Frank-Walter Steinmeier
Elected Bundespräsident
Sunday, February 12
931 of 1,239
To take office March 19

The European Union

- Martin Schulz
  - MEP 1994-2017
  - President EP 2012-17
  - Lost election as President of Commission in 2014

The European Union

- First decade of European Economic Community
  - Several major steps toward integration, 1958-65
  - Process of integration slowed distinctly from 1965 into early 1980s
  - By late 1970s and early 1980s, sense that project of European integration had to move boldly forward or fail

The European Union

- Three realms of initial success
  - Creation of effective Common Market
  - Creation of Common Agricultural Policy
  - Establishment of supremacy of EEC law over Member States’ domestic law

The European Union

- Impediments to integration that contributed to sense of stagnation
  - Problem of unanimous decision-making in the Council
  - Collapse of postwar economic monetary order with “Nixon shock” of August 15, 1971 and end of Bretton Woods
  - Twin problems of western revolutionary student and worker movements and later terrorism and renewed Cold War from 1978
  - Economic crisis that followed twin oil shocks of 1973-74 and 1979
The European Union

• Building Institutions of EEC
  ─ ECSC
  ─ Council of Ministers
  ─ High Authority
  ─ Common Assembly
  ─ Court of Justice
  ─ EEC
  ─ Council of the European Economic Community
  ─ Commission of the European Economic Community
  ─ European Parliamentary Assembly (after 1979 European Parliament)
  ─ European Court of Justice
  ─ Euratom

The European Union

• 1965 Merger Treaty (Treaty of Brussels) effective July 1, 1967
  ─ All three Communities merged their Commissions and Councils

The European Union

• First President of Commission of European Economic Community
  ─ Walter Hallstein
  ─ Members of Commission elected by Council, acting unanimously
  ─ President of Commission elected by Council

The European Union

• Structure of EEC under Treaty of Rome
  ─ Part One – Principles
  ─ Part Two – Bases of the Community
    • Title I – Free Movement of Goods
      ─ Chapter 1 – The Customs Union
        ◦ Section 1 – The elimination of customs duties as between Member States
        ◦ Section 2 – Establishment of the Common Customs Tariff
      ─ Chapter 2 – The elimination of quantitative restrictions as between Member States
    • Title II – Agriculture
      • Title III – The Free Movement of Persons, Services and Capital
        ─ Chapter 1 – Workers
        ─ Chapter 2 – The Right of Establishment
        ─ Chapter 3 – Services
        ─ Chapter 4 – Capital
The European Union

- Article 3 of Treaty of Rome lists “a” through “k” tasks
- Commission started with first, second, and fourth
  - Elimination of tariffs between the Member States
  - Common tariffs and commercial policy toward third countries
  - Common Agricultural Policy

The European Union

- Commission of EEC became an international diplomatic presence in economic negotiations
  - Joined Kennedy Round of GATT negotiations as separate entity in 1964
    - General Agreement on Tariffs and Trade
    - Negotiations were based upon US fear that it might be shut out of trade with new large European trading bloc of EEC

The European Union

- Articles 12 through 17 of Treaty of Rome provided for stepped reductions in tariffs among Member States in three steps
  - From existing tariffs of January 1, 1957
  - Member States could not introduce new tariffs nor increase existing tariffs in meantime
  - Completely eliminated on July 1, 1968
  - Had not yet eliminated a large number of other regulatory barriers to trade in goods

The European Union

- Thorniest task was to introduce Common Agricultural Policy
  - All European states has protected, subsidized, and promoted their agricultural sectors
    - To overcome real food shortages
    - To placate farmers, a significant political constituency
    - Favored producers over consumers, rural over urban dwellers
  - Enormously expensive, dependent upon tariff barriers
    - Antithetical to idea of customs union, not to mention common market
    - Contrary to neoliberal economic notion of “comparative advantage”

The European Union

- Commission of EEC drafted legislation
  - Presente...
The European Union

- In practice, CAP is a massive system of price and market supports for farmers so that they can make a living
  - Price and market supports in EEC/EU internal market
  - Common protective tariffs to protect European farmers from competition from more efficient producers from without the EEC/EU

- A political compromise between industrialized, urbanized Member States and more agricultural, rural Member States
  - Germany paid for access to French market for industrial exports by subsidizing French farmers
  - Germany has always been largest net contributor to CAP
  - Urban residents throughout EEC/EU pay more for agricultural products to preserve domestic European agricultural production
  - Also to preserve “rural way of life”

- France remains sixth-largest agricultural producer in world
  - Accounts for 1/3 of agricultural land in EEC/EU
  - Second-largest agricultural exporter after United States
  - Exports high-value agricultural goods
    - US agricultural exports to Europe are either very basic; soybeans and animal fodder, or very processed, snack food
    - We send them tofu and Cheddar; they send us Camembert and Sancerre
  - French farmers receive €11 billion annually in EU subsidies

- Food
- Environment
- Countryside
The European Union

- CAP is always a source of tension between EEC/EU and the US and other agricultural exporters in GATT and WTO free-trade/tariff reduction negotiations.
- But creation of CAP, and its common defense before WTO, eliminated greatest barrier to final removal of internal customs barriers and creation of a common market in agricultural goods within the EEC.

