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Democracy and pluralism after European integration: Incorporating the contested character of the EU

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ABSTRACT

Recent years have seen multiple controversies between the EU and its member states that revolve around different conceptions of what kind of polity the EU is, and what it should be. These controversies are particularly heated when fundamental democratic values are at stake. In this article, we address the fundamental tension between the assertion of common EU values and the pluralistic character of the EU polity, both among and within member states. The driving question of this article is how we can understand controversies between the EU and its member states in light of the presence of alternative conceptions of the EU and its democratic and pluralistic character. We reconstruct two opposing conceptions of the EU – the intergovernmental and the cosmopolitan conception – and then analyse how the disagreement between these fundamental conceptions plays out in five key controversies. We argue that the disagreement over what the EU is, and what it should be, is inherent to EU politics. The EU can only become democratic if it recognizes these conflicting understandings and provides political arenas in which the disagreements between them can be articulated, confronted, and resolved.

KEYWORDS European Union; democracy; pluralism; European integration; political theory

Introduction

The relation between democracy at the European Union (EU) level and the member state level is a delicate balance that is constantly challenged. In recent years, challenges have arisen on several fronts. This includes most prominently the suppression of societal pluralism in Hungary and the violation of judicial independence in Poland but also the challenge to EU legal supremacy by Germany's highest court, the conditionality of support

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to Greece during the euro crisis and the (unsuccessful) recourse to differentiated integration in the single market to prevent Brexit. While such issues are often studied separately, we argue that they are connected by a common thread: the EU's attempt to address a *plurality* of interests, values, and views – including those related to its very own nature – in a *democratic* manner.

In general, the relation between democracy and pluralism is complex. On the one hand, the very idea of modern democracy is premised on what Rawls (1993) called the 'fact of reasonable pluralism': a democratic order aims to produce commonly binding norms that can be reasonably accepted by all citizens despite their competing interests and values. On the other hand, democracy can only be sustained if there is some minimal consensus on the basic norms that govern the ways collective matters are settled. Hence, democracy finds its limits in accommodating pluralism where that pluralism turns against democracy itself; that is, when it encounters positions that are themselves unwilling to recognize the validity of competing values and interests. Short of those extremes, a democratic polity continuously has to look for ways to accommodate the diversity of interests and values that it encounters.

In the EU, pluralism is taken to a next level, as it is composed of a heterogeneous set of member states that each face pluralism internally. What is more, these pluralisms themselves are related to a plurality of views of what the EU is and ought to be. As a consequence, the EU regularly has to navigate the tension between democracy and pluralism when member states raise deviant demands, or when its decision-making rules are being challenged.

The premise of this article is that the abovementioned challenges to the EU order are fundamentally connected as they underline that the EU is not a state with a well-entrenched constitutional structure. Instead, all EU member states bring their own, often long-established conceptions of democracy and constitutionalism into the Union and accede with diverging motivations and ideas about what the EU is and how it should evolve. Hence, in this article, we ask how we can understand controversies between the EU and its member states in light of alternative conceptions of the EU and its democratic and pluralistic character.

In response to this question, we argue that the pluralism of conceptions of what the EU is, and what it should be, has exacerbated the controversies mentioned. What is more, the absence of a shared understanding of the nature of the polity and the constitutional rules that govern it fundamentally challenges the ability to resolve these controversies in a *democratic* way. Hence, we argue for a greater recognition and awareness of the pluralism of EU conceptions in the Union, its member states, and among its citizens, because conflicts between them are bound to resurface time and again. This

requires the recognition of EU politics as an arena in which not only different interests and values but also distinct EU conceptions conflict with each other.

To develop and illustrate the claim that fundamental controversies in the EU inevitably also involve, and are deepened by, different understandings of the EU's nature, we organize this article around two ideal-typical EU conceptions that we pit against each other: one conceiving of the EU in terms of intergovernmentalism and the other seeing the EU as a cosmopolitan union. These two positions certainly do not exhaust the diversity of views on the EU but, as they offer contrasting views on the nature of the relationship between the EU and its member states, they serve to bring to light how the aforementioned five crises are deepened by the lack of a settled EU conception. In reverse, the controversies also serve to illustrate the EU's contested character.

The article proceeds as follows. In the next section we examine the issue of pluralism within the EU context. Section 3 develops the two conceptions of the EU. Section 4 then uses the intergovernmental and cosmopolitan perspectives to demonstrate how pluralism permeates the five controversies that were identified above. We conclude by arguing that the EU should be seen as a democratic arena where not only values and interests may clash but also different conceptions of the EU.

Three subjects of pluralism

This article departs from pluralism, as a defining feature of modern societies, and from modern democracy, as an attempt to protect and channel societal pluralism. Contemporary democratic orders are understood to serve the aim of allowing the peaceful co-existence of diverse interests and values. Democracy requires political tolerance among all parties involved, even if they maintain agonistic relations to each other, as well as respect for the institutions that express societal pluralism, such as a well-working constitution, independent courts, and free journalism (Galston, 2002; Herman, 2017).

Conceptions of societal pluralism can be arranged from 'brute' pluralism on the one end to 'reasonable' pluralism on the other. Brute pluralism, or pluralism 'as such', regards the societal diversity in views as the 'upshot of self- and class interests, or of people's understandable tendency to view the political world from a limited standpoint' (Rawls, 1993, p. 36). In contrast, Rawls has argued that the range of moral outlooks that can be accommodated within a liberal democracy has to be limited to those that he calls 'reasonable'. This means that there is still a plurality of incompatible worldviews but that it is limited to those that are compatible with the equal freedom of persons and with liberal democratic rule of law.

Rather than revisiting the discussion of societal pluralism in general, we turn to the complex case of the European Union and its member states. In that particularly challenging context, the plurality of views, values, and

interests of persons and groups comes to be related to two other 'subjects' of pluralism: constitutional pluralism and a pluralism of EU conceptions. To add these subjects of pluralism is necessary, we argue, because of the intense – and indeed contested – relations the EU maintains with its member states.

Also within the EU the issue of societal pluralism remains first and foremost an issue for nation states. Each of the EU member states continues to be the primary arena in which societal pluralism is played out and addressed within the confines of its respective constitutional structure. However, these constitutional structures vary from member state to member state. Nations have travelled different paths, in which they have made different constitutional choices, in more or less democratic ways, about what national democracy demands and how it should be institutionalized. For that reason, EU member states display a remarkable constitutional richness, which they – according to their own proclamation in the Treaty on European Union – want the Union to 'respect' (Art. 4.2 TEU). Hence, given the range of conceptions of national democracy, we find within the EU not only societal pluralism (a pluralism of social interests and comprehensive doctrines) but also constitutional pluralism (a pluralism of national institutional *responses* to societal pluralism). With the latter term we refer not to the 'vertical' conflict between the national legal order and the EU legal order as commonly problematized in EU legal theory (Kelemen, 2016; Davies & Avbelj, 2018; De Burca & Scott, 2000; Walker, 2008), but to the 'horizontal' variety of constitutional arrangements across EU member states (Bellamy & Kröger, 2021).

