

Series preface

This book is the third in a series that is devoted to the regulation of biotechnology. Since the series was launched, the EU has changed significantly, albeit in ways that are largely consistent with the vision laid out by the European Court of Justice in *Van Gend & Loos*. In that landmark case, the Court observed:

Independently of the legislation of Member States, Community law 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 case marked a watershed moment for the EU, as it promotes individuals (in more contemporary parlance, ‘European citizens’) to the heart of the European project. Put differently, *Van Gend & Loos* signifies that the EU derives its legitimacy not from states or state bureaucracies but directly from its citizens. The future of Europe thereby is ultimately determined by individuals, who occupy a pivotal position in a web of duties *and* rights that they can exercise autonomously without state intermediaries. The emancipation of the European citizen continued after *Van Gend & Loos*, as is evidenced by Article 2 TEU:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

It is striking that, despite its relatively recent origin, Article 2 does not reserve a discrete place for environmental values, but merely indirectly embraces these by way of anthropocentric references to ‘human dignity’ and ‘respect for human rights’. This, in turn, brings us to Article 6(1) TEU, which recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights, and Article 6(3) which provides for

fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States.

At a *fundamental* level, therefore, articulations of EU environmental policy that come in the form of directives and regulation thereby are manifestations of the right to a clean environment, which in Article 37 of the Charter is conceived as a solidarity right.¹ The anthropocentric paradigm underpinning EU environmental policy is important, as it bears upon the proper interpretation of secondary EU environmental law, in particular in the sphere of biotechnologies that affect the essence of the lives of humans and their relationships with their surroundings. The conceptualization in Article 37 of the Charter of the environment as a third generation human right implies that the EU and its Member States share duties to act, but also that citizens become the locus of both rights *and* duties. In his 1979 inaugural lecture, Karl Vasak put it as follows:

[Third generation human rights] are new in the aspirations they express, are new from the point of view of human rights in that they seek to infuse the human dimension into areas where it has all too often been missing, having been left to the State, or States ... [T]hey are new in that they may both be *invoked against* the State and *demand*ed of it; but above all (and herein lies their essential characteristic) *they can be realized only through the concerted efforts of all the actors on the social scene*: the individual, the State, public and private bodies and the international community.²

It is from this perspective that Naveen Thayyil's book is such a timely and important signal, confronting us with the challenge to uphold the values of Article 2 TEU in a high-tech globalized age driven by transnational technocracies that, in many ways, are *prima facie* incompatible with the respect for human dignity and pluralism Article 2 TEU professes. The author must therefore be applauded for this visionary book, in which he effortlessly combines legal, sociological and

¹ See Article 3(3) TEU, instructing the Union to pursue a high level of environmental protection, a mission the EU shares with the Member States (see Art. 4(2)(e) TFEU), and which is further specified in Articles 191–194 TFEU.

² Karel Vasak, 'Pour unetrousime generation des droits de l'homme', in *Studies and essays on international humanitarian law and Red Cross principles* 837, 839 (Christophe Swinarski ed., 1984).

philosophical arguments in support of a regulatory regime for genetically modified organisms that mirrors the fundamental values of the European Union.

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