The European Union

- Establishment of principle of supremacy of Community law over Member State domestic law
  - Three steps:
    - Supremacy in U.S. law
    - Direct Effect of Community law
    - Supremacy of Community law

The European Union

- Constitution of the United States, Article VI, paragraph 2:
  - This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The European Union

- Marbury v. Madison, 5 U.S. 137 (1803)
The European Union

• The European Union
  - Constitution clearly creates a new polity, supranational with respect to the states
  - Treaty of Rome is in the form of a multilateral international treaty
    - Intravergovernmental components
    - Supranational components
    - Politicians within Member States array themselves across a spectrum of views, from intragovernmental to supranational

The European Union

• Articles 164 to 188 of the Treaty of Rome give European Court of Justice (ECJ) jurisdiction:
  - To ensure observance of law and justice in the interpretation and application of the Treaty;
  - To hear disputes between Member States about whether they have conformed to terms of Treaty;
  - To provide binding interpretations of the Treaty and of laws of the EEC when sought by courts of the Member States having to interpret and apply EEC law;
  - No supremacy clause stating that EEC law overrides Member State domestic law

The European Union

• Marbury (1803)
  - It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

The European Union

• Marbury (1803)
  - Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.
  - This doctrine would subvert the very foundation of all written constitutions.
The European Union

- So just like Mr. Justice Marshall in *Marbury* who had to make up power of judicial review, ECJ had to make up two supranational doctrines:
  - Direct Effect
    - That the Treaty of Rome conferred an individual right of a citizen of an EEC Member State to claim protection of EEC treaty and laws
  - Supremacy
    - That EEC Treaty and laws prevailed over domestic laws, even constitutions, of Member States

The European Union

The European Union

- Van Gend en Loos v. Nederlandse Administratie der Belasting, Case 26/62 (1963)
  - The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community.

The European Union

- Costa v. ENEL, Case 6/64 (1964)

The European Union

- Van Gend en Loos (1963)
  - The working of Article 12 contains a clear and unconditional prohibition which is not a positive but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law. The very nature of this prohibition makes it ideally adapted to produce direct effects in the legal relationship between member states and their subjects.

The European Union

- Costa v. ENEL, Case 6/64 (1964)
  - As opposed to other international treaties, the Treaty instituting the E.E.C. has created its own order which was integrated with the national order of the Member States the moment the Treaty came into force; as such, it is binding upon them. In fact, by creating a Community of unlimited duration, having its own institutions, its own personality and its own capacity in law, apart from having international standing and more particularly, real powers resulting from a limitation of competence or a transfer of powers from the States to the Community, the Member States, albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves.
The European Union

- Costa (1964)
  - The reception, within the laws of each Member State, of provisions having a Community source, and more particularly of the terms and of the spirit of the Treaty, has as a corollary the impossibility, for the Member State, to give preference to a unilateral and subsequent measure against a legal order accepted by them on a basis of reciprocity. . . . It follows from all these observations that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called into question.

The European Union

- Individual litigants in Member State courts, in all kinds of civil litigation, had an interest in pleading enforcement of EEC law as they crafted their cases
  - Guaranteed a steady, integrationist, supranationalist development of law in court rulings
  - Cemented position of ECJ as integrationist, supranationalist component of EEC edifice

The European Union

- By mid-1960s, headwinds to “ever closer union”
  - Internal crisis, rise of de Gaulle in France
  - Exogenous crises of 1960s and 1970s
    - Collapse of Bretton Woods order in 1971
    - Successive oil shocks of 1973-74 and 1979
    - Experience of revolutionary student left in 1960s and domestic terrorism in 1970s
    - Accession of UK in 1973 as reluctant and intergovernmental member, especially after 1979
    - Second Cold War from 1979 onward

The European Union

- Rise of de Gaulle
  - Rising of pieds-noir in Algiers May 13, 1958
  - De Gaulle returns as premier on June 1
  - New Constitution on September 28, from Fourth to Fifth Republic

The European Union

- De Gaulle as imperious figure, fixed on grandeur of la France
The European Union

- De Gaulle strongly intergovernmental rather than supranational
- Insisted on unanimity
- “Empty chair crisis” June 1965-January 1966
- Luxembourg Compromise January 1966
  - Whatever issues subject to qualified majority voting, any Member State could insist on unanimity (and hence right to veto) on any issue that it deemed a “very important national interest”
  - Stalled bold steps toward integration until 1982

The European Union

- Why did other Member States not force the hand of France?
  - Bretton Woods
The European Union

- Why did other Member States not force the hand of France?
  - Bretton Woods
  - Oil shocks
The European Union
The European Union

- Why did other Member States not force the hand of France?
  - Bretton Woods
  - Oil shocks
  - Domestic terrorism

- New presence of Britain
- Second Cold War