To be sure, the fact that its member states have different constitutions and underlying notions of democracy and rule of law need not necessarily raise problems for the EU. Nevertheless, certain constitutional choices may raise hard questions not only within the states concerned but also for the Union as a whole. Some states' specific *constitutional* responses to their *societal* pluralism may reflect views of national democracy and rule of law that sit uneasily with the notions of democracy and rule of law held by other member states or by EU institutions.

To complicate matters even further, the extent to which – and the cases in which – this constitutional pluralism creates a problem for the EU depends itself on the particular view one holds of the nature of European integration (cf. Lacroix & Nicolaïdis, 2010). Here we discern a third subject of pluralism: a pluralism of conceptions of what the EU is. For example: as long as the EU is regarded as a form of international cooperation only, erected for the sole benefit of each of its member states, constitutional pluralism need not be a pressing EU problem. In this view, a nation's democratic practice is primarily that nation's business and not that of another state or of a union of freely cooperating nation states. In contrast, if the EU is seen as an autonomous political and legal order, shaped by its own principles of democracy and rule of law, then it is not unreasonable that EU institutions critically examine each

member state's form of democracy as incorporated in its constitutional structure.

In conceptualizing pluralism in the context of the EU, we thus highlight a pluralism of EU conceptions, which comes on top of a domestic pluralism of worldviews among societal groups and a pluralism of constitutional arrangements across member states. In the rest of this article, we argue that distinguishing and recognizing these different kinds of pluralism in the EU is essential to properly grasp the dynamics of recent EU crises and to appreciate the difficulties to resolve them in a democratic way. The focus on pluralism also allows us to indicate how the crises resemble each other and how they are different. In the next section, we illustrate EU conception pluralism by contrasting two distinct understandings of the EU: an intergovernmental arrangement on the one hand and a cosmopolitan order on the other.

EU conception pluralism

To capture the diversity and pluralism in positions at the EU level, this section outlines two positions that are particularly distinctive about ways to conceive of the EU and, in particular, about the relations that it establishes between its component parts, the member state democracies. The first conception underlines the intergovernmental character of the EU and emphasizes its primary focus on establishing order and peace. It sees the member state democracies as essentially self-centred and, on that basis, developing instrumental relations with each other. The other conception rather sees the EU as engaging its member states in a cooperative union with a cosmopolitan orientation. That is, it sees the member states and their citizens, in the domains in which they are cooperating (particularly the single market), as opening up to each other and committing to rules and norms that transcend national interests and identities.

Obviously, these two positions are only a small subset of the wealth of available conceptions of the European polity (cf. Schmitter, 1996). They do not even represent the extreme poles in which member states identities are essentially impermeable (cf. Miller, 1995) or in which the EU is taken to be (functionally) destined towards a fully integrated polity (Morgan, 2005). What is essential for our purpose is that both positions are moderate in the sense that they recognize the EU member states to be connected and yet to retain identities of their own. For that reason, they offer distinct and deeply anchored understandings about the relations that the EU establishes between its component parts, the member state democracies. Here we present these two conceptions as ideal-typical constructs that rely on their underlying logic. Hence, while we use arguments and concepts advanced by multiple scholars, these need not endorse the positions as we construct them down to the very last detail. This approach also allows us to embed the logics

of the two positions in a wider range of literature, which incorporates philosophical insights as well as EU policy analysis, without however necessarily reducing that literature to the constructed ideal-types.

The EU as an intergovernmental arrangement for order and peace

The intergovernmental conception of the EU, as we reconstruct it, finds its normative foundations in the combination of a political realism that underlines the inherently conflictual nature of politics with an IR realism that sees states as the central political agents in international politics. These two types of realism are definitely not coequal, but they complement each other as elements of the ideal-typical intergovernmental conception of the EU. The political realist perspective highlights that no order can ever eradicate the underlying potential for conflict between its subjects (Mouffe, 2013; Williams, 2005). An authoritative order may succeed in pacifying the relations between subjects for a while, but it does not change their inherent motivations; it only contains the possibly disruptive expression of these motivations by institutionalising effective counterforces. Hence, every order faces what Williams (2005) has called 'the basic legitimation demand': it has to demonstrate its value over the alternative of anarchy and the destructive forces against which it offers protection.

While for political realism the legitimacy of the EU and the particular form that EU integration best takes is an open and empirical question, the IR realist perspective recognizes European integration as offering a form of order in an international realm that is otherwise marked by anarchy (Mearsheimer, 2019). Crucially, however, states have played and continue to play the key role in the creation of that order, since they will not relinquish their sovereignty. From the intergovernmental perspective, European integration is premised on the recognition of the interdependencies and mutual vulnerabilities of European states in the post-war world (Beetz, 2017). Recognizing the atrocities and destructions that have been brought about in the absence of a shared order – and operating in the shadow of the greater power that had emerged across the Atlantic – the European states have come to agree to a settlement of their relations. This Union is thus deemed legitimate if, and to the extent to which, it manages to secure order and peace between its member states.

The intergovernmental conception also underlines that the EU is a supplemental order. Before its establishment, the states that joined the European integration project had already secured a social order *within* their own boundaries. These national orders came with historical legacies and were replete with strongly entrenched routines and cultures that distinguish them from each other. European integration is not meant to replace or transform these domestic orders. Instead, its main purpose was and remains to establish an order *between* states and to secure peace on a continent long

torn apart by wars. As a supplemental order, the EU is also bound to remain a limited order. Full integration is unfeasible and, indeed, undesirable, as it would dissolve the distinct identities of the constituent parts.

This reading has critical implications for the kind of order the EU is and the kind of relationship it creates between the member states and itself. Rather than superseding the existing power relations, the EU builds upon them and continues to reflect the underlying balance of power. The defining traits of the intergovernmental position are clearly recognisable in Andrew Moravcsik's liberal intergovernmental account (Moravcsik, 1998). According to this account, the distinct interests of member states and their interdependencies drive them to establish a shared order that reflects the underlying balance of power. Moravcsik (2007) characterizes the ensuing arrangement as an 'equilibrium' between, on the one hand, the gains that all member states can secure from cooperation and, on the other hand, the diversity of interests that ultimately separates them from each other.

While Moravcsik mainly developed the intergovernmental account as an analytical and explanatory approach driven by considerations of international economics, Richard Bellamy has recast it in explicitly normative terms, inspired by neo-republicanism. Bellamy (2013, 2019) argues that the intergovernmental nature of the EU aligns with a republican approach towards the EU which recognizes its achievements in establishing peace and order and in facilitating respect and cooperation between the member states. Bellamy insists, moreover, that the member states remain the primary units as they retain the necessary level of cultural cohesion and institutional infrastructure to realize republican self-government. Relatedly, Bellamy is particularly concerned about the danger of 'inter-state domination' (2013, p. 512). Ultimately, for him, the privileged status of national self-government and the danger of inter-state domination puts a limit on how far the integration of Europe can go. As he puts it, 'moves away from such a union of peoples towards greater political unity involve an inevitable loss of representativeness and political legitimacy' (Bellamy, 2013, p. 499). Hence, EU member states, representing the various *demoi*, must retain the power and legitimacy to do things on their own terms (Cheneval & Schimmelfennig, 2013; Nicolaïdis, 2012).

