

Lecture Plan

Background European Integration and the question of Sovereignty

The ECJ view

Constitutional Pluralism

Implications for Canada & the World

Background

National Sovereignty

Sovereign = total and exclusive power over a given territory

By separating out discreet parcels of land and making sure there is only one on each parcel, we prevent conflicts between different authorities

Two Visions of the EU

Intergovernmentalists see the EU as a voluntary agreement between states. Sovereignty remains with the states, the EU is just a tool for them to use they please.

Federalists

not just a tool of member states, the EU is an independent entity equivalent to a federal government and the states are a subordinate entity providing to it. Sovereignty rests with the EU

The original treaties do not resolve this question.

Compromise, Bracketing & Ambiguity

Functionalismif we start by making lots of small agreements in areas that are easy to agree on, this will begin to build trust and interdependence. Even

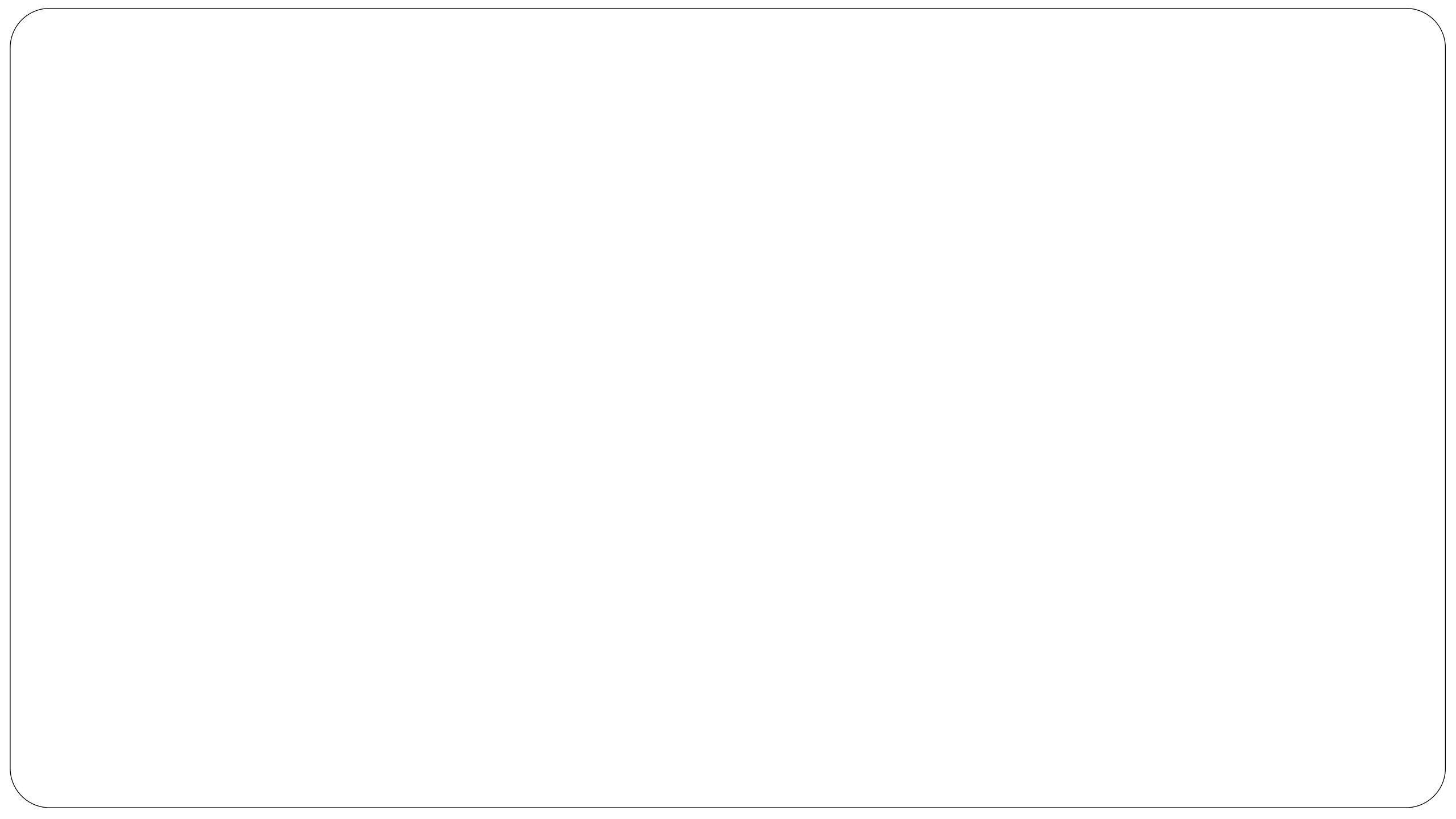
In the meantime, leaving contentious issues unresolved creates a union that is compatible with a wide range of outcomes, and can be supported by a wide range of actors

