The Republican Thrust of *70 Years of EU Law*: Theorizing 'A Union for Its Citizens'

Armin von Bogdandy*
Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany
bogdandy@mpil.de

Abstract 379
Keywords 380
I. Thesis and Program 380
II. Theory 381
1. A Topical Concept of Republicanism 381
2. The Common Good as Solidarity 386
III. Evidence 388
1. The Ventotene Manifesto 388
2. Art. 2 TEU as a Republican Manifesto 391
3. Operationalisation of the Manifesto 394
4. The Institutional Development 398
IV. Objections 400
1. Republican Self-Determination 400
2. Republican Virtue 402
3. Republican Forum 404
V. Making It Practical 407

Abstract

Päivi Leino-Sandberg's opening contribution to this special issue identifies deficits in the Commission's book *70 Years of EU Law*. This concluding contribution explores its promise, as expressed in its subtitle 'A Union for Its Citizens'. 'A Union for Its Citizens' is underpinned by a republican thrust, which this contribution substantiates in four steps. The first develops a tailored concept of republicanism, with the second step presenting evidence for it in EU law. The third step deepens the thesis by demonstrating its compatibility with core republican tenets, while the final step outlines how

* Director at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg. I thank the Dienstagsrunde, Aurore Gaillet, Thomas Maissen, Alexander Somek and Jacques Ziller for their valuable suggestions. The text was translated with DeepL, revised with the help of ChatGPT and finalised with help from Paolo Mazzotti, Dimitrios Syntrivanis and Moritz Vinken. An earlier German version was published in Armin von Bogdandy, Patrick Hilbert and Angelika Siehr, *Renaissance des Republikanismus* (Mohr Siebeck 2024), 1-89.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - CC BY-SA

to drive European republicanism forward, and, with it, European constitutionalism and federalism.

Keywords

European Constitutional Law – European Republicanism – 70 Years of EU Law – Legal Service of the EU Commission – Art. 2 TEU

I. Thesis and Program

Some consider the European Union (EU) Commission Legal Service's *70 Years of EU Law* to be inspired by Hallstein's 'Rechtsgemeinschaft' or Cappelletti's, Seccombe's, and Weiler's 'Integration Through Law'.[1] I read it in light of European republicanism: the book's subtitle is 'A Union for Its Citizens', a civic focus underlies all contributions, and its final chapter focusses on advancing the Union's civic transformation.[2]

The words 'A Union for Its Citizens' signal a choice and direction, which were missing from the book's predecessor, *Thirty Years of Community Law*.[3] The Legal Service takes a contentious position on what the Union is about. Sceptical voices will view this republicanism as propaganda from Brussels.[4] State-centred approaches would have preferred 'A Union for Its Member

1 See Christos Karetsos and Alexandros Bakos, 'The European Union's Geoeconomic Turn: Less Openness and More Realpolitik', HJIL 86 (2026), 197-224; Giulia La Torre, 'The Formation of the EU Legal System', HJIL 86 (2026), 133-166; Päivi Leino-Sandberg, "70 Years of EU Law' – The Politics of a Professional Language', HJIL 86 (2026), 59-83; Aitor Navarro, 'The EU as a Catalyst for Tax Harmonisation – Triumphs and Challenges in an Asymmetric Cooperation Model', HJIL 86 (2026), 357-378; as well as Jacob van de Beeten, 'Festschrift or Fiction? Omissions, Gaps and Blind Spots in 70 Years of EU Law', HJIL 86 (2026), 167-196.

2 Daniel Calleja and Clemens Ladenburger, 'The Future of European Union Law' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (Publications Office of the European Union 2022), 377-388.

3 European Commission Legal Service (ed.), *Thirty Years of Community Law* (Publications Office of the European Communities 1983).

4 See, for instance, the problematisations of Jacob van de Beeten (n. 1), Maciej Krogel, 'Is It Enough to Say 'Common Values' When We Mean the Essence of European Integration? Reassessing the Understanding of Art. 2 TEU as the Identity of the EU Legal Order', HJIL 86 (2026), 225-244; 'Leino-Sandberg (n. 1), Paolo Mazzotti, 'An Archaeology of EU Legal Discourse: The Legal Imagination Between Continuity and Discontinuity', HJIL 86 (2026), 85-131; Marc Steiert, 'Telling (Social) Europe Differently: Fractures, Discontinuities, and Alternative Trajectories in 70 Years of EU Law', HJIL 86 (2026), 331-356; Christian Thönnes, 'Invisible Infringements: On the AFSJ's Under-Constitutionalisation', HJIL 86 (2026), 299-330 and Henri de Waele, 'Beyond the Posture, Beyond the Pale – Assessing the EU's Real Record as An International Human Rights Actor', HJIL 86 (2026), 245-260.

 DOI 10.17104/0044-2348-2026-1-379

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

States'.[5] A positivist approach might suggest 'A Union for Its Peoples', following Art. 3 para. 1 TEU.

I support giving European citizenship such importance, not least for driving forward European republicanism. I see great promise for European republicanism because it develops European constitutionalism and federalism by stressing European citizenship, European solidarity, as well as checks and balances. It deepens theoretical insight while also providing practical orientation. Its promise is particularly relevant bearing in mind the current cleavages of European society and its geopolitical awakening. By 'going republican', European society might shine bright and, in so doing, withstand a global trend going in the opposite direction.[6]

To explore the promise of European republicanism, I substantiate it in four steps: theory, evidence, defence, and practice. The first step involves developing a tailored concept of republicanism (II.), the second step presents evidence for it by looking at a range of proposals, debates, legal acts, and judgements to show how European republicanism is developing (III.). The third step deepens European republicanism by demonstrating its compatibility with core republican tenets, namely self-determination, virtue, and a public forum (IV.). The final step looks to the future, taking into account competing approaches to an 'ever closer union' (V.).

II. Theory

1. A Topical Concept of Republicanism

Article IV, Section 4 of the American constitution famously stipulates that '[t]he United States shall guarantee to every State in this Union a Republican Form of Government'. Referring to this provision, John Adams once wrote to Mercy Otis Warren: 'I confess I never understood it, and I believe no other Man ever did or ever will'.[7] As there is no settled meaning, even amongst

5 One proponent of such approaches is the Second Senate of the German Federal Constitutional Court, see its landmark decisions, BVerfGE, *Maastricht*, judgement of 12 October 1993, 2 BvR 2134, 2159/92; BVerfGE, *Lisbon,* judgement of 30 June 2009, 2 BvE 2/08.

6 For the global trend, see the contributions in Helena Alviar García and Günter Frankenberg (eds), *Authoritarian Constitutionalism. Comparative Analysis and Critique* (Edward Elgar Publishing 2019).

7 Letter from John Adams to Mercy Otis Warren, 20 July 1807, available at <https://founders.archives.gov/documents/Adams/99-02-02-5195>, last access 17 February 2026. For a history Mortimer N. S. Sellers, *Republican Legal Theory: The History, Constitution and Purposes of Law in a Free State* (Palgrave 2003); on that thought Thomas Maissen, 'Républiques et républicanismes en époque moderne. Théories et pratiques dans une perspective occidentale' in: Olivier Christin (ed.), *Républiques et républicanismes. Les cheminements de la liberté* (Le Bord de l'eau 2019), 27-45.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

those who should know best, what should 'Republicanism' mean to Europeans in 2025? Given two millennia of conceptual history and its broad spectrum of current applications – from Donald Trump's Make America Great Again (MAGA) republicanism[8] to Kantian and Hegelian,[9] neo-Greek and neo-Roman[10] republicanisms – a common denominator, if there is one, would be too flimsy to be useful. Nor is it meaningful to seek the 'true' concept of republicanism: conceptual work aims not for truth but for utility.[11]

This contribution requires a concept of republicanism that is useful in current debates on European law. Such a concept should be rooted in its history, be compatible with the tenets of Article 2 TEU and allow us to make useful distinctions for the current debates. To this end, I explore the relationship between republicanism and democratic constitutionalism, as the latter is the prevailing approach of those engaging constructively with the European Treaties.

Historically, the concepts of republic and democracy began as antagonists. From Aristotle to Cicero, Machiavelli, Madison, and Kant, many authors viewed the republic – where mandated officials pursue the common good in a controlled way – as the most legitimate form of government, expressing scepticism towards democracy as the rule of the masses. This understanding of the republic was widespread in Europe from the early modern period onwards and might even constitute a common constitutional tradition.[12] Only in the 19th century did democracy begin to gain legitimacy, primarily as a demand for a more egalitarian society.

The 20th century witnessed a fusion of democratic and republican constitutional thinking that had a deep impact on both concepts. The fusion was spearheaded by the constitutional law of the French Third Republic and the Weimar Republic. On that basis, Constantino Mortati, an architect of Italy's republican constitution of 1947, defined Italian republicanism as a combination of democracy and fundamental rights under a rigid and power-sharing

8 Richard Abel, 'The Fate of Liberal Democracy Under Donald Trump', VRÜ 55 (2022), 505-527.

9 Rainer Forst, *Die noumenale Republik. Kritischer Konstruktivismus nach Kant* (Suhrkamp 2021); James Bohman, 'Is Hegel a Republican? Pippin, Recognition, and Domination in the Philosophy of Right', Inquiry: An Interdisciplinary Journal of Philosophy 53 (2010), 435-449.

10 Philip Pettit, *Republicanism. A Theory of Freedom and Government* (Clarendon 1997); Quentin Skinner, 'On the Slogans of Republican Political Theory', European Journal of Political Theory 9 (2010), 95-102.

11 Max Weber, 'Die Objektivität sozialwissenschaftlicher und sozialpolitischer Erkenntnis' in: *Gesammelte Aufsätze zur Wissenschaftslehre* (Mohr Siebeck 1922), 146-214 (208 f.).

