

## Conclusion and Outlook



# Integration Through Law and the European Union: Concepts of Law, Legitimacy, Rule of Law and Self-Conception

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*“European Integration can no longer rely on the basis of the traditional assumption that law is the natural cement that holds the member states, their peoples, and social and legal structures together.”<sup>1</sup>*

*“I believe we need an ambitious reform agenda to ensure the proper functioning of a larger Union, to ensure we are equipped to tackle our geopolitical challenges and to improve democratic legitimacy, notably through citizen’s participation.”<sup>2</sup>*

Integration through law and the European Union (EU) – the title of this volume combined a classic theory of European integration with our current conception of the EU. Keeping in mind the political and legal achievements of this supranational legal community over the past 70 years, we have adopted a critical yet broad-minded integrationist view departing from the law as both the technical and normative foundation of the European community. Additionally, political and legal dimensions as well as the polycrisis experience since the financial and state debt crisis strongly inform our view on the EU, its capabilities, democratic structures and legitimacy challenges.

This book brought together theoretical, conceptual and empirical approaches in relation to *integration through law* not limited to the classic understanding of integration through jurisprudence, but extending to various formats such as *integration through legislation*, *integration through*

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1 L. Azoulay, “Integration through law” and us’ (2016) 14 *International Journal of Constitutional Law* 2, 449, 462.

2 U. von der Leyen, ‘Europe’s Choice – Political Guidelines for the next European Commission 2024–2029’ (European Commission, 2024), 30.

*funding* and *integration induced by crisis*. What unites these approaches is their focus on the law not only as a tool and necessary medium, but powerful variable to strengthen integration in the sense of *constitutionalisation* of the European integration process. While *legislation* creates legal obligations for Member States and intensifies the legal entanglement in the multi-level system, *funding instruments* create liabilities and thus increase interdependencies between EU institutions and Member States. Finally, crisis resolution via European legal means further increases the European political scope with consent of the Member States.

The authors of this volume have analysed both the long-term integration developments and the role of law in the process of Europeanisation.<sup>3</sup> It became evident that jurisprudence from the early years of the European communities as well as recent case law, provides insights into the various policy areas in which the extension of European integration is implemented by means of law. Following up on this path, several authors have addressed coping strategies in recent crises, with law and legal culture serving as means to stabilise European integration.<sup>4</sup> Overall, the handling of the crises since the financial and sovereign debt crisis indicates that the EU has succeeded in stabilising and securing its own constitution and developing further legal elements.<sup>5</sup> The diversification of the EU's financial architecture, prompted by crisis situations, provides a deeper understanding of the self-conception and objectives of the EU (and its constitution).<sup>6</sup>

The significance of law in the integration process has steadily grown over time.<sup>7</sup> It provides the most important framework for cooperation among Member States, facilitating a multi-layered approach to governance that balances national interests with collective objectives. Thereby, the balance

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3 See in this volume: Domenica Dreyer-Plum (Pages 33 to 53); Domenica Dreyer-Plum, Anna Wenz-Temming and Jared Sonnicksen (Pages 55 to 75); Susanne K. Schmidt (Pages 79 to 104) and Darinka Piqani (Pages 149 to 172).

4 See in this volume: Clemens Ladenburger (Pages 105 to 122); Darinka Piqani (Pages 149 to 172) and Marcin Gorski (Pages 125 to 147).

5 See generally M. Riddervold, J. Trondal and A. Newsome, *The Palgrave Handbook of EU Crises* (Palgrave Macmillan, 2021); R. Coman, A. Crespy and V. A. Schmidt, *Governance and Politics in the Post-Crisis European Union* (Cambridge University Press, 2020).

6 See in this volume: Ruth Weber (Pages 175 to 196), Domenica Dreyer-Plum and Anna Wenz-Temming (Pages 197 to 219).

7 See generally J. Bast and A. von Bogdandy, *Unionsverfassungsrecht. Eine Neubestimmung anhand der Grundlagen im EU-Vertrag* (C. H. Beck, 2025).

between legitimacy claims from EU institutions and demands from Member States remains crucial for upholding democratic principles.<sup>8</sup>

In light of increasing politicisation and polarisation since the financial crisis,<sup>9</sup> it is clear that the European legal community faces challenges that require both coping and resilience strategies. It is precisely this challenging constellation: the polycrisis experience since the financial and state debt crisis, the polarisation and politicisation of European politics, and the increasing density and constitutionalisation of the legal community, that give continuous reason for our research interests about:

- (1) the changing meaning and scope of *law* in this political system,
- (2) the changing nature of *legitimacy* claims and accountability between European institutions and Member States,
- (3) the normative concept of *rule of law*, its (judicial) development in the European integration process and in relation with backsliding processes in several Member States,
- (4) the *self-conception* – and: finality – of the EU in terms of its capacity to act.

To conclude on the results of both our conference and this volume, we will connect in this chapter the study results of the different contributions with regard to the EU's conception of *law*, *legitimacy*, *rule of law* and *self-conception*.

### 1. Law and Integration Through Law

Law in the formal sense is a set of rules within a legal system that “regulates the relationship of a group of people to each other or to the superior sovereigns or between them”.<sup>10</sup> Apart from these fundamental structures that are created by legal relationships, the law has an important function in shaping social relationships that are reflected in the outcome of politi-

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8 See in this volume: S. K. Schmidt (Pages 79 to 104).

9 S. Hutter and H. Kriesi, ‘Politicizing Europe in times of crisis’ (2019) 26 *Journal of European Public Policy*, 996; V. A. Schmidt, ‘Politicization in the EU: between national politics and EU political dynamics’ in J. Zeitlin and F. Nicoli (eds), *The European Union Beyond the Polycrisis?* (Routledge, 2020), 67.