Empty Chair Crisis

1960s, proposals to expand role of the European Parliament and Commission to move to majority voting in the Council (making the EU more federalist)

De Gaulle, an intergovernmentalist, responds by boycotting the European council

Without France nothing can be done, integration is paralyzed, and the European project is in crisis



Italy nationalizes several energy companies

An Italian citizen argues that this violates EU treaty provisions around competition

Italian courts rule that because the energy nationalization bill is more recent than the treaties, Parliament implicitly abrogated those parts of the treaties

- Italy is not free to pick and choose which EU laws it wants to follow

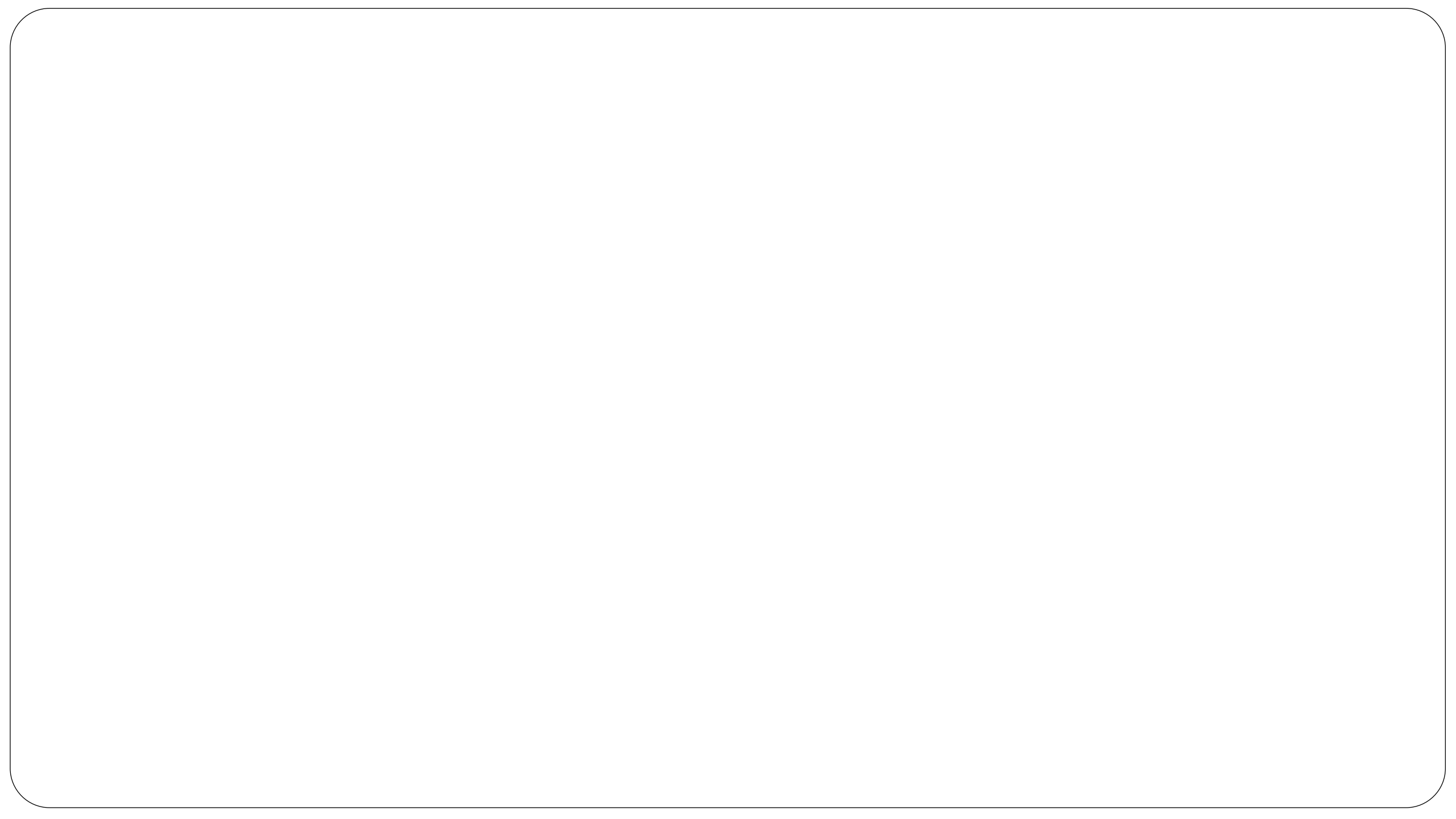
Italy has given up some of its sovereignty to the EU.