12 See Martin van Gelderen and Quentin Skinner (eds), *Republicanism. A Shared European Heritage* (2 volumes, Cambridge University Press 2002).

 DOI 10.17104/0044-2348-2026-1-379

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

constitution.[13] United States (US) constitutional developments set this fusion as the global standard, combining the administrative state of the New Deal with the democratic inclusion of the civil rights revolution.[14] Along that path, many constitutional systems merged their understanding of republicanism with that of constitutional democracy.

From the 1980s onward, a strand of republicanism developed that saw democratic practices as too technocratic and lethargic, or too juridical, and advocated for greater citizen involvement. In 1982, Claude Nicolet published a monograph that is credited with the renaissance of republicanism in the French presidential Fifth Republic.[15] Subsequently, a new republicanism emerged in the United States against the intellectual climate of the Reagan era,[16] in Germany against that of Kohl's chancellorship, and in Italy against that of Berlusconi's so-called 2nd Republic[17]. After the fall of socialism, Central and Eastern Europe witnessed similar republican aspirations, seeking more than just the adoption of Western European political practices.[18] Such thought informs important authors who have problematised the democratic credentials of European integration.[19]

Against this background, I put forward a concept of republicanism that fits the EU Treaties, and in particular their constitutional core, and thus sits in harmony with European constitutionalism. This excludes the republicanism currently advocated by the US Republican Party, which seeks to dismantle

---

13 Costantino Mortati, 'Concetto, limiti, procedimento della revisione costituzionale' in: Istituto di diritto pubblico e di dottrina dello Stato della Facoltà di scienze politiche dell'Università di Roma (ed.), *Studi di diritto costituzionale in memoria di Luigi Rossi* (Giuffré 1952), now in Costantino Mortati, *Raccolta di scritti – Vol. II: Scritti sulle fonti del diritto e sull'interpretazione* (Giuffré 1972), 5-41, esp. 20-34.

14 See Bruce Ackerman, *We the People. Volume 3: The Civil Rights Revolution* (Harvard University Press 2014); Bruce Ackerman, *The Decline and Fall of the American Republic* (Harvard University Press 2010).

15 Claude Nicolet, *L'idée républicaine en France, 1789-1924: Essai d'histoire critique (1982)* (Gallimard 1994). The book describes its reception in the 1994 edition, 509 ff.

16 See the contributions by Frank Michelman, Cass Sunstein, Kathryn Abrams, Derrick Bell, Preeta Bansal, Paul Brest, Richard Epstein, Michael A. Fitts, Linda K. Kerber, Jonathan Macey, Jerry Mashaw, H. Jefferson Powell and Kathleen Sullivan in the Special Issue of perhaps the most influential law journal, the Yale Law Journal, 'Symposium: The Republican Civic Tradition', Yale L. J. 97 (1988).

17 Günter Frankenberg, *Die Verfassung der Republik. Autorität und Solidarität in der Zivilgesellschaft* (Nomos 1996); Maurizio Viroli, *Repubblicanesimo* (Laterza 1999).

18 Paul Blokker, 'Dissidence, Republicanism, and Democratic Change', East European Politics and Societies 25 (2011), 219-243.

19 See Dieter Grimm, 'Constitutionalisation Without Constitution. A Democracy Problem' in: Nicholas W. Barber, Maria Cahill and Richard Ekins (eds), *The Rise and Fall of the European Constitution* (Hart 2019), 23-40; Alexander Somek, 'What is Political Union?', GLJ 14 (2013), 561-580; Mark Dawson and Floris de Witte, 'From Balance to Conflict. A New Constitution for the EU', ELJ 22 (2016), 204-224.

DOI 10.17104/0044-2348-2026-1-379

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

the democratic administrative state as established by the New Deal and to roll back the democratic inclusion achieved through the civil rights movement.[20] Several scholars argue that these policies also violate American republicanism.[21]

A concept of republicanism tailored for European legal scholarship must lie in the field of European democratic constitutionalism. It must then allow us to make useful distinctions in this field in order to advance its debates. I distinguish European republican constitutional thinking from other relevant positions on European constitutional law with reference to three characteristics: firstly, an orientation towards European citizenship; secondly, public authority must be limited and mandated; and thirdly an ambitious understanding of the common good. All three elements are present in *70 Years of EU Law*.

The first characteristic, the civic focus, understands the Union as a common affair of free and equal citizens, united in a common public cause. As its subtitle indicates, citizenship is the key term in *70 Years of EU Law.* Republicanism is useful to situate the book, but also to critique it. Seen from the perspective of republicanism, the book presents a reductive understanding of European citizenship; the dedicated chapter only focuses on children and homosexual persons. Here, as elsewhere in the book, the citizens' participation in political processes is largely missing.[22] To put it bluntly: much of what the book presents on citizenship would also fit in a book with the subtitle 'A Union for Its Subjects', or 'Une Union pour ses Administrés'.[23] A republican lens substantiates what other contributions have critiqued as too much

20 Philip Hamburger, *Is Administrative Law Unlawful?* (University of Chicago Press 2014); Adrian Vermeule, *Common Good Constitutionalism* (Polity 2022).

21 In this sense even a speechwriter of George W. Bush, David Frum, *Trumpocracy: The Corruption of the American Republic* (Harper Collins 2018).

22 Jonathan Tomkin and Elisabetta Montaguti, 'EU Citizenship: In the Service of EU Citizens' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (Publication Office of the European Union 2022), 92-110. For a similar criticism of this Chapter, see Johan Meeusen, 'Nothing More Than a Rights Catalogue Serving EU Citizens' Private Interests? Three Insights for an Alternative Assessment of EU Citizenship', HJIL 86 (2026), 261-297. The second edition added some pages on the 'Jean Monnet actions' in the broader context of the Erasmus+ programme: Themis Christophidou, 'The Jean Monnet Actions: Promoting Excellence in European Studies since 1989' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn, Publications Office of the European Union 2023), 11-14. This is relevant because of the underlying assumption: '[l]earning about the objectives and the functioning of the European Union is an important part of promoting active citizenship and the common values of freedom, tolerance and non-discrimination'. This is a welcome addition, but still does not fully capture the tenets of solidarity and political participation.

23 On this key concept of French public law Camille Morio, *L'administré: essai sur une légende du droit administratif* (LGDJ 2021).

 DOI 10.17104/0044-2348-2026-1-379

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

reliance on output legitimacy. Only the last chapter gives political participation a greater role, and even there, civic participation in EU affairs remains on the fringes. Similarly, the dimension of republican solidarity remains underexplored.

Nevertheless, a republican lens makes sense. First, it takes seriously the choice of the title: no other constitutional approach gives citizenship similar importance. Second, it helps in developing the republican approach to EU law, in turn sharpening EU federalism. Third, it stresses useful distinctions in the field of EU constitutional law. The focus on European citizenship distinguishes *70 Years of EU Law* from market-centred and member state-centred understandings of the European Union, which see, at best, a subordinate role for European citizenship or, at worst, no role at all.[24] The civic focus also distinguishes European republicanism from understandings that reduce the Union to a means against national policies that negatively impact other Member States.[25] That is a far cry from regulating the common interests of equal and free citizens, which is the essence of republicanism and the topic of most chapters in *70 Years of EU Law*. This civic focus also distinguishes European republicanism from understandings focused on the Union's mobile population.[26] A republican Europe is not just for people who take planes.[27]

The second characteristic is an institutional system of controlled government with limited and mandated authority. Republicanism once opted for mixed constitution, while modern approaches have developed this into a separation of powers with effective checks and balances.[28] Accordingly, *70 Years of EU Law* dedicates an entire part, indeed its first part, to this republican concern. Democracy, the rule of law, the protection of fundamental rights, and the separation of powers are interdependent in this under-

24 See Paul Kirchhof, 'The European Union of States' in: Armin von Bogdandy and Jürgen Bast (eds), *Principles of European Constitutional Law* (Hart/C. H. Beck 2011), 735-761 (736 f., 739 f.); Joseph H. H. Weiler, 'The Crumbling of European Democracy' in: Mark A. Graber, Sanford Levinson and Mark Tushnet (eds), *Constitutional Democracy in Crisis?* (Oxford University Press 2018), 629-638.

25 Thus the conflict of laws-approach of Christian Joerges, *Conflict and Transformation: Essays on European Law and Policy* (Hart 2022), 399 ff. For discussion, see the 'Symposium on Law, Conflict and Transformation – The Work of Christian Joerges', European Law Open 4 (2025), 1-155, with contributions by Anna Beckers, Vladimir Bogoeski, Christian Joerges, Turkuler Isiksel, Anna Peychev, Sabine Frerichs, Steven Klein, Gunther Teubner, Poul F. Kjaer, Maria Weimer, Agustín J. Menéndez, and Harm Schepel.

26 See Rainer Bauböck, 'Why European Citizenship? Normative Approaches to Supranational Union', Theoretical Inquiries in Law 8 (2007), 453-488.

27 Enrico Letta, 'Much More Than a Market – Speed, Security, Solidarity', Report to the European Council 2024, 62.

28 Maissen (n. 7).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

standing.[29] The third element is an understanding of the common good that demands more than just satisfying needs and balancing interests, more than just a functioning market economy, and more than just civil rights.

These characteristics deepen the difference between European republicanism and alternative approaches to the European Union. Its civic understanding of the common good deepens its distinction from member state-centred understandings, which primarily interpret the European common good through the alignment of state interests. This characteristic also deepens the distinction from market-liberal approaches that read the Union through the lens of a common market.[30] A republican understanding demands more than just a market that provides for material prosperity. It also opposes liberal interpretations of human rights as pre-political and instead sees them as conditions for democratic processes. Above all, these characteristics position European republicanism against populist governments that undermine the separation of powers and checks and balances, citing their electoral mandate.[31] Among all these approaches, republicanism fits *70 Years of EU Law* best.