10 W. Weidenkaff, ‘Allgemeine Rechtsbegriffe’, in C. Creifelds and K. Weber (eds), *Rechtswörterbuch* (C.H. Beck, 2017), 1062.

cal decision-making processes.<sup>11</sup> In this way, the law fulfils an important stabilising function for the community.<sup>12</sup> The law can only fully fulfil this stabilising function if it is binding. This binding force, in turn, is fed by the legitimisation of the law.<sup>13</sup> The outstanding importance of law for political systems lies in the fact that law is the decisive medium through which the social reality of today's societies is shaped. Law is regarded as the epitome of civilisational achievements: it replaces power and (violent) rule by exchange, dialogue and negotiation in the process of legislation. The law is thus incrementally incorporated into the structures of democracy, if it is linked to basic liberal democratic principles. In that sense, the law is "congealed politics"<sup>14</sup>, as it operationalises democratic processes.

European law has developed into a category of law in its own right: It is neither comparable to national law nor to international law.<sup>15</sup> It is located on an intermediate level between national and international law, with an incomparably high degree of binding force which sets clear demands to be met by its Member States.<sup>16</sup> This is where the European legal community differs most clearly from conventional international organisations in the sense that it displays a deeper and more profound legal structure.<sup>17</sup>

The daily law-making processes developed in close cooperation between the European institutions<sup>18</sup> combined with jurisprudence<sup>19</sup> and ad-hoc cri-

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11 D. Grimm, 'Recht und Politik' (1969) *Juristische Schulung*, 501, 502.

12 E. R. Lautsch, *Integration durch Recht* (Mohr Siebeck, 2023).

13 M. van Hoecke and M. Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law' (1998) 47 *International and Comparative Law Quarterly*, 495, 515.

14 D. Grimm, see n. 11, 502; taken up by G. F. Schuppert, 'Rigidität und Flexibilität von Verfassungsrecht. Überlegungen zur Steuerungsfunktion von Verfassungsrecht in normalen wie in „schwierigen“ Zeiten' (1995) 120 *Archiv des öffentlichen Rechts*, 32, 37.

15 W. Phelan, 'The revolutionary doctrines of European law and the legal philosophy of Robert Lecourt' (2016) EUI, LAW, Working Paper; A. Vauchez, *Brokering Europe: Euro-lawyers and the making of a transnational polity* (Cambridge University Press, 2015); A. von Bogdandy, 'Founding Principles of EU Law: A Theoretical and Doctrinal Sketch' (2010) 16 *European Law Journal*, 95.

16 K. K. Patel, *Europäische Integration. Geschichte und Gegenwart* (C. H. Beck, 2022), 45–47.

17 K. K. Patel, see n. 16, 45–47.

18 See in this volume: Clemens Ladenburger (Pages 105 to 122).

19 See in this volume: Susanne K. Schmidt (Pages 79 to 104); Darinka Piqani (Pages 149 to 172)

sis management<sup>20</sup> illustrate the various components of *integration through law* that have formed over the past decades.

The *integration through law* theory movement focuses on analysing the role of law and legal institutions in the process of European integration.<sup>21</sup> In fact, many scholars have demonstrated how a handful of fundamental decisions effectively developed structural principles of European law through judge-made law.<sup>22</sup> Although law is at the centre of the theory, the concept of law has remained largely technical. Law is understood as a tool for integration, as an object, as a form of enforcing political decisions.<sup>23</sup> Current scholarship emphasises that *integration through law* peaked in the 1960s and 1970s with a few ‘mythical’ judgments. The Single European Act enabled an important transition to *integration through legislation* rather than *integration through law* (jurisprudence) with the facilitation of European harmonisation. This need for harmonisation followed from individual decisions of the Court of Justice and resulted in the insertion of Art. 100a EEC Treaty, which effectively enabled *integration through legislation*.<sup>24</sup> What followed, was a “dialectical relationship between the EU Court (‘law’) and

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- 20 See in this volume: Clemens Ladenburger (Pages 105 to 122); Ruth Weber (Pages 175 to 196); Domenica Dreyer-Plum and Anna Wenz-Temming (Pages 197 to 219)
- 21 M. Cappelletti, M. Seccombe, J. H. H. Weiler, *Integration through law: Europe and the American federal experience* (Walter de Gruyter, 1986); U. Haltern, ‘Integration durch Recht’, in H.-J. Bieling and M. Lerch (eds), *Theorien der europäischen Integration* (Springer, 2012).
- 22 A. von Bogdandy and J. Bast, ‘Europäisches Verfassungsrecht: Theoretische und dogmatische Grundzüge’, in A. von Bogdandy and J. Bast, *Europäisches Verfassungsrecht* (Springer, 2009), 13, 24; M. Höpner, ‘Usurpation statt Delegation. Wie der EuGH die Binnenmarktintegration radikalisiert und warum er politischer Kontrolle bedarf’ (2008) MPIfG Discussion Paper, 7; L. Azoulay, ‘The Retained Powers’ Formula in the Case Law of the European Court of Justice: EU Law as Total Law?’ (2011) 4 *European Journal of Legal Studies*, 178, 188–194; M. Rasmussen, ‘Law Meets History: Interpreting the van Gend en Loos Judgment’, in F. Nicola and B. Davies (eds), *EU Law Stories* (Cambridge University Press, 2017), 103, 111–117; W. Phelan, ‘Goodbye to all that: Commission v. Luxembourg & Belgium and European Community Law’s Break with the Enforcement Mechanisms of General International Law’, in F. Nicola and B. Davies (eds), *EU Law Stories* (Cambridge University Press, 2017), 121, 130–133; A. McNaughton, ‘Acts of Creation: The ERTA Decision as Foundation Stone of the EU Legal System’, in F. Nicola and B. Davies (eds), *EU Law Stories* (Cambridge University Press, 2017), 134, 147–152.
- 23 F. Schorkopf, ‘Rechtsgeschichte der europäischen Integration: Ein Themengebiet für Grundlagenforschung in der Rechtswissenschaft’ (2014) 69 *JuristenZeitung*, 421, 424.
- 24 K. K. Patel and H. C. Röhl, *Transformation durch Recht: Geschichte und Jurisprudenz europäischer Integration 1985–1992* (Mohr Siebeck, 2020), 40–49.