In the areas that Italy has given up sovereignty, EU law is supreme over national law

Fundamental principles:

Direct Effect EU law creates a new community and new rights that can be enforced directly without the consent of national governments.

Supremacy EU law is supreme over national law. In the event of a conflict, EU law prevails.



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Ireland

The Irish constitution makes any law essential to EU membership supreme over any Irish law, even the rest of the Irish constitution.

so!

If Ireland were to amend its constitution, would EU law still be supreme?

Poland

Germany

Germany takes an innovative, compromise position halfway between accepting EU supremacy and asserting German supremacy.

German courts rule that EU law is supreme, but only if it meets certain conditions.
In other words

This approach, of accepting EU supremacy subject to certain conditions, has now spread to other countries.

Constitutional Variety

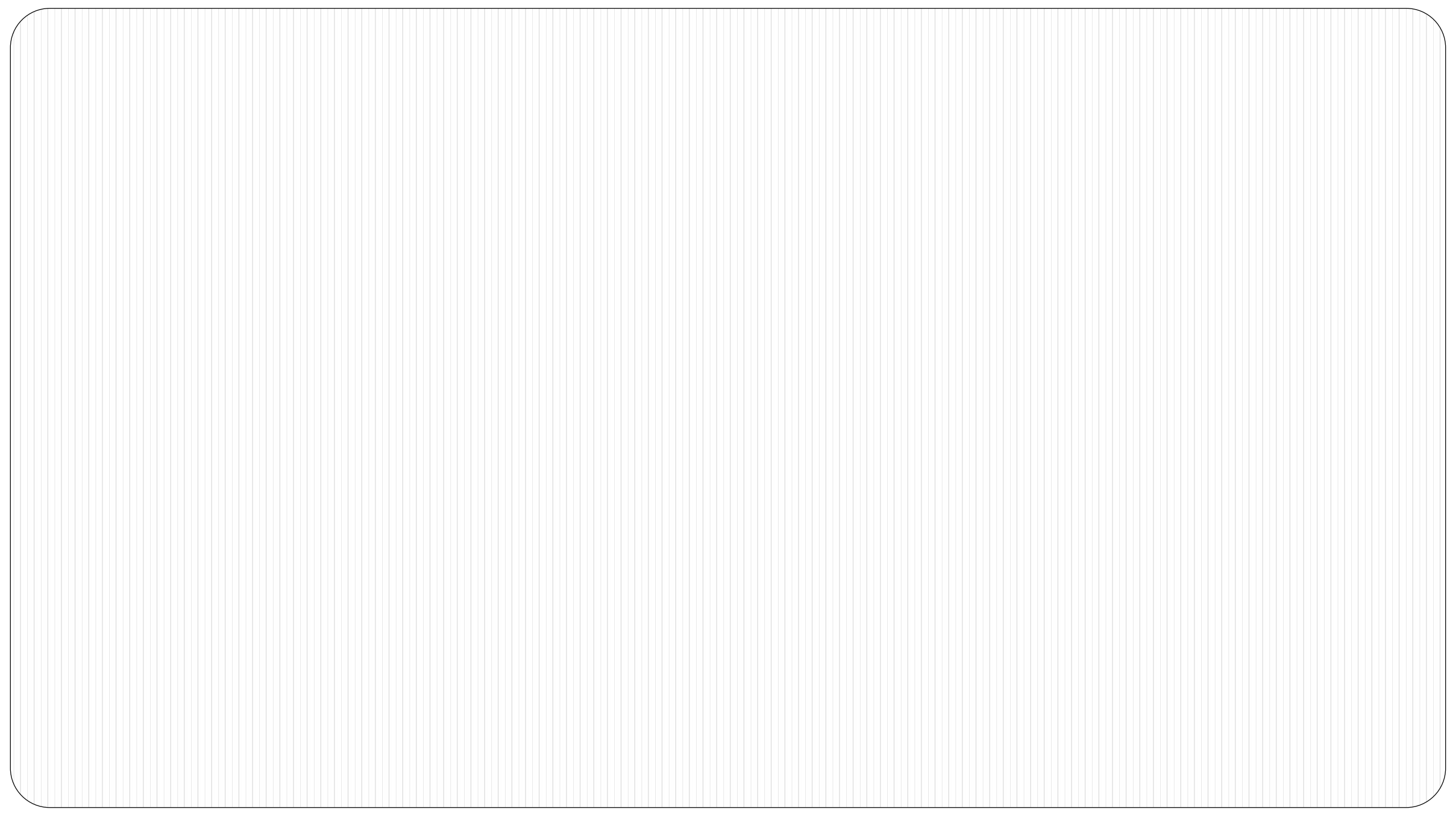
supreme, under what conditions, and why.

Sometimes these positions are directly contradictory, other times courts find innovative compromises.

So who exactly is in charge here?

Well, it depends who you ask!

Every court in Europe envisions the relationship between member countries and the EU differently; there is no consensus on how the whole thing works or who is ultimately running the show.



Order and Contestation

Because people are divided on the question, resolving the issue of federal integovernmentalism one way or the other would probably cause the system collapse.

The only way to keep the system going is by leaving the question open to (re)negotiation

contestation, it works

contestation

Example

The ECJ rules that EU law is supreme even over national constitutions

German courts are concerned because EU law has no human rights protections
In order to make sure human rights are respected, Germany will consider certain provisions of its own constitution supreme

But it develops its own human rights standards anyway, in order to avoid the conflict

German courts respond by accepting EU supremacy

Mutual Accommodation

How can we Conceptualize this System?

Multiphenational legal orders are shaping EU law, putting conditions on it.
At the same time EU law shapes each of them through supremacy.

