

A CONSTITUTIONAL DEFINITION FOR STRENGTHENING THE EU AS A UNION OF VALUES

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In his explanatory lectures and publications, the President of the European Union (EU) Court of Justice has been emphasising recently that the EU endorses a new kind of identity that operates outside the paradigms of the nation-state and that the polity is establishing itself as a democratic union of democracies. Revolutionary as they may seem to politicians, international lawyers and political theorists, these conclusions do not come out of the blue.

The Dutch Council of State established in its advice on the Lisbon Treaty that the EU can no longer be understood in terms of the Westphalian template as either a State or a Union of States, while the present author posited in 2014 that, when paradigms lose their capacity to explain reality, they must be replaced with new ones. In order to enable the EU to consolidate its constitutional achievements in times of democratic backsliding, scholars have to develop a democratic theory of European integration capable of informing and explaining the functioning of the EU as a 'Union of Values'.

A constitutional definition of the European Union

From the outset, the process of European integration has been an experiment in democracy. Its initiators had all experienced the horrors of national-socialist and fascist rule, while a significant number of them actively contributed to the Resistance. Spinelli wrote his famous manifest in imprisonment on the island of Ventotene, while Huizinga sketched his blueprint for a democratic Europe in

internal exile in the Netherlands and the work of Habermas can be characterised as a profound effort to overcome the intellectual legacy of Nazism.

Moreover, by restricting membership of their Communities to democratic countries, the founding fathers demonstrated their awareness of the axiom that the 'pooling of sovereignty' is only feasible between democratic states. Introducing this revolutionary method, they activated the democratic principle in international relations. It holds that, if democratic states agree to share the exercise of sovereignty, their organisation must be democratic too. Right from the start in 1951, the democratic principle has been triggering European integration from within. Overlooked by mainstream ideologies, it prompted the desire to create an ever closer union among the peoples of Europe to result in the emergence of an entirely new model of democracy.

The innovative character of the present EU as a post-Westphalian polity may be symbolised by the constitutional definition to be elaborated in this commentary. It holds that the EU is a union of states and citizens in which the citizens are entitled to participate not only in the political life of their country but also in that of the Union and in which respect for the rule of law is guaranteed both at the national and at the European level.

The need for a democratic theory of European integration

Yet, seven decades and seven treaties onwards the EU is still in want of a democratic theory of European integration. This lack of democratic self-awareness has come to haunt the EU in times of constitutional erosion and autocratic temptation. In 2016, it has prevented the EU from taking a stance against the infamous Brexiteer-allegations that the EU had become a

[‘Fourth Reich’](#), while, subsequently, it has paralysed the European Council to such an extent that it refrained for 15 consecutive years from taking appropriate action against a Member State the authorities of which openly promoted and practised illiberal activities. The manifest and systematic violation of EU values by that country was exposed by the EU Court of Justice only after the Hungarian electorate had voted the Orbán regime out of office in April 2026.

The absence of a democratic political philosophy of the EU is especially remarkable since the Member States have reiterated their democratic aspirations in laying the foundations for an ever closer union among the peoples of Europe in each and every treaty. It appeared for the first time in the preamble to the 1957 Treaty of Rome and has been accentuated in Article 1 of the 2007 Lisbon Treaty. In line with the explicit intentions of the founding fathers and the steadily increasing number of Member States, the Court of Justice established in its case law that the EU has developed a distinctive model of democracy. In its [Conditionality Verdicts of 16 February 2022](#), the Court of Justice found that the values of human rights, democracy and the rule of law as contained in Article 2 of the Treaty on European Union constitute the very identity of the Union. From the historical perspective, it observed that the EU has evolved in a bottom-up process from a union of democratic states into a union of democratic states which also forms a democracy of its own, adding that it is entitled to defend its values against breaches by Member States. In the [Values Verdict of 21 April 2026](#), the Court explicated that the protection of the rule of law is not just an obligation of individual Member States but forms a collective responsibility of the Union too, notably in cases in which a Member State is breaching them in a manifest and particular serious manner. So, the EU is not merely a democracy in its own right that is entitled to protect its constitutional achievements against

foreign threats and erosion from within but also applies a different concept of sovereignty. Commenting on these landmark decisions, the President of the EU Court of Justice observed in a number of lectures that [“the EU endorses a new kind of identity that operates outside the paradigms of the nation-State”](#) and identified the polity at other occasions as a “democratic union of democracies”.