the EU legislator ('politics')".<sup>25</sup> This paved the way for the "spectacular rise of EU legislation".<sup>26</sup>

This emphasises once again that *integration through law* is neither automatic nor self-evident, but that it took committed actors (*agency*) to give law the position it has today in the European legal community. Both the Heads of State and Government<sup>27</sup> and actors within the European institutions are actively involved as authors of this law.<sup>28</sup> In fact, the law has gained this important role based on a combination of jurisprudence (of the Court), treaty development (by the Heads of State and Government), legislation (by Commission and Council, increasingly the European Parliament) and the general and continuous support of the Member States. Thus, the agency behind *integration through law* is not only concentrated in supranational institutions – as it appears to be in the theoretical approach of *integration through law* with a strong emphasis on the Court. Ultimately, this intricate interplay between law and politics illustrates that for European integration to thrive, a balance must be maintained between legal authority and political confirmation.

The first section on *conceptual approaches to understanding the link between law and European integration* fundamentally addressed the connection between law and *integration through law*. We can draw several conclusions from the two contributions to situate the significance of law within European integration processes. *Domenica Dreyer-Plum* conceptualised *law* and *integration through law* as essential components of the EU's legal and political framework. *Integration through law* is rooted in the EU's early judicial decisions, enabling individuals to become subjects of EU law. Thus tracing the historical evolution of EU law from its inception to its current role in shaping governance, illustrates how past decisions have laid the groundwork for contemporary legal principles such as direct effect and supremacy. This effectively bridges legal studies and political science, highlighting how law functions not only as a regulatory mechanism but also as a narrative that shapes political discourse and public understanding

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25 R. Schütze, "Integration-through-Law": grand theory, revisionist history' (2025) *European Law Open*, Doi:10.1017/elo.2025.15, 1, 1–39.

26 R. Schütze, see n. 25, 1.

27 Milestones: Treaties of Rome 1957, Single European Act 1986/1987; Maastricht Treaty 1992/1993; Lisbon Treaty 2007/2009.

28 Especially the Court of Justice in the 1960s, the Council and Commission until the mid-1980s, and only since the Lisbon Treaty has the European Parliament also been involved as an equal legislator.

within the context of European integration. From this contribution, we can conclude that both ‘written’ (formal legislation) and ‘living’ law (implementation) help us to enhance our understanding of the law’s significance in shaping the EU’s identity and functioning as a multilevel governance system. This comprehensive approach is reflected in the concept of *legal culture* as a framework for understanding how legal norms interact and influence democratic legitimacy. The suggested operationalisation of legal culture allows for a nuanced exploration of how legal norms are intertwined with social practices and political contexts, thereby enriching the understanding of *integration through law*.<sup>29</sup>

Advancing the discussion on the connection between law and social practices, the chapter by *Anna Wenz-Temming, Jared Sonnicksen and Domenica Dreyer-Plum* discussed the significance of law and *integration through law* in the context of democratic transformation processes, particularly focusing on European climate change litigation. We followed their argument that law not only serves as a regulatory tool but also functions as a narrative that shapes political discourse and public understanding during times of crisis. Legal frameworks can provide legitimacy for policy solutions while addressing complex societal challenges, such as climate change. This conceptual approach underscores that *integration through law* is closely linked to political processes, where legal arguments are used to justify policy choices and engage citizens in democratic governance. By examining two significant cases of climate change litigation, it is possible to demonstrate how legal narratives are applied in order to influence public perception and foster engagement with pressing issues.<sup>30</sup>

Law can provide legitimacy to political narratives and policy solutions, acting as an authoritative framework through which societal issues are addressed. By framing conflicts in legal terms, law facilitates discourse around democratic governance. Since effective governance in democratic systems relies heavily on legal processes, this gives reason to further explore law as a narrative to maintain democracy amidst transformative pressures. Generally, this underscores that understanding the interplay between law,

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29 See in this volume: Domenica Dreyer-Plum (Pages 33 to 53).

30 See in this volume: Domenica Dreyer-Plum, Anna Wenz-Temming and Jared Sonnicksen (Pages 55 to 75).

narratives, and democracy is vital for navigating current and future challenges within the EU multi-level system.<sup>31</sup>

Concluding on the link between law and European integration, we can draw from these contributions that the significance of *law* is paramount since it serves both as the foundation of the EU and constitutes the key instrument both in everyday and crisis politics as well as in continuous transformation processes. *Integration through law* has evolved from early judicial decisions to a more legislative focus also affecting integration as a narrative that shapes public perceptions. This is likely to be crucial for addressing contemporary challenges within the EU's multi-level governance system.

## 2. Legitimacy and Integration Through Law

In political science, legitimacy is defined as the recognition and acceptance of an authority, usually a governing body or institution, *by the governed*. Legitimacy furthermore encompasses the belief that the authority's right to rule is *justified and appropriate*, which is essential for maintaining social order and stability. Additionally, the ability to deliver results that meet citizens' needs enhances the legitimacy of the authority by way of *effectiveness*.<sup>32</sup>

Several scholars have shaped our perspective on legitimacy in the EU with different focus: While *Andrew Moravcsik* highlighted the significance of Member State interests on EU integration processes and those implications for the legitimacy of EU institutions,<sup>33</sup> *Giandomenico Majone* addressed issues of accountability, transparency and legitimacy in non-majoritarian institutions and thereby enhanced our understanding of the regulatory state and governance in the EU.<sup>34</sup> More generally, *Jürgen Haber-*

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31 See in this volume: Domenica Dreyer-Plum, Anna Wenz-Temming and Jared Sornicksen (Pages 55 to 75).