2. The Common Good as Solidarity

The emphasis on citizenship, limited and mandated government and the common good are deeply rooted in the republican tradition.[32] Solidarity's roots are less deep and mainly hail from French republicanism.[33] I see solidarity as particularly useful in our current European context to further substantiate the republican common good.

---

29 On this interdependence, Armin von Bogdandy, *The Emergence of European Society Through Public Law: A Hegelian and Anti-Schmittian Approach* (Oxford University Press 2024), 90-93.

30 Ernst-Joachim Mestmäcker, 'Zur Wirtschaftsverfassung in der Europäischen Union' in: Rolf H. Hasse, Josef Molsberger and Christian Watrin (eds), *Ordnung in Freiheit. Festgabe für Hans Willgerodt zum 70. Geburtstag* (Gustav Fischer Verlag 1994), 263-292. Considered as a possible scenario in European Commission, 'White Paper on the Future of Europe. Reflections and Scenarios for the EU27 by 2025', 1 March 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A2025%3AFIN>, last access 17 February 2026, Scenario 2.

31 See European Parliament Resolution of 17 May 2017 on the situation in Hungary, 2017/2656(RSP), OJ EU 2018 C 307/75; Gábor Halmai, 'Illiberal Constitutionalism? The Hungarian Constitution in a European Perspective' in: Stefan Kadelbach (ed.), *Verfassungskrisen in der Europäischen Union* (Nomos 2018), 85-104.

32 See references in (n. 7) to (n. 19).

33 The authority is Nicolet (n. 15); see also Serge Audier, *La pensée solidariste. Aux sources du modèle social républicain* (Presses Universitaires de France 2010); Pierre Crétois and Stéphanie Roza (eds), *Le Républicanisme social: une exception française?* (Éditions de la Sorbonne 2014).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Modern solidarity was first theorised by Émile Durkheim. He introduced organic solidarity as the linchpin of societies based on the division of labour. Léon Duguit and George Scelle were pioneers in translating this idea into legal scholarship.[34] Like many of our key concepts – such as legitimacy, trust, identity, and integration – solidarity has two dimensions.

First, as an analytical term, it explains social cohesion. This is illustrated by the text that launched European integration and which *70 Years of EU Law* duly quotes. On 9 May 1950, Robert Schuman declared that Europe would emerge 'through concrete political achievements (*réalisations*) that first create a de facto solidarity (*solidarité de fait*)'. According to Schuman, the communitarisation of the coal and steel industries would lead to economic interdependence, and this interdependence (division of labour) would then create solidarity *de facto*. This solidarity is based first and foremost on the recognition of social interdependence, not on a moral stance. It is not a matter of altruism or any other kind of do-gooderism.

At the same time, this concept has normative relevance insofar as it justifies demands to protect or strengthen solidarity as the key social mechanism. This includes obedience to the law[35] as well as redistribution to ensure social cohesion (and thus the proper functioning) of societies based on the division of labour. Politically, this dimension was first articulated by French radicalism,[36] which was mainstreamed in Europe after World War II.[37]

This concept of solidarity holds much promise. First, it is rooted in Schuman's declaration (and thus the deep origins of European integration). Second, it strengthens the distinctiveness of republicanism in European society with regard to redistribution and social cohesion, perhaps its two most critical issues.

Consider the demands of nationalist forces termed as 'welfare chauvinism', often associated with deep Euroscepticism.[38] Such demands have become a broad trend by which parties on the right moved away from their previous rejection of the welfare state towards a position that accepts it, but excludes

34 Hugo Canihac, 'Du solidarisme aux Communautés européennes. Le concept de solidarité dans la pensée de George Scelle', Revue Française d'Histoire des Idées Politiques 51 (2020), 195-230.

35 For a long time the most important dimension of solidarity in EU law, Roland Bieber, 'Zur Entwicklung des Rechtsbegriffs der Solidarität in der Europäischen Union: Anmerkungen zur jüngsten Rechtsprechung', Schweizerisches Jahrbuch für Europarecht (2020), 591-606.

36 Margaret Kohn, 'Radical Republicanism and Solidarity', European Journal of Political Theory 21 (2022), 25-46.

37 This is the key in Tony Judt, *Postwar Europe* (Penguin 2005).

38 Early on Jørgen Goul Andersen and Tor Bjørklund, 'Structural Changes and New Cleavages: the Progress Parties in Denmark and Norway', Acta Sociologica 33 (1990), 195-217.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

foreigners. That is incompatible with European solidarity as advocated by European republicanism.[39]

Furthermore, since 2009, the Union has been distributing considerable financial resources. This has triggered opposition even in the pro-integration field, so solidarity has become a salient issue. It is significant that the Court of Justice of the European Union (CJEU) has referred to the solidarity of Art. 2 of the Treaty on European Union (TEU) in two of its (perhaps) most important decisions since *Van Gend en Loos*, which deal with both redistribution and the ultimate foundation of the Union.[40] These decisions brought the Union to a new level of constitutionalism (III. 3.). A solidaristic republicanism conceptualises this move.

This framing of European republicanism distinguishes it from the US constitutional thinking that dominates most theories of republicanism. The focus on solidarity is particularly appropriate for continental Europe, as the social question is fundamental to most European constitutions of the 20th century, unlike the US constitution (which is a point that holds even in the interpretation of progressive constitutional theories).[41] The latter are about rights, political participation, and fairness, but not about the social question as a constitutional issue. Solidarity is only mentioned in passing in Pettit's key work.[42] The Anglo-American political, social, and ideological contexts are different from those of continental Europe. Scholars should reflect on this.

III. Evidence

1. The Ventotene Manifesto

What is the evidence for European republicanism? The term as such appears only rarely, and certainly not in *70 Years of EU Law*. Only a few authors advocate for the idea of European republicanism. In Germany, political scientist

39 Markus Ketola and Johan Nordensvard, 'Reviewing the Relationship Between Social Policy and the Contemporary Populist Radical Right: Welfare Chauvinism, Welfare Nation State and Social Citizenship', Journal of International and Comparative Social Policy 34 (2018), 172-187.

40 The decisions are from the same day and are almost identical, ECJ, *Hungary v. Parliament and Council*, judgement of 16 February 2022, case no. C-156/21, ECLI:EU:C:2021:974, para. 129; ECJ, *Poland v. Parliament and Council*, judgment of 16 February 2022, case no. C-157/21, ECLI:EU:C:2022:98, para. 147.

41 Maurizio Fioravanti, *Costituzionalismo. La storia, le teorie, i testi* (Carocci 2018), 75-79; See only the articles in the relevant Special Issue of the Yale Law Journal (n. 16).

42 Philip Pettit, *On the People's Terms. A Republican Theory and Model of Democracy* (Cambridge University Press 2012) does assign importance to social justice, but only in the state context; see further Philip Pettit, *Just Freedom. A Moral Compass for a Complex World* (W. W. Norton 2014).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Ulrike Guérot promotes the revolutionary foundation of a European republic.[43] The economist Stefan Collignon and the political scientist Thilo Zimmermann conceive of a European republic that is founded on its economic integration and common goods.[44] Kostas A. Lavdas and Dimitris N. Chryssochoou conceptualise the Union as a *res publica composita*,[45] and Thorsten Thiel reconstructs it along the lines of Philip Pettit and Hannah Arendt.[46] In legal literature, Anna Kocharov's analysis of the politicised EU as Republican Europe has triggered a broad response,[47] Elias Deutscher has confirmed ordoliberal insights with Pettit, and Lieneke Slingenberg has analysed ECHR decisions with him.[48] Robert Schütze's European federalism is republican.[49] While there are contributions, they do not yet constitute a robust research field.

A broader examination produces much more, and broader, evidence. That examination starts with the Italian prison island of Ventotene. There, in 1941, leftist Altiero Spinelli and liberal Ernesto Rossi jointly drafted a manifesto for a post-fascist Europe that is federal and – an aspect that is often overlooked – republican.[50] This manifesto aligns with the Federalist Papers, Kant, and like-minded political forces that have intervened in European constitutional developments since 1848.[51]

---

43 Ulrike Guérot, *Warum Europa eine Republik werden muss! Eine politische Utopie* (Dietz 2016).

44 Stefan Collignon, *The European Republic* (The Federal Trust Foundation 2003); Thilo Zimmermann, *Europäischer Republikanismus. Ein kohärenter Erklärungsansatz für die wirtschaftliche und politische Integration in Europa?* (Springer Cham 2023), 139 ff.

45 Kostas A. Lavdas and Dimitris N. Chryssochoou, *Republican Europe in a Liberal Milieu* (NYU Law School 2009).

46 Thorsten Thiel, *Republikanismus und die Europäische Union. Eine Neubestimmung des Diskurses um die Legitimität europäischen Regierens* (Nomos 2012).

47 Anna Kocharov, *Republican Europe* (Bloomsbury Publishing 2017).

48 Elias Deutscher, 'The Competition-Democracy Nexus Unpacked – Competition Law, Republican Liberty and Democracy', YBEL 41 (2022), 197-251; Lieneke Slingenberg, 'The Right Not to Be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution', HRLR 19 (2019), 291-314.

49 Robert Schütze, Models of Demoicracy: Some Preliminary Thoughts (2022). EUI Working Paper LAW 2020/08, 36 ff., available at: https://hdl.handle.net/1814/67823; Robert Schütze, 'The Internal Market: A Constitutional Perspective' in: Robert Schütze and Takis Tridimas (eds), *Oxford Principles of European Union Law – Volume II: The Internal Market* (forthcoming; Oxford University Press 2026, manuscript on file with the author), Section VI. C.