In this intergovernmental perspective, the cooperation of member states in the EU is ultimately motivated by joint interests which they secure by accepting reciprocal constraints, including constitutional constraints. However, the shared obligations of member states towards the EU go only so far as their express and continuous consent allows. Indeed, this consent can also be revoked. If that were not possible, the member states would be subject to EU domination. To the extent that common rules are imposed, they are authored by the states collectively.

Still, under this conception, member states' autonomy is not unlimited. Intergovernmentalists acknowledge that EU sanctions, for instance the suspension of voting rights in the Council, may be imposed upon democracy-undermining governments (Bellamy & Kröger, 2021). Yet, in light of the concern with inter-state domination, particular restraint is required in any kind of EU incursions into the autonomy of national political processes. While membership of the EU obviously comes with obligations and removes certain policy choices from the national domain, it should as much as possible leave national self-government intact (Bellamy, 2019). As long as citizens continue to have a strong political affiliation with their nation-state, and as long as the EU has 'demoi' rather than one demos, the process of European integration should not advance to the point where it impairs national constitutional structures and political processes. By the same logic, the adoption of EU-agreed rules should always leave the option to withdraw from the cooperation altogether or to negotiate partial opt-outs, rebates, and exceptions.

The EU as a cosmopolitan union

The conception of the EU as a cosmopolitan union (Ferry, 2009; Wolthuis & Corrias, 2021) does not see the EU as merely an agreement between states, but rather highlights that the EU order establishes an 'omnilateral' relation (Ripstein, 2009) between all member states and all their nationals. It emphasises that EU Single Market law establishes a distinct legal order in which each EU member state's nationals have equal market rights in each of the member states. The adjective 'cosmopolitan' is used here specifically in Kant's sense, to refer to law that applies between states on the one hand and foreign persons on the other (Kant, 2011). Kant distinguishes cosmopolitan law from the law between persons (within a state; under positive domestic law) and from the law between states (international law). EU Single Market law is a special kind of positive cosmopolitan law because in the EU, both states and their nationals authorise the rules that apply to their relation in border crossing interaction and commerce.

Still, this conception underlines that the EU is not a state; it is a union. It has sovereign states as members. That these states ultimately remain sovereign is clear from the right that they have to leave the Union. When states join the EU, they freely accept certain legal duties (for instance the duty not to discriminate against foreign Single Market state workers) in return for the rights that their nationals receive (such as the equal right to work in other Single Market states), for as long as they themselves see fit. In this view, the EU is a way in which states use their sovereign freedom, and they can change their minds and use their freedom differently, as Brexit has demonstrated.

However, by the very act of coming together in order to arrange things together, a collective emerges. In the case of the Single Market, this is

a collective of states and persons. From the moment of assembly, these states and persons have the right to speak and vote about how to give shape to their Single Market; the states and persons involved collectively share in the authorship of the laws to which they are all subjected (Fraser, 2008).

To assure the equality of Single Market rights and duties, positive cosmopolitan law needs to be executed by institutions that are ultimately independent from both Single Market states and Single Market state nationals. If the application of EU law were left to each state, it would never be certain that the rights are the same in different states. Independent executive and judicial institutions are necessary to distribute cosmopolitan justice (Kelemen & Pech, 2019). Once the EU is interpreted as a cosmopolitan union in this sense, it becomes clear that the range of constitutional pluralism that the EU can accept is limited. Member state constitutions that do not respect the final authority of the CJEU cannot be tolerated in this EU conception.

A legal order is democratic if those subjected to its provisions are simultaneously its authors (Habermas, 2011, p. 49). As indicated, basic EU law is law between states, viewed in cosmopolitan law as hosts of foreign citizens, and these states' nationals, who are entitled to equal market rights in the other member states. Hence, the laws governing the horizontal host-visitor relation ought to be authored by both the states and the persons involved (through their representatives) on an equal basis. This means that the view of the EU as a cosmopolitan union requires an institutional structure according to which states and these states' nationals occupy equal positions in the legislative process, at least with respect to all issues that concern positive cosmopolitan law. Following this logic, this conception stresses the need to have states' and citizens' representatives, in the Council of the EU and the European Parliament respectively, operate on an equal basis (cf. Habermas's (2011) notion of 'geteilte Souveränität').

The EU treaties can also be interpreted to constitute such a democratic polity. Its two classes of subjects are represented in the two legislative institutions. The representation of states' governments in the Council means little, however, if these governments themselves are not 'accountable to' their parliaments (Article 10(2) TEU) and if the representatives in the national parliaments are not chosen in free and fair elections. Union citizens, in turn, are represented by their representatives in the European Parliament (Article 14(2) TEU). Also, this representation is immaterial if these representatives are not freely elected (Article 14(3) TEU). If a member state government is not accountable to a freely elected parliament and if elections for the European Parliament (which are organized per member state) are not free and fair, then the EU legislature, which consists of both the European Parliament and the Council of the EU, cannot claim to speak for *all* EU member states and *all* EU citizens and, consequently, fails in light of democratic standards.

Evaluating pluralism in the EU: controversies regarding EU democracy and its relation to member states

In this section we turn to the five controversies that we identified in the introduction, namely those concerning the suppression of societal pluralism (Hungary); the violation of judicial independence (Poland); EU supremacy in monetary policy (Germany); policy conditionality for bailouts (Greece); and differentiated integration in the Single Market (UK). Obviously, in recent times, the EU has faced, and struggled with, (even) more crises. The selection of the five cases mentioned is motivated by the fact that they most directly involve the thematization of the character of the relations between the EU and its member states as well as those among the member states (horizontally). Hence, these cases exemplify the way in which the pluralism of EU conceptions amplifies political conflicts in the EU as well as the fundamental lack of common ground to resolve them in a democratic way.

Suppression of political pluralism in Hungary

Since Viktor Orbán, leader of the right-wing party Fidesz, became Hungarian prime minister for the second time in 2010, there has been an increasing concern about the suppression of societal pluralism in his country (Kelemen & Pech, 2019). The key conundrum that is raised by the case of Hungary is what the EU and its member states should do to address a government that removes the conditions that allow its decisions to be challenged and that makes it almost impossible for it to be voted out of power. The measures adopted by the Fidesz-regime – reforming the electoral law, concentrating all the political power in its own hands, disabling critical media, and delegitimising critical NGOs – add up to removing the preconditions for the viability of any effective opposition and societal pluralism (Bárd & Pech, 2019; Enyedi, 2018). In its current state, Hungary is probably best qualified as an 'electoral autocracy' (Dem, 2020; Ágh, 2015). In that sense, the country certainly pushes the boundaries of constitutional pluralism in the EU. The question is however whether it does so beyond breaking point.