32 For a comprehensive understanding of legitimacy in political science, see: J. Knight and M. Schwartzberg, *Political Legitimacy* (New York University Press, 2019); for its application to the European Union, see: D. Beetham and C. Lord, *Legitimacy and the European Union* (Routledge, 1998) and F. W. Scharpf, *Governing in Europe: Effective or Democratic?* (Oxford University Press, 1999).

33 A. Moravcsik, 'Preferences and Power in the European Community: A Liberal Inter-governmentalist Approach' (1993) 31 *Journal of Common Market Studies*, 473.

34 G. Majone, 'Regulatory Legitimation in the European Union' (1996) 3 *Journal of European Public Policy*, 546; G. Majone, 'Dilemmas of European Integration: The

mas' considerations on deliberative democracy and the public sphere have been influential on discussions of democratic legitimacy within the EU context.<sup>35</sup> With a discursive view on the EU, *Vivien Schmidt* extended our understanding of legitimacy by highlighting how ideas and narratives about Europe influence perceptions of legitimacy within the EU.<sup>36</sup>

Those are just a few of many different approaches to addressing legitimacy issues in the EU with different angles. One of the most comprehensive contributions on legitimacy in the EU has been provided by *Fritz Scharpf*, in which he distinguishes between *input*, *throughput*, and *output* legitimacy.<sup>37</sup> Input legitimacy focuses on accountability in democratic processes and representation in decision-making; throughput legitimacy examines the quality and efficiency of governance processes and whether they are fair, transparent and inclusive; while output legitimacy assesses the effectiveness and outcome of policies and their ability to meet citizens' needs. *Scharpf's* framework emphasises that these three forms of legitimacy are interconnected, suggesting that deficits in one area can undermine overall perceptions of legitimacy within the EU, thereby influencing discussions about democracy and accountability in EU governance.

In the context of the EU, input legitimacy is often critiqued due to perceived democratic deficits, such as limited direct electoral accountability of EU institutions.<sup>38</sup> In contrast, output legitimacy is considered very important on European level: The EU seems to enhance its legitimacy through positive outputs in terms of economic stability and social welfare.<sup>39</sup>

The EU is not a state, but it forms a common legal system with the Member States, in which questions of competence and boundaries of sovereignty arise between the Member States and the European institutions. This de-

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Ambiguities and Pitfalls of Integration by Stealth' (2005) 11 *European Law Journal*, 488.

35 J. Habermas, *The Postnational Constellation: Political Essays* (MIT Press, 2001); J. Habermas, *The Crisis of the European Union: A Response* (Polity Press, 2012).

36 V. A. Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and Throughput' (2006) 54 *Political Studies*, 1; V. A. Schmidt, 'Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone' (2019) 57 *Journal of Common Market Studies*, 440.

37 F. W. Scharpf, see n. 32; see also: F. W. Scharpf, 'The European Social Model: Coping with the Challenge of Diversity' (2002) 40 *Journal of Common Market Studies*, 645.

38 J. J. H. Weiler, 'Deciphering the Political and Legal DNA of European Integration. An Exploratory Essay', in J. Dickson and P. Z. Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (Oxford University Press, 2012), 137–158.

39 F. W. Scharpf, see n. 32; see also: F. W. Scharpf, see n. 37.

marcation of competence is fundamental to the democratic accountability within the European multilevel political system and thus to the legitimacy of European politics: This is the cornerstone upon which trust and participation of the European political system are built.

As such, legitimacy relies heavily on a “government of governments”<sup>40</sup>, where effective governance must navigate this complexity. The European Commission acts as an active lawmaker and shaper of the legal community, while the Court serves as a retroactive actor that interprets and defines this community’s contours. Both institutions derive their legitimacy from treaties; however, their effectiveness hinges on how well they fulfil their mandates in alignment with Member State needs.

However, as *Susanne Schmidt* points out, the Court of Justice operates at a distance from Member States, leading to varied effects and perceptions of its jurisprudence across the heterogeneous landscape of the EU. This diversity creates a paradox: while Member States frequently express specific wants, their differing priorities complicate consensus-building and create challenges for legitimacy. This assessment arises from *Schmidt’s* examination in this volume of the dynamics of *integration through law* at the Member State level, focusing on how EU policies are implemented and how this process can become contentious and politicised.

Due to the EU’s reliance on Member States for the implementation of EU laws and policies, several legitimacy issues relate to the the lack of strong central governance and administrative capacity. This can create tensions between fulfilling EU obligations on the one hand and maintaining domestic political support on the other hand, particularly when compliance with EU rules contradicts national interests or faces public opposition.<sup>41</sup> Furthermore, the interconnectedness among Member States introduces mutual dependencies, where non-compliance by one country imposes costs on others, complicating trust and cooperation within the EU framework. Additionally, the rise of right-wing populism reflects growing skepticism towards the EU as citizens perceive its regulations as undermining national interests or social welfare systems. While *integration through law* is positioned as a primary mechanism for advancing European integration;

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40 S. K. Schmidt, ‘Legitimacy dynamics in the multilevel EU – implementing integration through law at the MS level’, Bonn, 24 October 2024.