50 Altiero Spinelli and Ernesto Rossi, 'Per un'Europa libera e unita. Progetto di un manifesto' in: Altiero Spinelli and Ernesto Rossi (eds), *Il Manifesto di Ventotene* (Guida 1982), 9-30 (22 ff.). On Spinelli's contribution, see Lucio Levi (ed.), *Altiero Spinelli and Federalism in Europe and in the World* (Angeli 1990).

51 Nadia Urbinati and Vikram Visana, 'Beyond the Polis' in: Eugenio Biagini and Gary Gerstle (eds), *A Cultural History of Democracy in the Modern Age* (Bloomsbury Academic 2022), 215-237 (224); Éva Bóka, *Engineering European Unity. The Quest for the Right Solution Across Centuries* (Central European University Press 2022), 96.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Many analyses of European integration consider this manifesto as a slightly quirky and ultimately unsuccessful initiative, as evidenced by the failure to establish a Union constitution, first via the failed Treaty of 1984 establishing the European Union and second in the form of the failed Constitutional Treaty of 2004.[52] Yet, the manifesto is linked to today's European constitutional core. This is true for European federalists, many of whom have a republican orientation.[53] It is a federalism that aims to unite republics in a common republic. Such federalism has inspired Italian socialist Giuliano Amato, French liberal Valéry Giscard d'Estaing, founder of the *Républicains indépendants* party, and Belgian Christian democrat Jean-Luc Dehaene, who drafted, as a member of the Presidium of the Constitutional Convention, Art. 2 TEU.[54]

This tradition underlies Amato's understanding of European integration as 'Constructing Utopia'[55] as well as Macron's Sorbonne speech from 2017.[56] The same applies to the demands of the Conference on the Future of Europe for more European solidarity, more European civic participation, and more European decision-making.[57] This last point is the key concern in *70 Years of EU Law*'s last chapter that seeks to make this possible without Treaty change. No wonder that the Commission's 2017 White Paper on the Future

52 Giandomenico Majone, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth* (Oxford University Press 2005), 32 f.; Cecilia Valente, Carola D'Alessandro and David Ramiro Troitiño, 'Altiero Spinelli: Federalism in the European Integration' in: David Ramiro Troitiño, Ricardo Martín de la Guardia and Guillermo A. Pérez Sánchez (eds), *The European Union and Its Political Leaders: Understanding the Integration Process* (Springer 2022), 141-158 (150 f.).

53 See only Koen Lenaerts and Stanislas Adam, 'La solidarité, valeur commune aux états membres et principe fédératif de l'Union européenne', C.D.E. 57 (2021), 307-417 (314 f.); Robert Schütze, *From Dual to Cooperative Federalism: The Changing Structure of European Law* (Oxford University Press 2009).

54 On the process Alain Pilette and Etienne de Poncis, 'Valeurs, objectifs et nature de l'Union' in: Giuliano Amato, Hervé Bribosia and Bruno de Witte (eds), *Genèse et destinée de la constitution européenne. Commentaire du Traité établissant une Constitution pour l'Europe à la lumière des travaux préparatoires et perspectives d'avenir* (Bruylant 2007), 287-310 (299 f.); Clemens Ladenburger and Pierre Rabourdin, 'La constitutionnalisation des valeurs de l'Union. Commentaires sur la genèse des articles 2 et 7 du traité sur l'Union européenne', Revue de l'Union européenne 657 (2022), 231-239 (239).

55 Giuliano Amato, Enzo Moavero-Milanesi, Gianfranco Pasquino and Lucrezia Reichlin, 'Introduction' in: Giuliano Amato, Enzo Moavero Milanesi, Gianfranco Pasquino and Lucrezia Reichlin (eds), *The History of the European Union. Constructing Utopia* (Hart 2019), 1-3.

56 Emmanuel Macron, 'Initiative pour l'Europe – Discours pour une Europe souveraine, unie, démocratique', 26 September 2017.

57 Conference on the Future of Europe, 'Report on the Final Outcome', May 2022, <https://futureu.europa.eu/de/pages/reporting?locale=de>, last access 17 February 2026; 'Editorial Comments: From Conference to Convention? Ideas and Prospects for Reform of the EU Treaties', CML Rev. 59 (2022), 1583-1596.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

of Europe even posits the republican 'Ventotene Manifesto' as the pivotal source for the EU's path and future.[58]

Republican federalists are an important force in European society, but they are not domineering. Even among European socialists, liberals, and Christian democrats, many think in a Member State-centred way. Nevertheless, republican ideas have traction beyond European federalists. Consider the celebrations for the Constitutional Treaty on 29 October 2004. After signing, the signatories gathered for the group photo that was to bear witness of the new foundation. Emblazoned above their heads was the formula 'Europaeae rei publicae status'. It allows for various translations, such as 'The state of the European state'. But the more obvious one is: 'The constitution of the European Republic'.[59]

The Constitutional Treaty failed in 2005, but not its republican project. The Lisbon Treaty of 2007 incorporated much of the Constitutional Treaty. This is particularly true in respect of Art. 2 TEU. This incorporation reflects a democratically important point that is often neglected: the Constitutional Treaty met with great approval in European society. When the Member States halted the ratification process because of the French and Dutch 'no' votes, this was done against the Austrian, Belgian, Cypriot, Estonian, Greek, Hungarian, Italian, Latvian, Lithuanian, Luxembourg, Maltese, Romanian, Slovakian, Slovenian and Spanish 'yes' votes. While Germany had not yet ratified pending the Federal Constitutional Court's Lisbon decision, its legislator had already voted in favour of ratification. In this respect, it cannot be claimed that 'the Europeans' rejected the Constitutional Treaty outright. On the contrary: the vast majority were in favour. The incorporation of what I consider the republican manifesto of the Constitutional Treaty into the Treaty of Lisbon is legitimate.

2. Art. 2 TEU as a Republican Manifesto

What legal evidence is there that republicanism informs the evolution of EU law? I start with a comparison of Art. 2 of 1958 with Art. 2 of 2009. In 1958, integration aimed at the establishment of a common market, the progressive approximation of national economic policies, the promotion of a

58 European Commission (n. 30), 6.

59 <https://www.europarl.europa.eu/about-parliament/de/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe>, last access 21 January 2026. On the concept of republic at that time: Florence Chaltiel, 'Une Constitution pour l'Europe. An I de la République Européenne', R. M. C. 471 (2003), 493-502.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - CC BY-SA

harmonious development of economic activities, continuous and balanced expansion, increased stability, an accelerated raising of the standard of living, and closer relations between the Member States (Art. 2 of the Treaty establishing the European Economic Community [EEC Treaty]). There is not a word of this in Art. 2 TEU in its Lisbon version of 2009, which speaks of pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men, human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities.

The comparison reveals a categorical change over time. Even a sceptic will admit that these twelve principles can serve as a republican manifesto and that their positivisation, operationalisation, and institutionalisation can prove the relevance of republican thought. This is all the more important as integration could have also led to executive federalism through a regulatory agency far removed from citizens and democratic processes.[60] Today, the Union operates under constitutional principles that, while not exclusive, are key to the republican tradition. What Art. 2 EEC Treaty was about continues to be relevant (Art. 3 para. 3 TEU), but in serving the European constitutional project.

A comparison of Art. 2 TEU with its predecessor in the Amsterdam Treaty of 1997 confirms the republican thrust. The predecessor was more influenced by Anglo-American liberalism: it spoke of liberty instead of freedom and was silent on solidarity. If one places understandings of fundamental rights between liberalism (a negative and individualistic understanding focused on liberty) and republicanism (a positive and intersubjective understanding focused on freedom), the Union's fundamental rights today, after 50 years of development, can be located in the latter field.[61]

It reinforces the republican interpretation of the Treaties that Art. 2 TEU postulates a European society. This is the second major innovation of Art. 2 TEU,[62] one that *70 Years of EU Law* is shy to use.[63] Yet, European society is

60 Hans Peter Ipsen, *Europäisches Gemeinschaftsrecht* (Mohr 1972); such thought is still present, see Peter L. Lindseth, *Power and Legitimacy. Reconciling Europe and the Nation-State* (Oxford University Press 2010).

61 See the overview in Mark Dawson, *The Governance of EU Fundamental Rights* (Cambridge University Press 2017).

62 For more detail Armin von Bogdandy, On Meaning and Promise of European Society (November 25, 2024). MPIL Research Paper No. 2024 – 30, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032634.

63 There is only one specific reference, Isabel Galino Martín, Gaetane Goddin, Bernd-Roland Killmann, Denis Martin, Barbara Rous, Napoléon Ruiz García, Anna Szmytkowska, Freya van Schalk and Hubert van Vliet, 'From Economic Community to a Union for Its Citizens' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (Publications Office of the European Union 2022), 129-152 (152). However, many uses of 'society' in *70 Years of EU Law* can be understood as referring to European society.

 DOI 10.17104/0044-2348-2026-1-379

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

implicit throughout the book: if EU citizens form something, that something is not a European people or a European nation, but a European society, as posited by Art. 2 TEU.[64] In 2024, the Legal Service gave the concept a key role, positing that Hungary's anti-LGBTIQ law 'is a frontal and deep attack against […] European society'.[65]

Society is a 'collective singular', as are state, people, *demos* or nation,[66] and it is key in the republican tradition. One of the most important documents of European constitutionalism, Art. 16 of the Declaration of the Rights of Man and of the Citizen of 1789, uses society in a way that became key for republican government: 'Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.' In this tradition, the Ventotene Manifesto aims for a *riforma della società*,[67] which can only point to a reform of European society.

What was a political projection in 1941 is now constitutionally enshrined. Art. 2 TEU states that there is a European society, one that is characterised by twelve constitutional principles that all square with the republican tradition.[68] This European society is far more than the European civil society referred to in Art. 11 para. 2 TEU. The idea of civil society is 'private commitment to the public good'. The term 'society' used in Art. 2 TEU is much broader as it refers to a social totality whose political institutions are those of the European Union and all Member States.