While there is little doubt that Hungary would have major trouble to qualify for EU membership if it were to join today, it is less clear what consequences, if any, the government's suppression of societal pluralism should have now that the country is already a member state. Article 7 TEU allows for the suspension of voting rights in the Council but the activation of that clause is subject to major institutional hurdles, especially since Hungary can count on at least one other government (Poland) that is committed to stand with it. Proposals are currently on the table to withhold EU grants from countries that violate the rule of law and democracy. The question is whether

such financial sanctions are appropriate, and whether they do indeed target the envisaged proponents of the regime or rather affect innocent citizens.

It is clear that this controversy becomes more inextricable because of EU conception pluralism, that is, the different ways in which European integration and the relationship between the Union and its member states can be understood. From a cosmopolitan perspective, there is little doubt that the Hungarian government's manipulation of the national political system poses a problem for EU democracy as a whole. It affects the EU as a democratic union, with states and their nationals represented in the Council and the European Parliament, respectively. If elections held in Hungary cannot be trusted to be free, it is no longer evident that its government can claim to represent the Hungarian people at the EU level. The democratic and rule of law backsliding in Hungary also poses a threat to the free movement rights that other member states' nationals should be able to enjoy. Hence, from the cosmopolitan perspective, an EU intervention that protects Hungarian democracy against the Hungarian government is not only legitimate, but necessary (cf. Oleart & Theuns, 2022). As the EU's member states are also co-authors of cosmopolitan law, violations of democratic processes in one member state are inherently violations of EU democracy. For these reasons, a cosmopolitan perspective advocates for the activation of Article 7 TEU and a wholesale mobilisation of the EU apparatus to bring competitive democracy back to Hungary.

From the perspective of intergovernmentalism, the diagnosis is less clear-cut. As intergovernmentalists are committed to a high degree of constitutional tolerance, they are inclined to regard most conflicts as political disagreements. This perspective underlines first of all that member states operate by widely divergent procedures and traditions and that what is perfectly acceptable for some might be regarded as fundamentally unjust by others (Bellamy, 2013, p. 508). Hence, intergovernmentalists are reluctant to accept a legal or administrative solution by EU institutions such as the CJEU or the Commission.

Still, the intergovernmental perspective does take a stance against non-democratic member states in the EU when peace and order come at risk or when there is a threat of one-sided domination. Since all member states are equal and each of them may be in a position to cast a decisive vote, states need to share basic democratic values. Moreover, democratic backsliding in one EU member state may affect the democratic quality of other member states. Assuming that is the case, from the intergovernmental reading the suppression of societal pluralism in Hungary can also be understood as a challenge that affects the EU order as a whole, and the activation of Article 7 TEU appears as an acceptable response, also in light of the political nature of this procedure. From a constitutional pluralist perspective, Bellamy and Kröger (2021, p. 621; see also Schlipphak & Treib, 2017) have suggested 'a

greater role for independent monitoring bodies as well as the opposition and civil society actors within the targeted MS [member state] and beyond'. If this would fail to re-align Hungary, perhaps some *modus vivendi* arrangement could be found. One could think of an approach in which the voting rights of the Hungarian government in the Council are suspended but the country would continue being tolerated as a rule-taker in the EU.

In the case of Hungary, we see the tensions between the two conceptions of the EU coming to the fore. Its strongest opponents (both in the EU institutions in Brussels and the governments in other capitals, except Warsaw) appeal to a cosmopolitan understanding of the EU. In this understanding, the politics for which Hungary seeks autonomy are too fundamental and affect the very foundation of the Union. By contrast, the Fidesz government can appeal to an intergovernmental viewpoint in which member states (including the majority governments ruling them) retain considerable autonomy to arrange their own constitutional and societal order. In that view, disagreements on, for instance, the rights of minorities can be the subject of legitimate political conflicts for which, if they are intractable, *modus vivendi* arrangements have to be found in which different approaches can coexist. Ultimately, however, the position of the Hungarian government raises the question whether it still involves any conception of the Union's order as a whole. In the absence of any shared core norms and with a conception of democracy that marginalises oppositional voices at home, the position of the Hungarian government eventually also outruns the intergovernmental conception. And while intergovernmentalists are generally averse of intrusions in domestic affairs, they would expect the other EU governments to insist on the maintenance of the basic democratic order that all member states have subscribed to.

Violation of judicial independence in Poland

The Polish right-wing party Law and Justice won the presidential and parliamentary elections in 2015, after which Andrzej Duda became the Polish president. Since this victory, the judiciary has been the main check on power in Poland (Pech et al., 2021), and ever since Law and Justice entered into government, it has been in conflict with the judiciary. President Duda blocked judicial appointments already approved by the (outgoing) parliament. Once Law and Justice controlled the parliament, it appointed new judges favourable to the party. The government also sought to disable the sitting Supreme Court and established a Constitutional Tribunal that it sought to fill with its own appointees. More generally, the government has employed various means to try to remove (unfavourable) judges and to appoint favourable ones. These attempts to co-opt the judiciary have led the European Commission to criticise the Polish government for potentially violating the

rule of law (European Commission, 2017) and judicial independence, as well as suppressing societal pluralism (most notably regarding the LGBT community).

Like in the case of Hungary, we can see how the controversy with Poland about judicial independence gets deepened because the different positions involved can rely on different conceptions of the EU. From an intergovernmental point of view, one would be cautious to interfere from the European level. From this perspective, the Polish case primarily involves a political struggle about the imposition of a state order in which the rule of law, the separation of powers, and checks and balances are gradually replaced by a more politicized and unified authoritarian structure. Ultimately, however, the intergovernmental conception has to ask whether these measures come to threaten the integrity of the EU legal order. Depending on the extent to which the legal system and the conditions of cooperation are affected – and recognizing that some range of 'constitutional pluralism' is inherent to the EU – intergovernmentalism assumes that there is room to 'agree to disagree' within the wider confines of cooperation. Hence, the preferred intergovernmental strategy would be to carefully delineate the extent to which the legal system and the conditions of cooperation are affected. If possible, the EU-wide cooperation between legal authorities would be suspended only in the affected domains. However, if the competing constitutional views have in fact an impact beyond the specific case of Poland, and if that impact would affect Poland's status as a reliable partner in, and co-author of, the EU order, then external intervention would be justified, also from the intergovernmental point of view. When constitutional pluralism creates a fundamental threat to the EU legal order, 'a deficit is introduced by having democratic backsliding governments involved in EU decision making in the first place' (Bellamy & Kröger, 2021, p. 631).