41 See in this volume: Susanne K. Schmidt (Pages 79 to 104).

however, its success hinges on the willingness of Member States to comply with established legal frameworks.<sup>42</sup>

To ensure effective implementation of EU laws, stakeholder engagement is central to legal processes on European level. This is a key argument brought forward by *Clemens Ladenburger*. The Commission's responsiveness to Member States' demands illustrates this stakeholder engagement in shaping EU policies. Thus, the involvement of various actors, including national governments and the European Parliament, ensures that legislative initiatives align with the interests and sovereignty claims of Member States. This concept of positive integration then gains importance over negative integration,<sup>43</sup> which focuses on legal constraints on Member States. This shift may account for a more collaborative approach to governance and it increases legitimacy of *integration through legislation*.

The gradual shift from intergovernmental approaches to more community-based methods furthermore indicates that collaborative decision-making fosters efficiency and legitimacy in legislation processes. Some areas that are traditionally associated with national sovereignty, such as migration and public health (visible during the COVID-19 pandemic), are increasingly interconnected with core EU objectives like free movement. This interdependence necessitates coordinated action at both national and EU levels. Overall, this illustrates how *integration through legislation* in the EU requires a dynamic interplay between well-prepared initiatives on EU level, attentive listening to Member State concerns and strong cooperation between European and national institutions.<sup>44</sup>

This assessment is connected to one of the key questions we are dealing with in the context of different "*integration through...*"-formats: whether the enhancement of European integration by legal means are compatible with the (limited) competences of the EU. All "*integration through...*"-formats imply the advancement and extension of European jurisdiction. Hence, inquiring for the legitimacy of those extensions is important to maintain a balance between the national and European legal systems – the multilevel system – and to maintain trust and support for the European legal community. Summing up, it is important to emphasise that accepted and recog-

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42 See in this volume: Susanne K. Schmidt (Pages 79 to 104).

43 For the distinction between negative and positive integration, see generally R. Schütze, *European Union Law* (Oxford University Press, 2021); see recently: M. van den Brink, M. Dawson and J. Zgliniski, 'Revisiting the Asymmetry Thesis: Positive and Negative Integration in the EU' (2023) 32 *Journal of European Public Policy*, 209.

44 See in this volume: Clemens Ladenburger (Pages 105 to 122).

nised *integration through law* and *integration through legislation* requires cooperation among Member States to implement EU laws while balancing national sovereignty with collective action to address shared challenges effectively.

### 3. Rule of Law and Integration Through Law

The *rule of law* is not only a key component of the basic values of the EU (see Art. 2 TEU). It is also closely linked to democracy in the EU. What does this mean in practice? Rule of law requires that all individuals and institutions are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. In this understanding, supremacy of law prevails: Rather than arbitrary decisions of individual government officials, laws are key to govern in any political system and no one is above the law. Political science scholars emphasise that rule of law is crucial to *legitimate* governance and democratic institutions. Rule of law supports principles such as accountability, transparency, participation, and equality before the law.<sup>45</sup>

At this point, normative attributions come into play that are not inherent to the law itself but are instead ascribed to it. These narratives about the law are interwoven with the political order narrative that a society claims for itself. This is because normative narratives are clearly associated with the law, even if the law of a legal order does not provide any moral qualities in its own right.<sup>46</sup> The concept of *rule of law* is a prime example: Associatively, the term is linked to the constitutionally guaranteed separation of powers and checks and balances, which includes the recognition of fundamental civil liberties of citizens in relation to the state.<sup>47</sup> A number of other components – such as access to justice, legal certainty instead of arbitrariness, equality, the exercise of power with moderation, conflict resolution

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45 For an exploration of how legitimacy relates specifically to EU governance structures while emphasizing adherence to laws as critical for maintaining legitimacy: D. Beetham and C. Lord, see n. 32. Scharpf has contributed significantly to discussions about legitimacy in relation to governance structures within Europe; his works often address how adherence to the rule of law impacts democratic legitimacy, see F. W. Scharpf, n. 32.

46 E. R. Lautsch, see n. 12, 174.

47 T. H. Bingham, *The rule of law* (Penguin, 2011), 37–109.

patterns, fair procedures – require further demarcations.<sup>48</sup> At this juncture, there exists a direct conceptual connection to the democratic principles of the rule of law: While the “law inevitably creates a great danger of arbitrary power – the rule of law is designed to minimise the danger created by the law itself”.<sup>49</sup> It is often only in times of conflict—specifically during judicial review—that the content (morality) of a norm is truly defined, determining its compatibility with overarching values.<sup>50</sup> The rule of law can itself become a subject of negotiation when the legislature, executive and judiciary negotiate or even damage the principles of the rule of law. In this sense, the rule of law remains a gradual principle that a political system more or less possesses or more or less lacks.<sup>51</sup> *Joseph Raz* emphasised in his theoretical work that the *rule of law* is thus one of the various virtues of a legal system and should not be confused with democracy, justice, equality or the protection of fundamental rights.<sup>52</sup> The *rule of law* only becomes an ideal when it is actually linked to (democratic) values. Law as justice needs a mandate that must come from the political process<sup>53</sup> and can therefore be susceptible to injustice if the good is missed by particular interests.<sup>54</sup> Grasping what *rule of law* means in a community of 27 heterogeneous Member States poses serious challenges given differing legal practices. This raises questions about both the feasibility and legitimacy to establish a coherent normative understanding applicable to the entire EU.<sup>55</sup>

*Marcin Gorski* discussed in this volume the relationship between *integration through law* and the rule of law, particularly in the context of Poland’s legal and political developments from 2015 to 2023. The key message in relation to *integration through law* is that legal frameworks and institutions play a crucial role in maintaining democratic values and the

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48 T. H. Bingham, see n. 47, 37–109.