The society in Art. 2 TEU reinforces its interpretation as a republican manifesto as it stresses republican equality. It suggests a meaning of Union interest which goes beyond the aggregate of national interests (Art. 17 para. 1 sentence 1 TEU). The term also suggests that most of today's challenges are no longer specific to the Member States, but affect citizens of different Member States as members of one society. For example, the conflict over the democratic rule of law is not only a conflict with some Eastern Member States, but also a conflict between different political and

64 Of course, Art. 2 TEU's concept of European society not only includes citizens, but also resident foreign nationals. Given the EU Treaty's commitments to universalism and global constitutionalism (Art. 3 para. 5 TEU, Art. 21 TEU), its republicanism cannot follow the exclusionary logic of the early Roman republic.

65 ECJ, *Commission v. Hungary*, opinion of advocate general of 5 June 2025, case no. C-769/22, ECLI:EU:C:2025:408; Lena Kaiser, Andreas Knecht and Luke Dimitrios Spieker, 'European Society Strikes Back', Verfassungsblog, 26 November 2024, doi: 10.59704/00f6c17a50fc172c.

66 Albrecht Koschorke, *Hegel und wir* (Suhrkamp 2015), 82-92.

67 Spinelli and Rossi (n. 50), 38 ff.

68 Advocate General Capeta sums this up as the constitutional mandate for a 'good society', ECJ, *Commission v. Hungary* (n. 65), para. 157.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

ideological camps that are present in almost all Member States. A coding of the conflicts that focuses only on the Member States overlooks Union citizens.

European citizenship, one key to European republicanism, has been a legal concept since 1992.[69] Initially, this citizenship met with scepticism.[70] Soon, however, it developed legal and social effects: today, 75 % of Union citizens are aware of this status and treasure it.[71] Along those lines, *70 Years of EU Law* uses a concept quintessential to the evolution of EU law over the last 70 years. Not all approaches to EU law and not even all strands of European constitutionalism attribute such importance to EU citizenship, so one might doubt the Legal Service's choice to put it front and centre. I see it as legal and legitimate, because Art. 2 TEU informs the mandate of the institutions and hence the Commission's Legal Service (Art. 1 para. 2 TEU and Art. 3 para. 1 TEU).[72]

3. Operationalisation of the Manifesto

Initially, only a few lawyers recognised the legal significance of the European republican manifesto, i. e. of Art. 2 TEU. This perception shifted when what the French (Art. 89), Italian (Art. 139 CI), and US (Art. IV Section 4) constitutions protect as the republican form of government began to waver. Given the European Council's incapacity to rise to the challenge, the CJEU mobilised the republican manifesto, much supported by the Commission's pleadings. It is little wonder that *70 Years of EU Law* Part 1 summarises this case law as quintessential for the 70 years of EU law.

From 2018 onwards, the CJEU issued decisions with transformative impact that its President compared to that of its landmark cases *Van Gend en Loos*

69 First published in European Parliament, Resolution on the draft Treaty establishing the European Union, OJ C 77, 19 March 1984, 33. On Spinelli's role Sergio Pistone, 'Altiero Spinelli and the Strategy for the United States of Europe' in: Lucio Levi (ed.), *Altiero Spinelli and Federalism in Europe and in the World* (Angeli 1990), 133-140.

70 See Joseph H. H. Weiler, 'Citizenship and Human Rights' in: Jan A. Winter, Deirdre M. Curtin, Alfred E. Kellerman and Bruno de Witte (eds), *Reforming the Treaty on European Union. The Legal Debate* (Kluwer 1996), 57-86 (65).

71 European Commission, Standard Eurobarometer 103 – Spring 2025: European Citizenship, Survey of March-April 2025, 26-28.

72 On Art. 3 para. 1 TEU, Ferdinand Weber, 'Die Daseinsberechtigung der Union – Artikel 3 Absatz 1 EUV' in: Jürgen Bast and Armin von Bogdandy (eds), *Unionsverfassungsrecht. Eine Neubestimmung anhand der Grundlagen in Artikel 1 bis 19 EU-Vertrag* (Nomos 2024), 179-235.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

and *Costa v. ENEL*:[73] *ASJP*,[74] *LM*,[75] *Commission v. Poland*[76]. The Court's plenary stated that the values of Art. 2 TEU 'define the very identity of the European Union as a common legal order'.[77] The Union values thus assume a position comparable to the constitutional identity of Member States. Importantly, they define not only the European Union but ultimately every legal relationship in European society. With this case law, European constitutionalism evolved from a functional (effet-utile) constitutionalism, oriented towards the effectiveness of Union law, to a genuine, a principled constitutionalism.[78] The European Council and the Union legislator have confirmed this case law.[79] All Union institutions and many Member States now make use of the principles of Art. 2 TEU. This is relevant under constitutional law: the political organs are also competent to interpret constitutional law and shape its understanding.

What speaks in favour of interpreting this development as a republican one? In terms of comparative law, it is an application of what the French, Italian, and US constitutions understand as a defence of the republican form of government. The emphasis on the separation of powers is a particularly republican objection to those who refer to their electoral mandate as supreme. The role that the European Court of Justice (ECJ) assigns to the principle of solidarity (Art. 2 sentence 2 TEU) confirms a republican reading. It holds that the Union budget is one of the most important instruments with which 'the principle of solidarity referred to in Art. 2 TEU, which is itself one of the fundamental principles of Union law, can be given concrete form'.[80] Koen Lenaerts and Stanislas Adam have pushed forward this understanding of solidarity.[81] The European legislator justifies many legislative and

---

73 Koen Lenaerts, 'Upholding the Rule of Law Through Judicial Dialogue', Speech at King's College London, 21 March 2019, <https://youtu.be/qBOeopzvPBY?si=USv8JBlgV-7zks9Y&t=1163> [min: 19:23], last access 21 January 2026.

74 ECJ, *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, judgement of 27 February 2018, case no. C-64/16, ECLI:EU:C:2018:117, paras 30, 32, 35.

75 ECJ, *LM*, judgement of 25 July 2018, case no. C-216/18 PPU, ECLI:EU:C:2018:586, paras 35, 48, 50.

76 ECJ, *Commission v. Poland*, judgement of 24 June 2019, case no. C-619/18, ECLI:EU:C:2019:531, paras 42, 47, 58.

77 ECJ, *Hungary v. Parliament and Council* (n. 40), paras 127, 232.

78 Jürgen Bast and Armin von Bogdandy, 'The Constitutional Core of the Union: On the CJEU's New Constitutionalism', CML Rev. 61 (2024), 1471-1500.

79 Regulation 2020/2092/EU of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I. Recitals 3 and 5 expressly refer to the case law.

80 ECJ, *Hungary v. Parliament and Council* (n. 40), para. 129; *Poland v. Parliament and Council* (n. 40).

81 Lenaerts and Adam (n. 53), 314 f.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

budgetary measures as an expression of European solidarity, a European solidarity that probably surprised everyone in 2020: the response to the pandemic exemplifies European solidarity, not only because of the sums involved, but also because of the easing of conditionality.[82] The European legislator is now relying on the solidarity clause of Art. 122 Treaty on the Functioning of the European Union (TFEU) to introduce the Support to mitigate Unemployment Risks in an Emergency (SURE) and Next Generation EU programmes.[83] In doing so, it is transforming a set of rules that initially aimed to set limits on national budgets into a macroeconomic constitution under which the Union organises joint expenditure and redistribution. Given all these developments, it is surprising that *70 Years of EU Law* pays little attention to solidarity.

European solidarity is important in many other areas of EU law. There is 'financial solidarity between the nationals of the host Member State and those of the other Member States'.[84] The case law on the general prohibition of discrimination, on Union citizenship, and on the free movement of workers fits a republican scheme: the aim is always to ensure equal freedom, including between private individuals. European solidarity justifies interventions in private autonomy and the market economy, which aligns more with republican than liberal understandings. The Court's statement that EU citizenship is 'one of the principal concrete expressions of the solidarity which forms the very basis of the process of integration […] and which is an integral part of the identity of the European Union as a specific legal system'[85] provides another boost to a republican reading as the Court decided against a transactional, market-liberal understanding of citizenship. European republicanism helps us to understand this idea of European citizenship better than its contenders.

---

82 Michael Ioannidis, 'Between Responsibility and Solidarity. COVID-19 and the Future of the European Economic Order', HJIL 80 (2020), 773-783.

83 Council Regulation 2020/672/EU of 19 May 2020 establishing a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE), OJ L 159; Council Regulation 2020/2094/EU of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, OJ L 433I.

84 ECJ, *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, judgement of 20 September 2001, case no. C-184/99, ECLI:EU:C:2001:458, para. 44. The development of this principle is not straightforward, See in particular ECJ, *Elisabeta Dano and Florin Dano v. Jobcenter Leipzig*, judgement of 11 November 2014, case no. C-333/13, ECLI:EU:C:2014:2358.

85 ECJ, *Commission v. Malta*, judgement of 29 April 2025, case no. C-181/23, ECLI:EU:C:2025:283, para. 93. See in detail Luke Dimitrios Spieker and Ferdinand Weber, 'Bonds Without Belonging? The *Genuine Link* in International, Union, and Nationality Llaw', YBEL 43 (2024), 56-94.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

The tenets of Art. 2 TEU have become the dynamic focus of countless legal, political, and everyday discourses. In 2022, the novelist Robert Menasse published his novel 'Die Erweiterung' (The Enlargement), which makes this republican manifesto its key point.[86] The European Central Bank is considering printing the values of Art. 2 TEU on the next generation of banknotes.[87] To add to this, there is a geopolitical dimension.