From a cosmopolitan viewpoint, the violation of the rule of law and judicial independence is a straightforward challenge to the application of EU law (Pech & Scheppele, 2017) and the EU legal order. According to the cosmopolitan reading of the EU, member states have certain duties under EU law and EU nationals have certain rights that cannot be violated by a member state. To guarantee that each Single Market state national has the same rights, member state governments and their nationals are subject to EU law. Hence, there is a hierarchy between EU and national law and when a national law is changed in a way that challenges established EU law, an intervention is legitimate and necessary. If the independence of a participating state's judicial institutions is threatened, the uniform application of EU law is also threatened. In consequence, an EU intervention led by the European Commission and with an important role of the Council and the European Parliament is justified, in addition of the necessary instruments mobilised by the CJEU.

Again, the plurality of EU conceptions allows in principle for some difference of appreciation in the Polish case. While the cosmopolitan conception considers any attack of the Polish government on judicial independence a violation of the EU's common constitutional order and the shared values on which it rests, the intergovernmental reading sees little ground for EU intervention as long as the effects of Polish government's actions remain (mostly) restricted to the domestic sphere. Things change, however, if the government's actions affect the EU as a whole and, especially, the credibility of the common rules and the maintenance of order. If that is the case, then an EU intervention also becomes justified from an intergovernmental point of view.

Germany's challenge of central-level adjudicative supremacy

The German Federal Constitutional Court (*Bundesverfassungsgericht*) has a long history of taking it upon itself to assess the validity of EU acts. Ever since the classical judgement on the Maastricht treaty from 1993, the Court maintains that the EU cannot replace the democratic sovereignty of the German people or act in conflict with German Basic Law. For a long time, such assertions were only warning shots. This changed, however, in the 2020 ruling on the Public Sector Purchase Programme (PSPP). For the first time, the *Bundesverfassungsgericht* ruled EU action to be invalid, considering the justification offered by the European Central Bank for setting up the PSPP insufficient. One may well dispute the merits of the PSPP-judgement (see German Law Journal 2020) or reflect, as EU lawyers do, upon the (hierarchical) relation between national and EU legal orders but, beyond these *prima facie* issues, we want to highlight here the wider question of what range of constitutional pluralism can be tolerated across EU member states.

It is quite clear that the answer depends on the EU conception that one holds. From an intergovernmental perspective, the ruling is defendable. The PSPP judgement appears as a natural move in the ongoing conflict between the EU and its member states about the competences of the two layers of jurisdiction, which is, ultimately, part of the ongoing battle about the level of integration of the EU legal order and the degree of constitutional pluralism that it can allow to persist. The intergovernmental reading of the EU maintains that there are domains of jurisdiction that should remain under exclusive national control; and, moreover, that it is only natural that institutions wedded to the different orders (at different levels) will at times disagree about the exact boundaries between them. This position not only implies an empirical claim about the workings of the EU; it also implies a normative appeal to the special, historically entrenched position of EU member states, and to an understanding of the EU order that does not hinge on an overarching sovereign.

From the cosmopolitan point of view, the challenge posed by the *Bundesverfassungsgericht* directly threatens to undermine the legal security that nationals from other EU member states should be able to count on and enjoy. Admittedly, the cosmopolitan character of the EU order has emerged in the form of the Single Market, while the PSPP-case concerns the monetary union. In many respects, however, the monetary union can be seen as an extension of the Single Market. If the PSPP-case would be merely a matter of monetary policy then, from a cosmopolitan perspective, there would be little merit to the case of the *Bundesverfassungsgericht*; if a national court can dispute and push back on the rights that are provided by the EU, the cosmopolitan character of the EU is fundamentally put at risk (cf. Kelemen & Pech, 2019), especially since states that are in the Economic and Monetary Union have accepted that monetary policy is an exclusive competence of the supranational level (Article 3 TFEU). Crucially, then, much of the validity of the position of the *Bundesverfassungsgericht* hinges on its insistence that the PSPP is more than just monetary policy and has substantial implications in the fiscal domain. As the latter domain remains under EU member states' primary control, the claim to legal coherence and certainty would fail to justify central EU interventions. Under those conditions, the cosmopolitan perspective can allow for the PSPP-judgment.

While also in this controversy, the actors involved can draw on different EU conceptions to reinforce their positions, in practice it may allow for a *modus vivendi*. As long as the disagreements remain abstract matters of public law, the two positions can co-exist and have the balance between them decided by the domains of effective jurisdiction in each case. As it is, the jurisdiction of the *Bundesverfassungsgericht* is limited to the German legal order; it cannot impose its view on the CJEU nor on the ECB. At most, its position has the effect of putting the validity of the ECB's actions in doubt and of making the actionability of any claims that might follow from them within the domain of German law unsure. In turn, neither may the CJEU be in a position to impose its views on the *Bundesverfassungsgericht*, assuming that the German government will stand by its constitutional court. Only if the *Bundesverfassungsgericht* were to challenge EU law, directly affecting the market rights of actual citizens or companies, would the controversy become really intractable.

Policy conditionality and the bailout of Greece

In the handing of the EU 'sovereign debt crisis' in the early 2010s we can also reconstruct the key controversy as ultimately involving different understandings of the nature of the EU. From the intergovernmental perspective, it is clear that the determination among the leading member states and EU actors to keep the euro afloat and to keep Greece in the Eurozone inevitably

involved some raw power play. Given the inestimable risks of letting Greece leave the euro, it was up to the other members of the euro group to handle the situation and to secure order, regardless of the resistance of many Greek nationals and government officials to that settlement. Under these conditions, the (other) EU governments had to weigh the incursion into the domestic democratic process and the sovereignty of Greece against the need to maintain order and stability in the euro area. Although the intergovernmental perspective allows for different outcomes of this balancing process (cf. Bellamy & Weale, 2015), it is at least an understandable outcome that the latter prevailed over the former when ultimately a choice had to be made.

From the cosmopolitan perspective that underlines the collectively authored nature of the EU order, the euro crisis revealed the incompletion of such a collectively authorized framework in the domain of economic and financial governance (Wolthuis & Corrias, 2021; Wolthuis, 2021). Instead, the euro crisis led member states to enact norms *by* themselves (in their capacity as members of the Council) *to* themselves (in their capacity as subjects of EMU law). However, from a cosmopolitan approach, justice requires laws to be applied by institutions that are independent from the subjects to which they are applied. When member states do not stand under the law, as they do in internal market law, but above it, because they combine in their own hands legislative, executive, and (quasi-)judicial powers (through their membership of the Council and the euro group), no legal condition is established. Rather, it is a form of despotic rule (Eberl & Niesen, 2011, p. 326) as stronger member states (or the majority of member states) overrule weaker member states (or a minority of member states). For this reason, the Greek debt crisis is not just a crisis of solidarity but is better classified as a crisis of justice (Chalmers et al., 2014, p. 50; Wolthuis, 2021). The fact that Greece found itself in a situation in which it had to depend on the solidarity of other member states, already implies that its democratic sovereignty was at stake. The conditions under which it received help meant that it was essentially deprived of the ability to manage its economic policy autonomously.