49 J. Raz, *The Authority of Law. Essays on Law and Morality* (Oxford University Press, 2009), 224.

50 D. Grimm, see n. 11, 508.

51 J. Raz, see n. 49, 211.

52 J. Raz, see n. 49, 211. A normatively understood rule of law – as advocated in the literature by *Lon Fuller* – requires the regularity of laws in the sense of generalisability, promulgation, legal certainty through freedom from retroactive legal change and instead constancy over time, clarity of the law, freedom from contradiction, and coherence between declared rule and official action, see: L. L. Fuller, *The Morality of Law* (Yale University Press, 1969), 46–90.

53 E. R. Lautsch, see n. 12, 189.

54 L. Green, ‘Book Review: Law’s Rule – The Rule of Law: Ideal or Ideology, by A. C. Hutchinson and P. Monahan (eds)’ (1987) 24 *Osgoode Hall Law Journal*, 1023, 1024.

55 Similar M. Höpner, ‘Überdreht: Integration durch Recht’ (2022) 76 *Merkur*, 56.

rule of law. Rule of law is accordingly a foundational principle for successful integration, ensuring that Member States adhere to established laws. The deterioration of the rule of law in Poland illustrates how political decisions can undermine these frameworks, leading to a weakening of democratic principles.

*Integration through law* – in the narrow understanding of integration through jurisprudence – requires robust legal mechanisms, an independent judiciary, and effective enforcement of rights to ensure that all citizens are protected under the law. International legal standards and cooperation with entities like the European Court of Justice may serve as vital tools for reinforcing national legal systems against authoritarian pressures. In the case of Poland, we saw that societal support for the rule of law has been vital in defending democratic values despite significant backsliding. Ongoing deficits like insufficient legal education and transparency in judicial appointments must be addressed to strengthen future efforts against democratic erosion. Furthermore, fostering a strong legal culture and ensuring accountability within judicial processes are essential for sustaining democracy and preventing future backsliding. Finally, reinforcing commitment to the rule of law as an independent constitutional principle will be crucial for navigating complex political landscapes while promoting deeper integration within Europe.<sup>56</sup>

To stabilise resilience among institutions and electorates in the ongoing battles for the rule of law, it is essential to acknowledge the proactive roles played by both the Court and the Commission in operationalising this principle, especially through mechanisms such as the Rule of Law Framework and landmark rulings like the Portuguese judges case.<sup>57</sup> This was addressed by *Darinka Piqani* in this volume. She explored the relationship between *integration through law* and the rule of law particularly in response to recent challenges faced by Member States like Poland and Hungary.

We conclude from this assessment that the rule of law has emerged as a constitutional principle in the EU legal order, reflecting a commitment to uphold democratic values and judicial independence. Additionally, legislative measures like the Conditionality Regulation define and protect the rule of law, while acknowledging ongoing challenges related to enforcement and clarity within EU law. Thus, while progress has been made in solidify-

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56 See in this volume: Marcin Gorski (Pages 125 to 147).

57 Case C-64/16 *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* [2018] ECLI:EU:C:2018:117.

ing the rule of law as a constitutional norm, its autonomous enforcement may still face limitations due to vague definitions and yet unresolved issues of competences between EU institutions and Member States. Furthermore, societal support for the rule of law seems crucial for its defence against backsliding into autocratic governance. This discussion underscores that *integration through law* is not merely about legal frameworks but also involves political dynamics and public perceptions.<sup>58</sup>

The situations experienced in Poland and Hungary reveal contrasting approaches to constitutionalisation; while *Piqani* reminds us of top-down effects of *integration through law* in the classic sense of jurisprudence, *Gorski* highlights the significance of civil society's engagement as a power coming necessarily from bottom-up in order to be sustainable and effective. Together, these perspectives underscore the necessity of cultivating a robust legal culture that promotes democracy and upholds the rule of law from multiple angles – both institutional frameworks and grassroots movements must work hand in hand to ensure lasting resilience against authoritarian tendencies.

This indicates why rule of law is an important concept in the context of the EU: Rule of law has gained normative power within European law as constitutional principle. Since the application of European law resides with the Member States, the realisation of rule of law principles are substantially practiced in the national legal systems, among which are the respect for basic rights, fair trials and independence of justice. Advancing European integration involves various mechanisms, including jurisprudence, legislation, extra-legal activities, funding and conditionality, all aimed at preventing a disconnect between the procedural and normative element of the rule of law.

#### *4. Self-Conception and Integration Through Law*

Conception is a broad term that denotes the process through which individuals or groups form ideas and interpretations about aspects of life and knowledge.<sup>59</sup> Self-conception refers to the broader framework of beliefs and

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58 See in this volume: Darinka Piqani (Pages 149 to 172).

59 G. Ryle, *The Concept of Mind* (Hutchinson, 1949); G. Lakoff and M. Johnson, *Metaphors We Live By* (University of Chicago Press, 1981).

ideas that an individual or entity holds about itself.<sup>60</sup> Such a conception is relatively stable, but may change for example due to significant events such as severe crises. Obviously, the EU does not have a personality in itself, but it does constitute a significant political entity that is perceived by its citizens as a relevant place to deal with transnational policy challenges. In our reading, the term 'EU conception' refers to the understanding, interpretation, and representation of the EU as an entity, including its goals, values, and institutional frameworks.<sup>61</sup> It encompasses how the EU perceives itself in relation to its Member States and citizens.