The dominant European discourse presents Russian aggression as a threat to 'our values' – that is, the values enshrined in Art. 2 TEU. On this point, politicians as diverse as Annalena Baerbock, Ursula von der Leyen, and Giorgia Meloni agree. 'Our values' serve to justify confronting an aggressive nuclear power, providing Ukraine with billions of euros in support, and welcoming millions of refugees. These are existential issues, so it is relevant that this political stance enjoys much support.[88] Since 2025, the Second Trump administration has turbocharged all this.

The regular criticism of Brussels' output as representing the lowest common denominator is yet more proof of how deeply European republicanism is embedded in European discourse. A republican understanding of the common good, unlike a transactional one, requires more than just the reconciliation of different interests. Republicanism gives true meaning to the Treaty when it states that there is a 'general interest of the Union', Art. 17 para. 1 TEU, i. e. it is this interest that defines the Commission's and hence its Legal Service's mandate.

To appreciate the recent dynamics of the republican manifesto, it is helpful to compare it with the White Paper on the Future of Europe, published by the Juncker Commission in 2017.[89] It responded to the euro crisis, the migration crisis, the Brexit referendum, the first election of Donald Trump, and predictions that EU-sceptical parties would gain strength in the next European Parliament. The Commission sketched five scenarios for 2025. The first scenario was: 'Carrying on', i. e., further muddling through without any qualitative leaps. The second scenario, 'Nothing but the single market', projected a retreat, the third scenario 'Those who want more do more', differentiated integration in response to growing heterogeneity. The fourth scenario, 'Doing less more efficiently', aims at focusing on and strengthening agencies with executive powers. Finally, the fifth scenario is about 'Doing much more together', which, I contend, involves 'republican deepening'.

86 Robert Menasse, *Die Erweiterung* (Suhrkamp 2022).

87 See <https://www.ecb.europa.eu/pub/pdf/other/ecb.tagreportbanknotes2023~67a9b1739c.en.pdf>, last access 23 February 2026.

88 European Commission, Standard Eurobarometer 103, Spring 2025, First Results: Public Opinion in the European Union, Survey of May 2025, 11, 33.

89 European Commission (n. 30).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Though the Commission pretends to be agnostic about the five scenarios, the paper's structure (such as placing the scenario 'Doing much more together' as the final one), its framing (such as the role of the Ventotene Manifesto), and many arguments (such as the European 'we') reveal the Commission's thrust that also guides the final chapter of *70 Years of EU Law.*

The juxtaposition of *70 Years of EU Law* and, more generally, the Union in 2025 with the 2017 White Paper illuminates how much the operationalisation of the republican manifesto has solidified European society and the Union's republican thrust. Take the values. The White Paper's sparse and somewhat vacuous references to these values stand in stark contrast to the burgeoning EU constitutionalism that emerged shortly thereafter. The entire first part of *70 Years of EU Law* is dedicated to the values. This is not an isolated phenomenon, but resonates with the developments previously outlined. When viewed through the lens of the White Paper's scenarios, the Union of 2025 aligns closely with the fifth scenario, indeed transcending many of the anticipations set in 2017.

This evolution develops and even shifts the Union's trajectory beyond mere policy adjustments. It transforms the Union's constitutional ethos as the principles of the republican manifesto have moved from the periphery to the core. This reshapes European integration and the Union's role on the global stage. The operationalisation of the republican manifesto marks the Union's history.

4. The Institutional Development

Many provisions of the Treaties develop the republican manifesto, including those on the institutions. This assertion might be surprising as republican authors often require parliament to play the leading role, which is not the case in the European Union. Yet again, my argument is not that the European Union is a model republic. I only claim that republicanism provides a key to interpret its path.

In the early period, integration seemed to be moving towards a regulatory agency deliberately removed from citizens and democratic processes.[90] Today's provisions on the EU institutions are far more responsive to republican thought. The Treaties prescribe that EU institutions govern the common affairs of equal and free citizens (Art. 9 TEU) through a power-sharing setup, including a power-sharing federal structure (Art. 1 para. 1, Art. 4 f. TEU). The Treaties establish a democratic (Art. 2 TEU) and representative (Art. 10

90 Ipsen (n. 60) and Lindseth (n. 60).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

para. 1 TEU) institutional system that provides for government (Art. 15 TEU), legislation (Arts 14 and 16 TEU), administration (Art. 17 TEU), and justice (Art. 19 TEU).[91] All this must be 'as open and as close as possible to the citizens' (Art. 1 para. 2 TEU) as well as participatory and dialogical (Art. 11 TEU). These provisions fit republican thought and support the thesis that it informs the Union's path.

If we find evidence for republicanism in the texts of EU law, the question remains how the Union's institutional practice responds to that. Such responsiveness is a tall order, as is shown by the debate on the Union's democratic credentials. There is no agreement on how the institutions can be 'as open and as close as possible' to 450.000.000 citizens. *70 Years of EU Law* largely avoids this thorny issue.[92] This is a pity, but one cannot expect the Commission's Legal Service to make a statement on the other institutions' democratic credentials, nor on what its leadership should do.

Others make such statements. Some, following Jean-Jacques Rousseau, simply do not see any republican path for a diverse union of 450.000.000 citizens. While I understand their scepticism, giving up is not an option for legal scholarship that aims at substantiating democratic decisions. In that spirit, other republican authors militate for increasing the European Parliament's powers.[93] While I agree that European parliamentarism needs development, I think that there is a greater problem in the European Council.

For many decades, the European Council's role for the Union was reminiscent of the late Roman potentates who prompted Cicero to write his *de re publica*.[94] It was set up outside the Treaties and removed from all supranational accountability.[95] It has responded to republican concerns by turning into an EU institution. Yet, its accountability towards EU citizens remains weak, being mostly mediated through national elections and publics. Another

91 In detail Christoph Möllers, 'Demokratie und Gewaltenteilung. Art. 10-12, 13 EUV' in: Jürgen Bast and Armin von Bogdandy (eds), *Unionsverfassungsrecht. Eine Neubestimmung anhand der Grundlagen in Artikel 1 bis 19 EU-Vertrag* (Nomos 2024), 795-859.

92 The only treatment is in Calleja and Ladenburger (n. 2), at 388, proposing to 'giv[e] citizens' panels an opportunity to formulate recommendations before key legislative initiatives are proposed'. This follows in the footsteps of the Conference on the Future of Europe and the Lisbon Treaty's commitment to participatory democracy, which the book recapitulates at 378 f.

93 Thiel (n. 46); Dawson and de Witte (n. 19).

94 Malcolm Schofield, *Cicero* (Oxford University Press 2021), 7.

95 In detail, see Armin von Bogdandy and Giacomo Rugge, 'Der Europäische Rat – Regieren in der europäischen Gesellschaft' in: Jürgen Bast and Armin von Bogdandy (eds), *Unionsverfassungsrecht. Eine Neubestimmung anhand der Grundlagen in Artikel 1 bis 19 EU-Vertrag* (Nomos 2024), 935-986.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

problem is that the European Council supports Member State-centred understandings of the Union – this also fails European citizenship.[96]

These problems would contradict any argument that proposes the Union as a model republic. But again, this is not the argument here: I do not even present the Union as a republic. What I show is that republicanism (or republican constitutionalism) serves to illuminate the Union's overall evolution, and that it does so better than its main contenders: state-centred approaches and market-centred liberalism. It also provides a forward-looking lens for the Commission president's new role within the European Council and new forms of its operation.[97]

IV. Objections

Part III presented evidence for republicanism as a meaningful approach to EU law and politics. Nevertheless, this approach would prove to be weak if it contradicted core tenets of republicanism such as republican self-determination, republican virtue, and a republican forum. Engaging with these tenets serves to deepen the argument.

1. Republican Self-Determination

Res publica res populi. Few things are as important to republicanism as the authorisation of political power by those subject to it. Many republican approaches give this an idealistic twist. Kant, an important authority on republicanism, sees legitimate legislation ultimately as collective self-legislation.[98] Along these lines, many (though not all) republican theories articulate understandings of democracy that the Treaties do not fulfil.

96 Markus Jachtenfuchs and Mark Dawson, 'Autonomy Without Collapse? Towards a Better European Union' in: Markus Jachtenfuchs and Mark Dawson (eds), *Autonomy Without Collapse in a Better European Union* (Oxford University Press 2022), 3-20.

97 Franz C. Mayer, 'Die Europäische Union als Präsidialregime – aus polnischen Verfassungserfahrungen lernen?' in: Jakub Urbanik and Adam Bodnar (eds), *Περιμένοντας τους Βαρβάρους. Law in a Time of Constitutional Crisis: Studies Offered to Mirosław Wyrzykowski* (C. H. Beck 2021), 485-497; Jan-Herman Reestman and Leonard F. M. Besselink, 'Editorial: *Spitzenkandidaten* and the European Union's System of Government', Eu Const L. Rev. 15 (2019), 609-618 (610).

98 Immanuel Kant, 'Die Metaphysik der Sitten' in: Wilhelm Weischedel (ed.), *Werkausgabe Band VIII. Die Metaphysik der Sitten* (Suhrkamp 1977), 303-634 (§ 52). For a thoughtful critique of my approach, see Claudio Bartmann, 'Repräsentation statt Selbstbestimmung – Die Zukunft der unionalen Demokratie' in: Alexander Heger, Sascha Gourdet and Moritz Malkmus (eds), *Zur Zukunft der Demokratie in der Europäischen Union* (Baden-Baden 2023), 47-84.