Whereas from a cosmopolitan perspective the handling of the Greek sovereign debt crisis is considered as inherently unjust, the intergovernmental perspective is mostly concerned about it having been unduly intrusive. Thus, the intergovernmental perspective underlines the imperative that the order of the euro zone had to be secured, but it also insists on the need to reconcile 'a European monetary order with the legitimacy of member state governance' (Bellamy & Weale, 2015, p. 257), and it recognizes that this requirement was compromised in the bailout of Greece. In the cosmopolitan view, EMU law is basically flawed; rather than forming an overarching order in which the rules are applied by an independent executive EU institution, such as the European Commission, member states define and administer the rules

themselves to exercise power over one or some of them. Interestingly, the establishment of the European Stability Mechanism (ESM) and the tightening up of economic surveillance in the European Semester that followed the euro crisis have led to a greater institutionalization of the governance of the euro zone. Still, while from an intergovernmental perspective these measures may suffice to establish the necessary stability in the euro zone, from a cosmopolitan perspective the euro's governance architecture remains too reliant on the coincidental balance of power between its members.

Brexit and differentiated integration in the single market

With every new EU integration initiative, states have the freedom to either participate or not. If some states say 'no' while others say 'yes', the outcome is differentiated integration. In principle, neither the intergovernmental nor the cosmopolitan conception denies states this freedom of choice as long as it does not affect the basic order that has been constituted. Matters are different, however, once states want to integrate in some but not all parts of one and the same integrated policy domain. The key issue with partial participation in an integrated policy domain is: can states pick and choose those parts of the domain they want to participate in? With respect to this question, the two discussed EU conceptions *do* conflict.

This issue is well illustrated by the pre-Brexit proposal of the UK government to participate in only a part of the Single Market. Former Prime Minister David Cameron proposed to limit work-related social benefits of foreign workers from Single Market states in the UK. That proposal was not accepted by the other states, who 'declared any attempt to limit the freedom of movement as non-negotiable' (Weiss & Blockmans, 2016, p. 9). Schimmelfennig (2018, p. 1166) concluded that 'the integrity of the internal market was a fundamental principle for all member states'. This principle of market integrity returns later in the Brexit Negotiation Guidelines, which claimed: 'Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach. [. . .] The four freedoms of the Single Market are indivisible [. . .]. There can be no "cherry picking"' (European Council, 2017, p. 3).

In this type of conflict, EU scholars usually tend to respond by choosing sides and solving the issue according to the preferred position of that side. There are commentators who do not take the principled position of EU institutions with respect to the Single Market seriously: that position, they claim, is merely 'political' (Matthijs et al., 2019, p. 226). Others endorse the European institutions' approach and tightly connect Single Market integrity to the treaties and to the legal principle of 'non-discrimination' (Weiss & Blockmans, 2016, p. 9). Our aim here is not to solve the problem from one point of view, but to analyse it and make sense of the different positions. The

premise of our analysis is that the position of the EU in these proceedings resembles the cosmopolitan approach, whereas the position of the UK resembles the intergovernmental conception.

The UK demand can be interpreted as an attempt to 'tailor' its preferred way of participating in the Single Market to the 'needs' of its 'people', to adopt the words of a proponent of the intergovernmental view (Bellamy, 2013, p. 510). What counts in this conception is nation-state democracy and the will of the nation state's people. European integration is a matter of accommodating national interests, in this view, whereby the interests of the various nations or peoples involved are viewed as 'heterogeneous' (Bellamy & Kröger, 2017). This approach does not look down on a compromise if it secures order, which makes EU differentiated integration as illustrated by the pre-Brexit proposal a defendable one.

The UK position sharply contrasts with the position of the EU institutions regarding Brexit. Their recurring references to the integrity of the internal market – with the Latin word *integritas* meaning 'wholeness' or 'intactness' – point in the direction of a cosmopolitan approach, because it is precisely cosmopolitan justice that keeps the Single Market intact. The overriding objective of Single Market law is that citizens enjoy *equal* free movement rights, irrespective of the state of which they are nationals and irrespective of their current location in the Union. With differentiated integration in the Single Market, that equality is lost. If the UK would opt for a customs union with the other EU member states (implying free movement of goods only), then – to ensure reciprocity – the other states should also refuse UK workers, services, and capital to move freely across their territory. The outcome of such a 'soft' Brexit means that there is no longer equality of free movement rights. This conflicts with the cosmopolitan understanding of justice that underlies Single Market law and explains why the Single Market would lose its integrity if the UK demand would be accommodated.

In this controversy the distinction between peace and order (intergovernmentalism) and justice (cosmopolitanism) returns. The disagreement between the two approaches goes all the way down to the location of democratic authority. Whereas the intergovernmental account places democracy primarily at the national level and views EU politics mainly as a forum in which national political objectives have to be addressed by diplomats or other state representatives (Bellamy, 2019), the cosmopolitan account views the collective of Single Market states and their nationals as the legislative authority. The demand of one state to participate in only a preferred part of the Single Market is but one voice within the EU legislature. As soon as a state has joined others to establish a Single Market, the Single Market legislature made up of representatives of EU member states (in the Council) and EU member state nationals (in the EP) has to decide about the relation that all Single Market states have with all Single Market state nationals. To make

room for constitutional pluralism in this regard would collide with the distribution of equal cosmopolitan freedom of EU citizens.

Conclusion

In this article we departed from the underlying tensions of the deeply pluralistic character of the EU polity and argued that the EU is characterized not only by societal pluralism and constitutional pluralism but also by EU conception pluralism. The last kind of pluralism reflects the fact that there is no settled view of the EU's identity. If EU conception pluralism is an inherent feature of the EU, then it is likely to feed into and exacerbate many fundamental political controversies that occur. This, indeed, is what we see in the five controversies that we reviewed in the previous section. The ways in which these controversies have played out underline the pluralist nature of the EU and the diversity of conceptions held of it.

Ultimately, the way one approaches these controversies very much depends on how one sees the EU in the first place. What we witness in these cases are not just legal or political conflicts between member states and EU institutions, but also – and that is the crucial point for us – between competing conceptions of the EU. While each of these conceptions comes to its own appreciation in each case, and these appreciations are often incompatible, we maintain that they may all be reasonable. Our analytical claim is that to really understand the full width and depth of these crises, one has to acknowledge the various EU conceptions that are at play.

The confrontation of the two conceptions that we have highlighted – the intergovernmental and the cosmopolitan one – in these five cases suggests two normative conclusions. The first of these conclusions is that both perspectives can recognize that there is pluralism in the EU, but also that there are limits to it. Ultimately, whatever kind of union or order the EU may be, it needs to rely on a minimum set of shared values or norms, without which it would cease to be an order altogether. In the cosmopolitan conception, this core set is quite broad as it relies on an elaborate understanding of states and citizens recognizing each other as free and equal. In the intergovernmental conception, this minimum requires a basic sense of a stable order, of consistent and reliable rules between states that are recognised to also remain democratic orders in their own right. Importantly, our analysis suggests that the way the Hungarian and Polish governments constrain societal pluralism within their own country does undermine those minimum rules according to both ideal-typical EU conceptions.