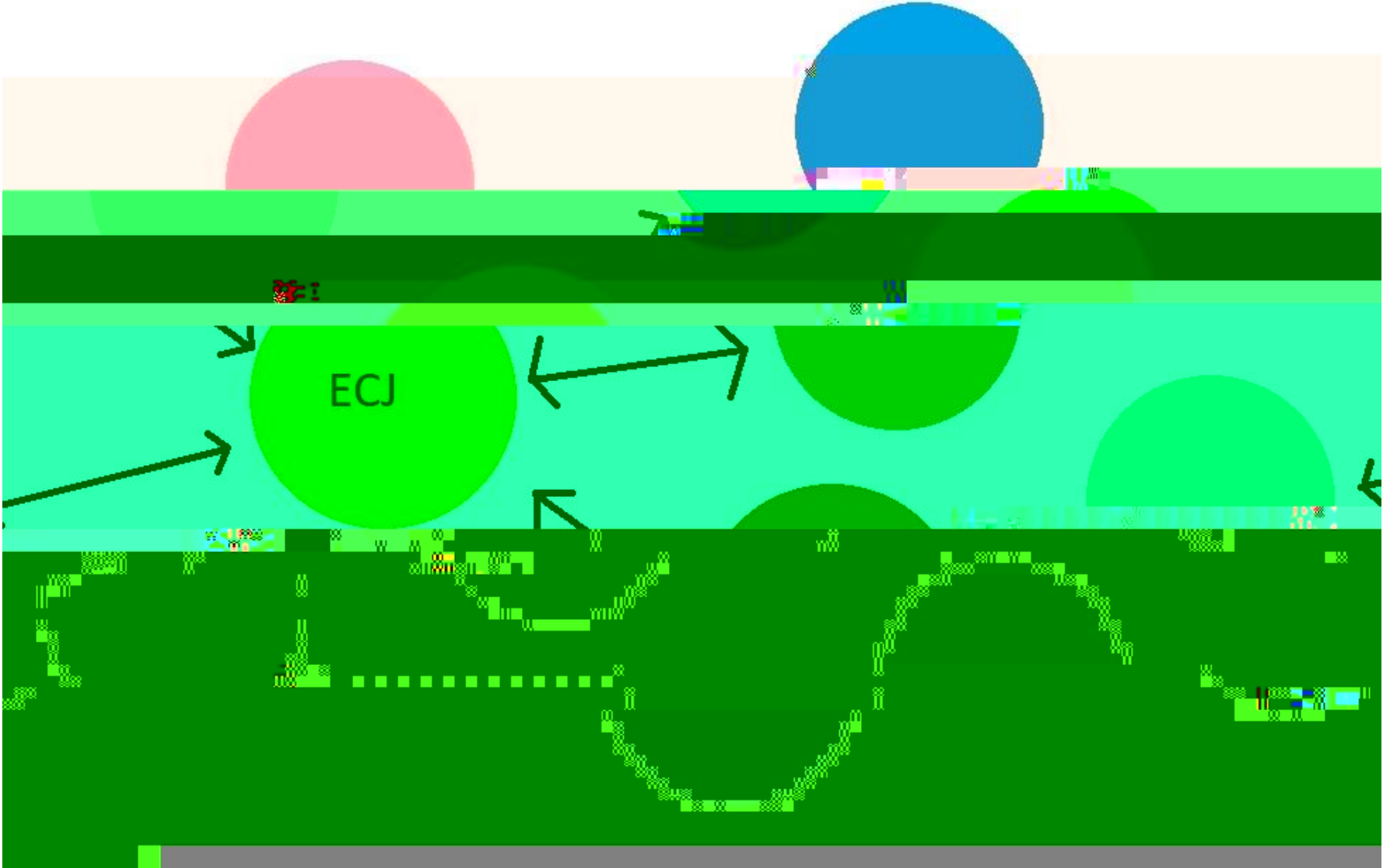
The system is one where multiple legal systems are all influencing one another.

Federalism



Intergovernmentalism

European Legal System:



Constitutional Pluralism

No court enjoys exclusive or absolute power

But all courts enjoy the ability to influence one another (instead of hierarchy)

This incentivizes mutual accommodation, allowing courts to cooperate without ever establishing a shared vision of who is in charge

Sovereignty and Pluralism

So What?

Well, this challenges the way we think about law and order.