The academic deficit

Obviously, the task of Courts is not to settle academic disputes or to draft political theories. Yet, when the President of the EU Court of Justice states in a number of official lectures that the EU operates beyond the paradigm of the nation-state and characterises the polity in post-Westphalian terms as a democratic union of democracies or, for that matter, as [a democratic union of democratic states](#), the academic community and notably the *communitas academica Europaeae* should at least be alerted and pay attention. So far, however, political theorists and legal philosophers have preferred to cherish the benign tranquillity of their Westphalian slumber. Actually, their paradigmatic innocence appears to be so comfortable that they have not yet started to question their own academic prejudices. In consequence, a serious academic deficit of the EU has emerged which hampers the Union’s further evolution towards a living European democracy. This intellectual shortcoming will be described here in all clarity - and possibly somewhat provocatively - as the inability of the European academic community to observe and to account for the paradigm shift in international relations which the founding fathers implemented at the very start of the integration process in 1951. By expressing their intention to embark on the experiment to create a shared destiny by pooling sovereignty in the fields of coal and steel, the Member States substituted the principles of mutual trust and solidarity for the perennial animosity

if not hostility between States of the prevailing Westphalian system of international relations. In consequence, it should have been clear from the outset that it would be *a priori* impossible for the result of their desire to create an ever closer union among the peoples of Europe to be explained in terms of that outdated template.

Perplexing as it may seem from the present perspective, conceptual blindness caused political theorists and legal philosophers to continue to study the EU through the lens of the paradigm which the object of their research has purposely abandoned. One school of thought portrays it as a more or less traditional organisation of states, while the other perceives the EU as a quasi-federal state or as a federal state in the making. Their agreement to disagree in the debate about the political finality of the Union implies that other options are not available. As the EU is destined to remain unable to say what it is - political theorists continue to argue -, it should accept [conception pluralism](#) as an asset.

The democratic principle in international relations

Blinded by the Westphalian spell, these academic authors systematically disregard the democratic principle in international relations, which the founding states of the current EU activated at the start of their experiment. It holds that, if democratic states agree to collectively exercise sovereignty in ever wider fields, their organisation should be democratic too. So, the academic community should reconceptualise the EU as an unprecedented democratic experiment and should endeavour to underpin the Treaties on European Union and the case law of the Court of Justice with a political philosophy capable of explaining its evolution to and its functioning as a democratic union of democratic states.

Political theorists and constitutional philosophers should notably try to overcome the academic deficit of the EU, to analyse the development of its distinctive model of supranational democracy and to draft a democratic theory of European integration. In conceptual terms, they should examine how the EU has outgrown the Westphalian system of international relations, clarify why this observation is relevant for the study of the EU and the process of European integration and which practical consequences the Union should draw from this paradigmatic breakthrough.

The urgency of the effort stems from the fact that, while the academic deficit merely hampered the spontaneous evolution of the EU in the past, it has become an imminent danger in times of constitutional erosion and democratic backsliding. On the eve of the 70th anniversary of the Treaty of Rome, scholars should finally acknowledge that, due to the desire to create an ever closer union among the peoples of Europe, it has been *a priori* impossible for the EU to be identified in terms of the abandoned template as State or as a Union of States. As the EU has established itself in defiance of prevailing Westphalian ideologies as "a union of states and citizens in which the citizens are entitled to participate not only in the political life of their country but also in that of the Union and in which respect for the rule of law is guaranteed both at the national and at the European level", political theorists and legal philosophers should follow suit and strengthen the rule of law with a democratic political philosophy.

The significance of the European experiment for global governance

The endeavour to lay the foundations for an ever closer union among the peoples of Europe has started as a daunting experiment in trans- and supranational democracy. Seven decades

onward, the EU faces the ultimate test of asserting itself as a democratic polity of states and citizens on the global stage. This contribution intends to remind politicians and lawmakers of the ancient wisdom 'to know thyself'. If it wants to meet the challenge, the EU must embrace its democratic identity and establish itself as a beacon of constitutional democracy in an increasingly autocratic world.

The European lesson for global governance is that the Westphalian system of international relations - developed in the 17th century to manage war in a continent of emerging nation-states - is conceptually unfit for guaranteeing the rule of law and world peace in the belligerent superpower set-up of the 21st century.

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