The second normative conclusion is that if we recognize the five controversies to eventually involve EU conception pluralism, then we find that the EU remains deficient in its sensitivity to this type of conflict and does not sufficiently stimulate this debate to be played out in a way that allows the

competing conceptions to be fully articulated. This is particularly clear in the case of the bailout of Greece, where a majority of member states imposed a specific conception of the rights and duties involved in the membership of the Eurozone. Similarly, in the Brexit process, in the absence of a fundamental debate on the nature of the EU, the issue became reduced to an endless debate on the technicalities of a new trade relationship. In the case of the *Bundesverfassungsgericht*, we see the public articulation of competing conceptions of the EU. However, what is notably lacking in that case is an arena where adherents of these conceptions can enter in a debate with each other. Even in the cases of Hungary and Poland, the EU is inclined to address these as legal issues in a narrow sense rather than to recognize that they involve questions about the nature of the EU polity (Oleart & Theuns, 2022).

Essentially, we argue that the capacity of the EU to handle crises in a democratic way can only be assured if it starts from the recognition of EU conception pluralism. The EU ought to facilitate the open confrontation of conflicting conceptions. This requires a general recognition that what may appear as fundamental challenges to European integration are in fact debates invited by the very character of the EU itself (Bickerton et al., 2022). Once we realize that the EU's own character remains contested, the EU faces a democratic imperative to facilitate debate in which the diversity of EU conceptions can be expressed. This imperative can be justified on any reasonable conception of the EU.

Such a change of attitude would be much facilitated if the EU would also institutionally be more capable to invite the problematization of its very identity (cf. Geenens & De Schutter, 2022). One can think of various sites that could accommodate such debates. For one, the European Council is a natural site to have these debates since it is concerned with the general development of European integration (Art.15 TEU). Alternatively, one might think of Markus Patberg's (2021) recent idea to establish a 'permanent constitutional assembly' that would systematically feed its conclusions into the EU's decision-making procedures. A third alternative could be Joseph Weiler's (2002) plea for an EU 'Constitutional Council': a judicial forum meant to facilitate 'horizontal' exchanges between the CJEU – as the supranational legal authority – and national (supreme) courts. Finally, one can think of the recurring initiation of broad-based reflection exercises on the nature and the priorities of the EU like the 2022–23 Conference on the Future of Europe (see Alemanno, 2022; Oleart, 2023).

Of course, such proposals can all be contested for not being neutral between different EU conceptions. A greater focus on the European Council may, for instance, be more congenial to intergovernmentalists, while cosmopolitans are more likely to embrace the proposal for a permanent constitutional assembly. Still, all these arrangements would facilitate the confrontation of different EU conceptions, as is illustrated by the experiences

of the 'Conference on the Future of Europe' that intergovernmental movements have used as an opportunity to stage their views on the EU besides the cosmopolitan voices that one expects to be more at home in such a setting (Przybylski, 2021).

Regardless of the specific institutional reform that one prefers, these proposals share three related features. One is that they seek to organize the discussion of the nature of the EU in a horizontal rather than vertical way. It follows, secondly, that these institutions are inherently deliberative in character. The aim is to come to understand the opponent's position and to agree to reasonably disagree if consensus happens to be out of reach. Finally, these arrangements would underline that the question of the nature of the EU is bound to remain an open question that requires continuous attention. These features highlight that the EU order does not offer a supreme arbitrator to settle the question of its own identity, but instead constitutes a common political arena in which fundamentally different conceptions regularly confront each other and European policy-makers have to find collectively acceptable arrangements.

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References

Ágh, A. (2015). The transformation of the Hungarian party system: From democratic chaos to electoral autocracy. *Südosteuropa Zeitschrift für Politik und Gesellschaft*, *63* (2), 201–222. https://doi.org/10.1515/soeu-2015-630204

Alemanno, A. (2022) Unboxing the Conference on the Future of Europe and its democratic raison d'être. *European Law Journal*, 26(5–6), 484–508.

Bárd, P., & Pech, L. (2019). How to build and consolidate a partly free pseudo-democracy by constitutional means in three steps: The 'Hungarian model.' SSRN Journal, RECONNECT Working Paper.

Beetz, J. P. (2017). A two-tier conception of European Union peoplehood: A realist study of European citizens' bonds of collectivity. *European Law Journal*, *23*(6), 467–481. https://doi.org/10.1111/eulj.12270

Bellamy, R. (2013). 'An ever closer union among the peoples of Europe': Republican intergovernmentalism and demoicratic representation within the EU. *Journal of European Integration*, *35*(5), 499–516. https://doi.org/10.1080/07036337.2013.799936

Bellamy, R. (2019). *A Republican Europe of States*. Cambridge University Press.

Bellamy, R., & Kröger, S. (2017). A demoicratic justification of differentiated integration in a heterogeneous EU. *Journal of European Integration*, *39*(5), 625–639. https://doi.org/10.1080/07036337.2017.1332058

Bellamy, R., & Kröger, S. (2021). Countering democratic backsliding by EU member states: Constitutional pluralism and 'value' differentiated integration. *Swiss Political Science Review*, *27*(3), 619–636. https://doi.org/10.1111/spsr.12448

Bellamy, R., & Weale, A. (2015). Political legitimacy and European monetary union: Contracts, constitutionalism and the normative logic of two-level games. *Journal of European Public Policy*, *22*(2), 257–274. https://doi.org/10.1080/13501763.2014.995118

Bickerton, C., Brack, N., Coman, R., & Crespy, A. (2022). Conflicts of sovereignty in contemporary Europe: A framework of analysis. *Comparative European Politics*, *20* (3), 257–274. https://doi.org/10.1057/s41295-022-00269-6

Chalmers, D., Davies, G., & Monti, G. (2014). *European Union Law: Texts and Materials*. Cambridge University Press.

Cheneval, F., & Schimmelfennig, F. (2013). The case for demoicracy in the European Union: The case for demoicracy in the EU. *Journal of Common Market Studies*, *51*(2), 334–350. https://doi.org/10.1111/j.1468-5965.2012.02262.x

Davies, G., & Avbelj, M. (Eds.). (2018). *Research Handbook on Legal Pluralism and EU Law*. Edward Elgar Publishing.

De Burca, G., & Scott, J. (Eds.). (2000). *Constitutional Change in the EU: From Uniformity to Flexibility*. Hart Publishing.

Eberl, O., & Niesen, P. (2011). Kommentar. In I. Kant (Ed.), *Zum ewigen Frieden und Auszüge aus der Rechtslehre* (pp. 89–414). Suhrkamp.

Enyedi, Z. (2018). Democratic backsliding and academic freedom in Hungary. *Perspectives on Politics*, *16*(4), 1067–1074. https://doi.org/10.1017/S1537592718002165

European Commission. (2017). Rule of Law: European Commission acts to defend judicial independence in Poland. 20 December 2017. Available online: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367 (accessed 14 November 2020).

European Council. (2017). *Guidelines following the United Kingdom's notification under article 50 TEU*, 29 April.

Ferry, J. M. (2009). European integration and the cosmopolitan way. In M. Telò (Ed.), *The European Union and global governance* (pp. 349–365). Routledge.

Fraser, N. (2008). *Scales of Justice: Reimagining political space in a globalizing World*. Columbia University Press.

Galston, W. (2002). *Liberal Pluralism: The implications of value pluralism for political theory and practice*. Cambridge University Press.

Geenens, R., & De Schutter, H. (2022). A tripartite model of federalism. *Philosophy & Social Criticism*. https://doi.org/10.1177/01914537211066850

German Law Journal. (2020). Special Section: 'The German Federal Constitutional Court's PSPP Judgment', Special Section: 'The German Federal Constitutional Court's PSPP Judgment, *21*(5), 944–1127.

Habermas, J. (2011). *Zur Verfassung Europas. Ein Essay*. Suhrkamp.

Herman, L. (2017). Democratic partisanship: From theoretical ideal to empirical standard. *The American Political Science Review*, *111*(4), 738–754. https://doi.org/10.1017/S0003055417000247

Kant, I. (2011). *Zum ewigen Frieden und Auszüge aus der Rechtslehre*. Suhrkamp.

Kelemen, R. D. (2016). On the unsustainability of constitutional pluralism: European supremacy and the survival of the Eurozone. *Maastricht Journal of European and Comparative Law*, *23*(1), 136–150. https://doi.org/10.1177/1023263X1602300108

Kelemen, R. D., & Pech, L. (2019). The uses and abuses of constitutional pluralism: Undermining the rule of law in the name of constitutional identity in Hungary and Poland. *Cambridge Yearbook of European Legal Studies*, *21*, 59–74. https://doi.org/10.1017/cel.2019.11

Lacroix, J., & Nicolaïdis, K. (Eds.). (2010). *European stories: Intellectual debates on Europe in national contexts*. Oxford University Press.

Matthijs, M., Parsons, C., & Toenshoff, C. (2019). Ever tighter union? Brexit, Grexit, and frustrated differentiation in the single market and Eurozone. *Comparative European Politics*, *17*(2), 209–230. https://doi.org/10.1057/s41295-019-00165-6

Mearsheimer, J. (2019). Bound to fail: The rise and fall of the liberal international order. *International Security*, *43*(4), 7–50. https://doi.org/10.1162/isec_a_00342

Miller, D. (1995). *On Nationality*. Oxford University Press.
Moravcsik, A. (1998). *The Choice for Europe: Social purposes and state power from Messina to Maastricht*. Routledge.
Moravcsik, A. (2007). The European constitutional settlement. In S. Meunier & K. McNamara (Eds.), *Making History: European integration and institutional change at fifty* (pp. 23–50). Oxford University Press.
Morgan, G. (2005). *The idea of a European super state. Public justification and European integration*. Princeton University Press.
Mouffe, C. (2013). *Agonistics: Thinking the World Politically*. Verso.
Nicolaïdis, K. (2012). The idea of European demoicracy. In J. Dickson & P. Eleftheriadis (Eds.), *Philosophical Foundations of EU Law* (pp. 247–274). Oxford University Press.
Oleart, A. (2023). The political construction of the 'citizen turn' in the EU: Disintermediation and depoliticisation in the Conference on the Future of Europe. *Journal of Contemporary European Studies*, 1–15. https://doi.org/10.1080/14782804.2023.2177837
Oleart, A., & Theuns, T. (2022). 'Democracy without politics' in the European commission's response to democratic backsliding: From technocratic legalism to democratic pluralism. *Journal of Common Market Studies*. https://doi.org/10.1111/jcms.13411
Pech, L., & Scheppele, K. L. (2017). Illiberalism within: Rule of law backsliding in the EU. *Cambridge Yearbook of European Legal Studies*, *19*(December), 3–47. https://doi.org/10.1017/cel.2017.9
Pech, L., Wachowiec, P., & Mazur, D. (2021). Poland's rule of law breakdown: A five-year assessment of EU's (In)action. *Hague Journal on the Rule of Law*, *13*(1), 1–43. https://doi.org/10.1007/s40803-021-00151-9
Przybylski, W. (2021), How to co-opt the conference on the future of Europe. *Politico*, retrieved from https://www.politico.eu/article/conference-on-the-future-of-europe-suggestions/, July 12, 2021.
Rawls, J. (1993). *Political Liberalism*. Columbia University Press.
Ripstein, A. (2009). *Force and Freedom: Kant's Legal and Political Philosophy*. Harvard University Press.
Schimmelfennig, F. (2018). Brexit: Differentiated integration in the European Union. *Journal of European Public Policy*, *28*(8), 1154–1173. https://doi.org/10.1080/13501763.2018.1467954
Schlipphak, B., & Treib, O. (2017). Playing the blame game on Brussels: The domestic political effects of EU interventions against democratic backsliding. *Journal of European Public Policy*, *24*(3), 352–365. https://doi.org/10.1080/13501763.2016.1229359
Schmitter, P. C. (1996). Imagining the future of the Euro-polity with the help of new concepts. In G. Marks, F. W. Scharpf, P. C. Schmitter, & W. Streeck (Eds.), *Governance in the European Union* (pp. 121–150). Sage.
V-Dem. (2020). *Autocratization Surges – Resistance Grows*. *Democracy Report 2020*. V-Dem Institute, retrieved from https://www.v-dem.net/media/filer_public/de/39/de39af54-0bc5-4421-89ae-fb20dcc53dba/democracy_report.pdf, July 12, 2021.
Walker, N. (2008). Taking constitutionalism beyond the state. *Political Studies*, *56*(3), 519–543. https://doi.org/10.1111/j.1467-9248.2008.00749.x
Weiler, J. (2002). A Constitution for Europe? Some Hard Choices. *JCMS: J Common Market Studies*, *40*(4), 563–580. https://doi.org/10.1111/1468-5965.00388
Weiss, S., & Blockmans, S. (2016). *The EU deal to avoid Brexit: Take it or leave*. CEPS Special Report 131, Centre for European Policy Studies.

Williams, B. (2005). *In the beginning was the deed: Realism and moralism in political argument*. Princeton University Press.

Wolthuis, B. (2021). The European Union between solidarity and justice. *Acta Politica*, *56*(2), 261–275. https://doi.org/10.1057/s41269-020-00152-w

Wolthuis, B., & Corrias, L. (2021). Europe's cosmopolitan union: A Kantian reading of EU internal market law and the refugee crisis. In E. Herlin-Karnell & E. Rossi (Eds.), *The public uses of coercion and force. from constitutionalism to war* (pp. 204–225). Oxford University Press.