 DOI 10.17104/0044-2348-2026-1-379

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Political self-determination does not square with the Treaties. The republican 'We the People' of the American constitution is on the minds of European policymakers, but it is not in the EU Treaty. Instead, it begins with His Majesty the King of the Belgians, followed by Her Majesty the Queen of Denmark. It is the 'High Contracting Parties' who establish the Union, not its citizens (Art. 1 para. 1 TEU). Neither the EU Treaties nor EU legislation postulate a European 'we', 'self' or people. Thus, some republican approaches, similar to communitarian and state-centred approaches, observe a systemic deficit of the European Union, articulated as the no-demos thesis.[99] These approaches consider that the Union itself is not democratic, only its Member States are. Accordingly, the assertion that the Union operates as a representative democracy (Art. 10 para. 1 TEU) is untenable.

Yet, the lack of a European 'we' does not preclude a republican reconstruction of Union law. The Treaty's conception of democracy can be reconciled with the republican tradition. One way to do so is to rely on theories that do not conceive of authorisation in terms of self-legislation of *a* people, but stress that equal and free citizens provide their peers with a mandate for political rule.[100]

In order to deepen this understanding of European republicanism, I suggest an additional step that relates the facticity of Union law to the normativity of neo-Kantian republicanism, as represented by Rainer Forst. Forst deduces the need for self-determination from the idea of autonomy,[101] so autonomy is the key standard. Art. 2 TEU requires every act of the Union to comply with the principles of pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men, respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. All these tenets serve autonomy. Moreover, the Union institutions must be able to justify any act in the light of Art. 2 TEU in political proceedings, in judicial proceedings, in public, and ultimately vis-à-vis any person concerned, and Forst substantiates the idea of self-determination with the right to justifica-

99 Richard Bellamy, *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU* (Cambridge University Press 2019); from a state-related perspective, Kirchhof (n. 24); from a communitarian perspective Joseph H. H. Weiler, 'The State "über alles". Demos, Telos and the German Maastricht Decision' in: Ole Due, Marcus Lutter and Jürgen Schwarze (eds), *Festschrift für Ulrich Everling. Band 2* (Nomos 1995), 1651-1688.

100 Sellers (n. 7), 28 f., 38 f.; Pettit, *Republicanism* (n. 10) and Pettit, *On the People's Terms* (n. 42).

101 Forst, *Die noumenale Republik* (n. 9), 39 ff.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

tion.[102] EU authority is then legitimate under neo-Kantian republicanism if it satisfies those twelve principles.[103]

Such a reading of republicanism also serves as a theoretical approach. Rather than only being a critical theory, it becomes constructive within European society. This reading also avoids the dilemma that republican thought centred on self-determination must declare the Union to be undemocratic, even though democratic processes have qualified it as democratic: the ratification of Art. 2 TEU and Art. 10 TEU by the parliaments of all Member States fulfils all democratic standards.

2. Republican Virtue

The iconography of republicanism is rich in depictions of citizens who virtuously serve the common cause, and a perceived lack of virtue has haunted republicanism since Cicero.[104] There is the well-known adage that the First Republics in Austria and Germany were republics with excellent republican constitutions yet devoid of republican virtue, foreshadowing their eventual failure. The tenet of virtue underscores the social significance of loyalty, of duty, and of practicing values. Various republican theories advocate for a citizenry dedicated to the common good, the *res publica*, which is essential for societal stability and personal fulfilment.[105]

David's painting *Le Serment des Horaces* stands as a cultural icon of this ideal.[106] This might be why Larry Siedentop cloaked his sceptic book *Democracy in Europe* with the *Serment des Horaces*: even its cover suggests that EU democracy is a fantasy.[107] With a Davidian understanding, EU republicanism seems indeed absurd: there are no significant manifestations of European virtue akin to the young men in David's *Serment*, who are happy to defy death for the common cause.

Yet, European society functions, as do many national societies, without Davidian virtues. Are these societies precarious or even doomed? Such a

102 Rainer Forst, *Das Recht auf Rechtfertigung. Elemente einer konstruktivistischen Theorie der Gerechtigkeit* (Suhrkamp 2007).

103 The concept of *non-domination* could have a similar thrust. It adheres to the idea of autonomy but seeks to avoid the pitfalls of the idea of *self-government*.

104 Schofield (n. 94), 147 ff.

105 See Hannah Arendt, *The Human Condition* (The University of Chicago Press 1958).

106 Although the painting was commissioned by Louis XVI and depicts an event of the Roman monarchy, it became an icon of French republicanism, Christine Tauber, 'Neue Identitäten – neue Genealogien: Jacques-Louis Davids künstlerische Selbstdarstellung nach dem 9. Thermidor 1794', Zeitschrift für Kunstgeschichte 79 (2016), 331-364 (336 f.).

107 Larry Siedentop, *Democracy in Europe* (Allen Lane 2000).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

conclusion seems to me more ideological than empirically grounded. Indeed, the European Union demonstrates that a society can thrive without such virtue: its constitutional law has proven to be a surprisingly stable framework amidst numerous crises. In any event, the Union has confounded the many who expected its disintegration. Rather, the Union has responded to its challenges, from the sovereign debt and refugee crises to Brexit, authoritarian tendencies in some Member States, the pandemic, and the war in Ukraine.[108] This resilience underscores the current legal and political significance of EU constitutional law, calling for thicker theories than just constitutionalism.

Hermann Heller, a republican constitutional scholar (and an authority referred to by the German Federal Constitutional Court on questions of social cohesion) shows what is key for modern European republicanism.[109] Heller observed that the Weimar Republic's survival hinged not on virtuous citizens but on the ruling classes allowing the working class to improve their situation under the Weimar constitution's procedures and principles[110], a position close to French republicanism.[111]

Heller even anticipates a move towards European republicanism. Back in 1928, he wrote 'that in post-war Europe the idea of the sovereign nation state has lost much of its persuasive power among all classes. For the ruling class itself, the question has become highly problematic as to whether today's nation state serves the self-preservation of the nation better than a European federal state. For this reason, too, the national idea will very soon prove to be insufficient to legitimize democracy'.[112] According to Heller's thought, a European federation could be viable if it realises the democratic and social rule of law.[113] After experiences with fascism, National Socialism, Iberian and Greek authoritarianism, and Soviet communism, Christian democratic, liber-

108 See Jörn Axel Kämmerer, Markus Kotzur and Jacques Ziller (eds), *Integration und Desintegration in Europa* (Nomos 2019); Hans Vollaard, *European Disintegration: A Search for Explanations* (Palgrave Macmillan 2018); Luuk van Middelaar, *Pademonium. Saving Europe* (Agenda Publishing 2021).

109 BVerfGE *Maastricht* (n. 5); on Heller's republicanism Marcus Llanque, 'Politik und republikanisches Denken: Hermann Heller' in: Hans J. Lietzmann (ed.), *Moderne Politik: Politikverständnisse im 20. Jahrhundert* (VS Verlag für Sozialwissenschaften 2001), 37-61.

110 On this nexus of democratic stability and material situation Daron Acemoglu and James A. Robinson, *Why Nations Fail. The Origins of Power, Prosperity and Poverty* (Profile Books 2013).

111 On the Weimar concept of republic Emanuel Richter, '6.3 Republik' in: Rüdiger Voigt (ed.), *Aufbruch zur Demokratie: Die Weimarer Reichsverfassung als Bauplan für eine demokratische Republik* (Nomos 2020), 159-170.

112 Hermann Heller, 'Politische Demokratie und soziale Homogenität (1928)' in: Martin Drath and Christoph Müller (eds), *Gesammelte Schriften. Band 2* (Sijthoff 1971), 421-434 (433).

113 Hermann Heller, *Rechtsstaat oder Diktatur?* (Mohr Siebeck 1930), 9, 26.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

al, and socialist politicians laid down these principles in Art. 2 TEU and tasked the Union with their realisation in Art. 3 TEU.

Davidian republican virtue is dispensable for a viable society[114] and sits uneasily with the ethos of free societies.[115] Moreover, an operative democratic constitution serves as a functional equivalent to virtue as the leading human motive. Republican thought can still mobilise for practicing public freedom, including lively debates, civic engagement, or a strong opposition that provides for accountability.[116] Indeed, *70 Years of EU Law* proposes taking on the Conference on the Future of Europe's model of 'citizens' panels' in the context of legislative initiatives.[117]

The practice of public freedom has solid foundations in the Union Treaties, starting with Art. 1 para. 2 TEU. These foundations are more than law in the books. The politicisation of the Union has been transforming the meaning of civic action by involving citizens as Union citizens. Many conflicts now appear as European conflicts because they concern people throughout European society and involve issues of *European* rights, *European* democracy, the *European* rule of law or *European* solidarity. Of course, the concrete meaning of these terms is often disputed. However, disputes regarding their meaning strengthen republican dynamics if they occur in a European republican forum.

3. Republican Forum

Republicanism requires a forum (or, as synonyms, an agora, a public, a public space or sphere) where citizens freely interact. Such a communicative space has intrinsic value, as it creates a place to practice freedom, and also serves the process in which the common good is determined. The requirement of such a forum, triggers an important objection to European republicanism: the alleged absence of such a space at the European level.

114 On the need of democratic education, Kris Grimonprez, *The European Union and Education for Democratic Citizenship. Legal Foundations for EU Learning at School* (Nomos 2020).

115 This point is key to Böckenförde's dictum, see Ernst-Wolfgang Böckenförde, 'Die Entstehung des Staates als Vorgang der Säkularisation' in: *Säkularisation und Utopie. Ebracher Studien. Ernst Forsthoff zum 65. Geburtstag* (Kohlhammer 1967), 75-94 (93).

116 For such proposals see Frankenberg (n. 17), 32 ff., 133 ff., 213 ff.; Thiel (n. 46), 240 ff.; Alexander Somek and Elisabeth Paar, 'Europe's Political Constitution', European Law Open 2 (2023), 484-510 (§ 9).