Among the shared values today are democracy, human rights, rule of law and respect for diversity among Member States.<sup>62</sup> Those values were implicit in the founding treaties, and became explicit with the Treaty of Maastricht and the Treaty of Lisbon. The objectives of the EU have always circled around explicit goals such as: economic cooperation,<sup>63</sup> stability and social cohesion within Europe; but were connected to implicit objectives: to foster trust among the Member States and to build for long-lasting peace and security.<sup>64</sup> Another significant changing element is the growth of the EU from originally six to now 27 Member States based on enlargement.<sup>65</sup>

The institutional structure of the EU diverges from international organisations since it combines supranational elements (autonomous bodies among the EU institutions, most prominently the Commission and Court) with intergovernmental elements, in which the executives of the Member States control decisions. Not only the inclusion of supranational bodies but also the trickling down of European law into national systems and the growing interdependence between the national and European legal spheres create a great necessity for accountability and transparency in decision-making processes.

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60 While self-perception focuses on immediate views of oneself, self-conception encompasses a more comprehensive understanding of what an organisation represents, see R. F. Baumeister and K. D. Vohs (eds), *Handbook of Self-Regulation* (Academic Press, 2007); M. Rosenberg, *Conceiving the Self* (Basic Books, 1979).

61 J. Pinder and S. Usherwood, *The European Union: A Very Short Introduction* (Oxford University Press, 2013).

62 See Art. 2 Treaty on European Union, see also Charter of Fundamental Rights of the European Union.

63 Art. 26–27, Treaty on the Functioning of the European Union, see R. Baldwin, *The Economics of European Integration* (McGraw-Hill Education, 2020).

64 See K. K. Patel, *Projekt Europa: eine kritische Geschichte* (C. H. Beck, 2018), 65–107.

65 See F. Schimmelfennig and U. Sedelmeier, *The Europeanization of Central and Eastern Europe* (Cornell University Press, 2005).

The conception of the EU encapsulates a comprehensive view of its identity, purpose, governance structures, and evolving role in addressing both internal dynamics among Member States and external relations with global partners. It is closely connected to the ‘finality’ of the EU: a discussion that has been particularly vivid in the 2000s with the development and failure of the Constitutional Treaty.<sup>66</sup> Overall, finality is essential for understanding how institutions define their roles and responsibilities within broader societal contexts.

In this volume, we connected the (self-)conception and ‘finality’ of the EU with its financial architecture. Why? Because the financial capacities are decisive for the EU’s capabilities. Additionally, the budget of the EU is one key aspect where the EU diverges from classic international organisations.<sup>67</sup> The connection between the financial budget of the EU and its self-perception and finality is significant, as the budget reflects the EU’s priorities, values, and objectives while shaping its identity and governance. By allocating funds to specific programs (e.g., cohesion policy or the Green Deal), the budget demonstrates how the EU perceives its role in promoting prosperity and addressing challenges within Member States.<sup>68</sup> Funds are also crucial for fostering integration among Member States, particularly through initiatives aimed at – but not limited to – reducing disparities between regions. This financial support embodies the EU’s commitment to solidarity among its members, reinforcing its self-image as a community that prioritises mutual assistance.<sup>69</sup>

The self-conception of the EU both develops from and feeds into the self-conception of the legal community. Recently, the financial capacities were further diversified with the expansion of the financial architecture provided by the NextGenerationEU funding opportunities generated in response to the Covid pandemic management. These events have led

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66 See exemplary the contrasting speeches of Joschka Fischer (at the time Federal Foreign Minister of Germany) and Jacques Chirac (at the time President of the French Republic): J. Fischer, ‘Vom Staatenverbund zur Föderation – Gedanken über die Finalität der europäischen Integration’ (2000) Auswärtiges Amt, Humboldt-Universität in Berlin; J. Chirac, ‘Rede des französischen Staatspräsidenten Jacques Chirac vor dem Deutschen Bundestag’ (2000) Deutscher Bundestag, Berlin.

67 K. K. Patel, see n. 16, 45–47.

68 See R. Baldwin and C. Wyplosz, *The Economics of European Integration* (McGraw Hill Education, 2022).

69 See J. Bachtler, P. Berkowitz, S. Hardy and T. Muravska (eds), *Cohesion Policy in the European Union* (Routledge, 2016).

to a consolidation of financial structures, deepening *integration through legislation and funding mechanisms*. The evolution of the EU's financial framework thus illustrates how it adapts to changing circumstances while maintaining its long-term objectives. This adaptability reinforces both its finality (e.g., promoting stability) and self-image (as a resilient entity).<sup>70</sup>

Ruth Weber explored in her contribution the relationship between the financing of the EU and its self-conception, suggesting that financial integration reflects different understandings of European integration. Two perspectives on financial integration are identified: a static view that sees existing arrangements as fixed and a dynamic view that emphasises ongoing change and adaptation in response to crises. Detailing the evolution from contribution-based financing to an own resources model, the argument unfolds in consideration of the implications for democratic legitimacy resulting from that shift. While *integration through funding* is emerging as a concept, it remains distinct from traditional notions of *integration through law*. The latter is primarily characterised by legal frameworks, judicial interpretations, and the authority of institutions like the European Court of Justice (ECJ) to shape European integration, emphasising a structured legal approach to governance and policy implementation.<sup>71</sup> In contrast, *integration through funding* focuses on the financial mechanisms available to the EU, such as budgetary resources and conditional financial support for Member States, which can influence national policies without necessarily relying on established legal processes or frameworks. The emergence of funding-based strategies, particularly evident in initiatives like NextGenerationEU,<sup>72</sup> reflects a shift towards leveraging financial resources as tools for integration and policy alignment among Member States, highlighting a more flexible and adaptive approach compared to the rigid structure associated with legal integration. In this vein, the finality of the EU is increasingly ambiguous and subject to ongoing debate, particularly in the context of evolving financial mechanisms and integration strategies. While the traditional notion of *an ever closer union* has been a guiding principle for EU integration, this consensus appears to be eroding amidst contem-

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70 B. De Witte, 'The European Union's COVID-19 recovery plan: The legal engineering of an economic policy shift' (2021) 58 *Common Market Law Review*, 635; M. Ruffert and P. Leino-Sandberg, 'Next Generation EU and its constitutional ramifications: A critical assessment' (2022) 59 *Common Market Law Review*, 433.

