-State or common institution can also complain to this Court with respect to any act taken by the Executives or the Council of Ministers which is believed to be contrary, in procedure or in substance, to the provisions of the Treaties. Individuals and enterprises may also appeal to the Court when such acts are addressed to them. National courts must refer to the Court of the Community all questions involving the interpretation of the Community law or the determination of the validity of the acts of the common institutions.

The enforcement of the Community law by the Court of the Community has proved quite successful. After the first two years, the Court's docket has become progressively more crowded. On last January 1st, 150 cases had been brought before the Court, 16 by Member-States and the rest by individuals or enterprises. Over 60 cases were still pending. Some had been withdrawn, but the Court had rendered decisions in 50 cases, and had thus begun to build a body of jurisprudence interpreting the Community law. May I add that out of the 48 decisions concerning cases in which the Executive of the Coal and Steel Community has been involved, the Court found in 40 cases that the Executive had been acting in conformity with the provisions of the Treaty.

### Change leads to Change

You will not be surprised when I tell you that in carrying out the Treaties we are encountering many problems.

A great economic revolution such as we are waging by peaceful means cannot be achieved without difficulties. We are having our share of growing pains.

But there is evidence already that by establishing a Common Market and by the conduct of common institutions which are already an active, living force in the Community, we are setting in motion profound forces of change. In fact, I think all of us who have been involved in the development of the European Community have been astonished at the pace of some of these changes. We have been astonished, for example, by the rate at which the larger and more modern enterprises, both in industry and agriculture, have accepted the idea that countries, formerly enemies, can and must become parts of their own market. In fact, there are mounting pressures not only in official circles but in business as well to speed up the establishment of the Common Market, while only three years ago the transition period laid down in the Treaty seemed all too short.

But even more important than the changes within the Community are its external effects. The proposals for a Free Trade Area, put forward primarily at the instance of Great-Britain, are but a reflex to the creation of the Common Market. A traditionally protectionist country such as my native land of France has lately changed the whole line of its trade and economic polity. All of the members of the Community, whether their policies in the past have been liberal or protectionist, are prepared to support proposals of the Executive for negotiations to reduce the common external tariff.

These changes in attitude and in conditions, vast as they are, are, I hope, but preludes to even greater changes. Certainly this should be the case; after all it is in the nature of change to make further change possible. The recent and hopeful developments of economic cooperation on the Atlantic level would presumably not have been made at the present time except for the

existence of an Economic Community able to speak for three-fifths of Western Europe's population and productive resources. And when we consider the difficult and dangerous problems with which we shall be faced in the coming years, European integration must inevitably appear, I think, as an indispensable policy of Atlantic cooperation.

In fact, I say to you, out of deep conviction, that the methods of our Community, based, as is your Federal system, on the acceptance of common rules and common institutions, can and will offer a new field for the creativeness of the Atlantic world.

But I should emphasize with equal strength that the success of these methods depends eventually on the attitude of mind and on the will with which they are carried on. It is in this respect that the most striking change has occurred in Europe since the war. Let me tell you a short story about this.

I must confess, it is high time, that I have been in jail. Lawyers generally object to being in jail. But many European lawyers of my generation have been in jail during the war. In fact, we started the legal department of our European Community with three lawyers who had all been in jail : one, a German Jew, had been in one of Hitler's concentration camps; another German had spent two years in France as a prisoner of war; I myself, wounded, had been made a prisoner and sent to what is to-day Eastern Germany. We all thought in our own jail that a better Europe could be successfully tried in the future. Today, our children sit together in the same European school, set up jointly by our six Governments for the children of the officials of our Community. They study, play and grow together. They get at the end of their studies a European degree which enables them to go to any University they choose in our six countries. A European University is on its way to be set up by the six countries.

We have decided in jail to cease gazing separately at the past of our European nations. Our children learn together in school to look at their joint future. A big step has indeed been taken towards European unity.

---