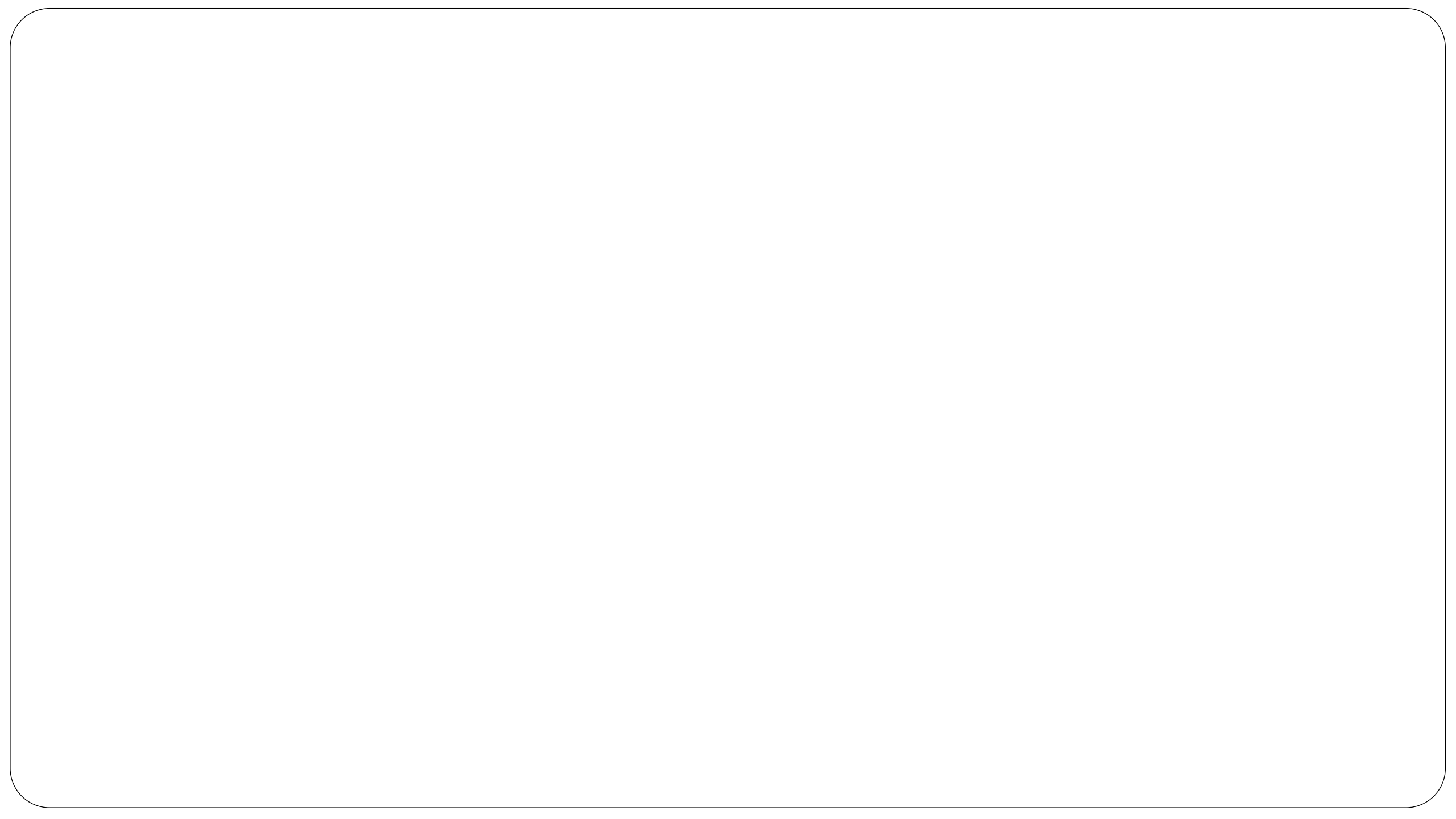
The traditional story European philosophers tell about law goes like this:
Once upon a time, humans lived without any form government and everybody was killing, stealing from, and raping one another. Life was nasty and short.
In response, humans decided to give all their power to one individual (the

The story suggests social order depends on a) a clear set of rules b) a single person to make the rules. If either of these conditions is absent we will have total chaos.

So there!

Constitutional Pluralists argue that European legal system challenges this

Instead, we find a well



Conclusions

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