71 See in this volume: Ruth Weber (Pages 175 to 196).

72 Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility [2021] OJ L57/17.

porary challenges and crises. The emergence of concepts like *integration through funding* indicates a shift in how integration may be understood and pursued in the future, potentially complementing existing frameworks based on *integration through law*.<sup>73</sup>

From this we conclude that further developments in EU financing are likely amidst ongoing political debates about defence and security funding, indicating a potential for new dynamics in both legal frameworks and integration strategies. This implies that as political dynamics change, so too does the perception of what the ultimate goals of European integration should be. While there remains an aspiration towards deeper integration, the specific pathways and mechanisms for achieving this goal are becoming more complex and contested, suggesting that the finality of the EU may be more fluid than previously thought.<sup>74</sup>

The chapter by *Domenica Dreyer-Plum* and *Anna Wenz-Temming* similarly addressed the significance of budgetary politics for the constitution of the EU and their connection to funding strategies in past crises. In this reading, *integration through law* is a dynamic process significantly influenced by crises, particularly in the context of the COVID-19 pandemic and the previous financial and state debt crisis. The NGEU programme illustrates how financial instruments can enhance European integration by establishing joint liabilities and increasing fiscal capacity, which is crucial for addressing urgent socio-economic challenges. This may constitute a paradigm shift towards deeper financial *integration through funding* mechanisms, although conditionality remains a crucial aspect of financial assistance measures during crises. Despite advancements in creating new financial instruments, ongoing challenges relate to achieving a fully functional fiscal union within the EU framework due to political resistance and varying national interests. The importance of intergovernmental control over negotiation processes suggest a continuity in how decisions are made within the EU framework. While there is potential for further development in the EU's financial constitution – particularly concerning new revenue sources – the current landscape remains constrained by existing treaties and Member State agreements. Additionally, historical financing decisions have established path dependencies that affect current views on legitimate funding practices, while the financial constitution connects economic policies to broader political goals like democratic governance and rule of law.

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73 See in this volume: Ruth Weber (Pages 175 to 196).

74 See in this volume: Ruth Weber (Pages 175 to 196).

This analysis underscores that “*integration through...*”-formats are not just about legal frameworks but also involve navigating complex political dynamics and responding to pressing challenges in a rapidly changing environment. The interplay between crisis responses and legal integration highlights both opportunities for further development and ongoing limitations in achieving comprehensive fiscal solutions within the EU.<sup>75</sup> Taking the different views together, there is a strong connection between the financial budget of the EU and its self-perception and finality. The budget reflects core values like solidarity and cohesion while facilitating deeper integration among Member States. It also plays a crucial role in establishing legitimacy through transparency and accountability in resource allocation. Additionally, negotiations surrounding funding highlight power dynamics that influence perceptions of national sovereignty versus collective governance.

## 5. Conclusion and Outlook

The significance of law in the European integration process today cannot be overstated; it is, quite literally, the backbone of the EU. Law underpins the very fabric of this political entity, representing a remarkable achievement and a challenge when it comes to legitimising political choices to be implemented at national level.

Indeed, the law serves as the enduring ‘currency’ of the EU, highlighting the importance of fostering a shared understanding of the rule of law through ongoing discourse. While profound crises like the financial turmoil have prompted a reevaluation of foundational principles, the collective response to the Covid pandemic demonstrated resilience through initiatives such as NGEU. There is a strong connection between the financial budget of the EU and its self-perception and finality. The budget reflects core values like solidarity and cohesion while facilitating deeper integration among Member States. Ultimately, changes to financing structures demonstrate how the EU adapts to contemporary challenges while striving toward long-term goals related to peace, stability, prosperity, and unity.

However, there are risks associated with overstretching legal instruments beyond what is politically necessary, particularly when justifying *integra-*

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75 See in this volume: Domenica Dreyer-Plum and Anna Wenz-Temming (Pages 197 to 219).

*tion through funding* mechanisms. As the EU navigates contemporary challenges, fostering a shared understanding of core values will be vital for sustaining integration efforts and reinforcing trust among Member States. Ultimately, *integration through law*, *integration through funding* and *integration through legislation* must work together to address pressing issues while promoting long-term goals related to stability and unity within the European community.

Nonetheless, the persistent rule of law crisis poses a significant challenge that tests the integrity and cohesion of Europe's legal framework. This situation requires effective navigation of future complexities by harnessing the unique expertise of its legal community.

The normative concepts of legitimacy and the rule of law are closely tied to judicial experience. They are fundamentally connected to the questions of how we wish to shape our society and how we envision political processes functioning within European politics. It is exactly the general approval by political institutions (the legislative lending legitimacy to the political process) and the wider citizenry, which provides for the necessary political confirmation and *legitimacy*. Recent developments in countries like Poland and Hungary illustrate how political decisions can undermine the rule of law, highlighting the need for judicial independence and societal support to maintain democratic values. A bottom-up normative culture, grounded in the rule of law, is essential to complement the strong institutional structures established by EU treaties and enforced by bodies like the European Court of Justice (ECJ) and the European Commission.

While we examined the challenges of accountability and legitimacy in *integration through law* via jurisprudence, legislative processes provide more direct avenues for justification. Similarly, integration formats driven by funding, crisis-induced integration, and further developed through legal instruments occur within frameworks that ensure clear accountability. Yet, the support for the law and legal processes induced by European institutions and the Member States (represented partially also within EU institutions) remains essential to meet rule of law standards and to guarantee for the general legitimacy of shaping the European legal community.