117 See n. 92. See further the results of the Conference on the Future of Europe (n. 57); Council of the European Union, 'Presidency Conclusions on Strengthening EU Democratic Resilience', 9463/25, 27 May 2025.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

The Union's democratic character has been challenged because it allegedly lacks a European public space.[118] This objection, dating from the 1990s, has lost much of its force due to the Union's politicisation. The vibrant communication within European society today can be conceptualised as a European public space, though not one that can be squared with theories of the 1960s.[119]

A public space, as here understood, is a communicative setting where actors engage over collective decisions in the presence of an affected audience. For a European public space to materialise, three elements are essential: a mobilising topic requiring a collective decision that impacts people across Member States; the presence of actors and audiences from across European society; and shared meaning,[120] also understood as a common *frame*[121] or a common *world*.[122]

In Europe, such a public space has solidified around the crises mentioned earlier. There are many mobilising topics requiring a collective decision. Today, even routine politics unfold within this space, whether it's the debate over phasing out combustion engines, classifying nuclear energy as 'green', or border security at the Evros river. This European public space often builds upon and connects various national public spaces. From a republican perspective, these diverse spaces coalesce into a singular European space when they interact in pursuit of the common good.

As to actors and audiences from across European society, various mechanisms provide for that interaction. The most obvious is provided by the European Council. It links the various national spaces in one European space, acting as a crisis manager, *impasse-breaker*, *strategist*, *shaper* or collective head of state.[123] Its meetings process pressing issues in the public eye. They generate mass media publicity, even though that coverage is framed with reference to national concerns (III. 3.).

---

118 See in the republican tradition Dieter Grimm, 'Braucht Europa eine Verfassung?', JZ 50 (1995), 581-591 (587 ff.).

119 The following relies on Thomas Risse, 'European Public Spheres, the Politicization of EU Affairs, and Its Consequences' in: Thomas Risse (ed.), *European Public Spheres. Politics Is Back* (Cambridge University Press 2015), 141-163.

120 Thomas Risse, 'Introduction' in: Thomas Risse (ed.), *European Public Spheres. Politics Is Back* (Cambridge University Press 2015), 1-26 (10 f.).

121 Rens Vliegenthart and Liesbet van Zoonen, 'Power to the Frame. Bringing Sociology Back to Frame Analysis', European Journal of Communication 26 (2011), 101-115.

122 In the footsteps of Hannah Arendt, Somek and Paar (n. 116), § 12.

123 Luuk van Middelaar and Uwe Puetter, 'The European Council: The Union's Supreme Decision-Maker' in: Dermot Hodson, Uwe Puetter, Sabine Saurugger and John Peterson (eds), *The Institutions of the European Union* (5th edn, Oxford University Press 2022), 51-77 (66 ff.).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

While the European Council and mass media have been the focus of most studies on the European public space, other fora, such as legal journals and blogs, also play a role, as does discussing *70 Years of EU Law*. Such discussions influence collective decisions because they often impact decision-making processes. Public engagement with the law shapes concepts as well as legal and political structures. Tracing the Europeanisation of legal academia helps tracing parts of a larger European public space.

Today, the *Common Market Law Review*, the *European Constitutional Law Review*, the *International Journal of Public Law*, the *German Law Journal, European Law Online, European Law Live* provide European fora, and the *Heidelberg Journal of International Law* has the ambition to join that group. They form a European public space because they publish articles read across Europe on shaping, interpreting, or questioning collective decisions that affect European society.

This brings us to the third element, the common frame. The authors of articles in those journals, though employed in national legal academia, are Europeanised not only for their topics, but also for their *frames*: scholars who only refer to and speak to their compatriots are unlikely to be published. To be published, an author must refer to discourses that connect people across Europe and thus provide a *common world* in Arendt's sense.[124]

European public spaces develop even more dynamically for blogs such as *Strasbourg Observers* or *Verfassungsblog*. This is because a typical blog post takes a stance on a controversial issue,[125] which corresponds to the agonistic moment of public spaces. It is concise and appears quickly when the issue is still in the public eye. It reacts almost as quickly as an article in the mass media and comes with academic authority. We now have concise, pointed and current contributions on conflictual topics of European interest on platforms followed throughout Europe. In this way, national academics feed European public spaces.

Of course, such academic fora are but a tiny part of the public space. And, more broadly, it is beyond doubt that the European public space is not as developed as the national space. It is also apparent that the European public space has flaws, including many asymmetries in the voice it lends to different social groups. But discussing the deficiencies is not the issue here.[126] What

124 A common world in Arendt's sense does not require a consonance of perceptions and views (homogeneity), Somek and Paar (n. 116).

125 Max Steinbeis, 'How to Write a Blog Post. The Most Important Thing is a Clear, Sharp Thesis', Verfassungsblog, 10 June 2023, doi: 10.17176/20230609-231112-0.

126 Jürgen Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (Luchterhand 1962).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

matters is the evidence for the European public space as a condition of European republicanism to be meaningful.

V. Making It Practical

European republicanism is a useful paradigm for legal work. It helps practitioners and scholars to advance the ongoing republican transformation (or 'citizen-centred' transformation, as *70 Years of EU Law* puts it).[127] Their contribution is important, not least for the obstacles to Treaty reform, that is to keep EU constitutional law in sync with societal and geopolitical challenges.

Such forward-looking lawyering is legitimate: the constitutional project manifested in Articles 1 to 19 TEU identifies EU constitutional law as an unfinished project that can be advanced, within the limits of legal hermeneutics, through interpretation.[128] The key to this interpretation is the European constitutional core (Art. 1, 2, and 3 para. 1 TEU). This core informs the entire EU legal order,[129] as Art. 2 TEU states that its principles 'characterize' European society.[130] The Court of Justice has emphasised the principles of Art. 2 TEU as the Union's identity.[131] All interpretations must align with its 'constitutional framework' or 'constitutional structure',[132] following many apex courts.[133] The CJEU describes that *concretization* as follows: the principle of representative democracy in Art. 10 para. 1 TEU 'concretizes' the value of democracy in Art. 2 TEU, and Art. 14 para. 3 TEU 'implements' this principle.[134] Similarly, the value of the rule of law is a fundamental premise of Union law, which is 'concretized' by the guarantee of judicial independence in Art. 19 TEU.[135] With the same logic, the constitutional core impacts secondary law and even the law of the Member States. Such interpretations can address republican demands, such as enhancing transparency,

127 Calleja and Ladenburger (n. 2).

128 In detail Bast and von Bogdandy, 'The Constitutional Core' (n. 78).

129 Bast and von Bogdandy (eds), *Unionsverfassungsrecht. Eine Neubestimmung anhand der Grundlagen in Artikel 1 bis 19 EU-Vertrag* (Nomos 2024).

130 So explicitly the French, Italian, Spanish etc. versions of the Treaty.

131 See ECJ, *Hungary v. Parliament and Council* (n. 40), 127, 232.

132 ECJ, *ECHR Accession II*, Opinion 2/13 of 18 December 2014, ECLI:EU:C:2014:2454, paras 158, 165.

133 Luke Dimitrios Spieker, *EU Values Before the Court of Justice* (Oxford University Press 2023), 90 ff.

134 ECJ, *Criminal Proceedings against Oriol Junqueras Vies*, judgement of 19 December 2019, case no. C-502/19, ECLI:EU:C:2019:1115, paras 63 ff.

135 ECJ, *Associação Sindical dos Juízes Portugueses* (n. 74), paras 30, 32.

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

accountability, contestability, or solidarity, wherever methodologically feasible.

Three caveats to conclude:

First, this contribution does not categorise the EU as a republic.[136] It only shows European republicanism as a possible approach to EU law. Applied to *70 Years of EU Law*: the Legal Service's republicanism does not imply pursuing a European federal republic by stealth.

Second, republicanism is but one of several legitimate approaches to EU law, next to State-centred and market-centred (liberal) approaches.[137] The future of the EU and its law, as its past, will be a compromise between different social groups and forces.[138] While there is no room for republican fundamentalism, it helps to navigate negotiations towards meaningful compromises.

Third, European republicanism should be critical of some problems caused by 70 years of EU law, such as bureaucratisation, alienisation and even threats to individuals.[139] Since *70 Years of EU Law* conveys the impression that EU law is just fine, it misses the full meaning of 'A Union for Its Citizens'. But how could it be otherwise? The Commission's Legal Service has no mandate to publicly critique EU law and policy. One way out is to invite academics to engage with its book, and to suggest with its very title what kind of critique might be particularly helpful for advancing with the mandate of 'ever closer union', read in light of the Union's constitutional core.

136 For that, see Michael Anderheiden, 'Europäische Union – europäische Republik' in: Katharina Gräfin von Schlieffen (ed.), *Republik – Rechtsverhältnis – Rechtskultur* (Mohr Siebeck 2018), 127-140 (137 f.); van Middelaar (n. 108); I was of this opinion with respect to the European Constitutional Treaty, Armin von Bogdandy, 'The Prospect of a European Republic. What European Citizens are Voting for', CML Rev. 42 (2005), 913-941.

137 On these and further understandings, see the 5 Scenarios of the Commission's White Paper, European Commission (n. 30). Elaborating them by competing theories is an academic contribution to democratic society. For the academic debate see Kaarlo Tuori and Suvi Sankari (eds), *The Many Constitutions of Europe* (Routledge 2010); Matej Avbelj (ed.), *The Future of EU Constitutionalism* (Hart Publishing 2023).

138 For a view on the main groups of actors over the last 30 years, Dermot Hodson, *Circle of Stars. A History of the EU – and the People Who Made It* (Yale University Press 2023).

139 From the contributions to this volume, see in particular van de Beeten (n. 1), Leino-Sandberg (n. 1), Thönnes (n. 4), and de Waele (n. 4).

https://doi.org/10.17104/0044-2348-2026-1-379 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA