

# Festschrift or Fiction? Omissions, Gaps and Blind Spots in 70 Years of EU Law

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Abstract	167
Keywords	168
I. Introduction: A Festschrift for EU Law	168
II. How Central is EU Law? The Role of Law in Times of Crisis and Contestation	170
1. The Centrality of Law in European Integration	170
2. The Marginalisation of EU Law in Times of Crisis	173
3. The Absence of Contestation in 70 Years of EU Law	178
III. From Community of Law to Union of Values? Contextualising the Evolution of EU Law	179
1. Contextualising the Constructing of the Community of Law	179
2. The Decontextualised Emergence of the Union of Values	182
3. Old Wine in a New Bottle?	185
IV. Who Are 'the Citizens' for Whom the Union Exists? Hierarchies in EU Citizenship Law	187
1. Constructing the EU Citizen Through Law	187
2. The Prescriptive Turn in EU Citizenship Law	190
3. All EU Citizens Are Equal, but Some Are More Equal than Others	194
V. Conclusion: 70 Years of EU Law as a Missed Opportunity	195

## Abstract

This article interrogates the celebratory narrative advanced in *70 Years of EU Law – A Union for Its Citizens*. It focuses on those aspects of European Union (EU) law's history that are omitted from the narrative or only appear in a heavily redacted form. Specifically, this article shows how key moments of crisis, contestation, and exclusion are left out in an attempt to sustain a highly idealised depiction of EU law. In doing so, it argues that 70 Years of EU Law overstates both the centrality of EU law as well as the benefit it offers to EU citizens. This argument is developed through an analysis of

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three central themes of 70 Years of EU Law, namely, the presentation of EU law as the driving force of integration, the invocation of Article 2 Treaty on European Union (TEU) values as a renewed integrative principle, and the construction of citizens as beneficiaries of the legal order. Ultimately, this article advocates for a more reflexive understanding of EU law by situating its institutional successes alongside its structural blind spots and failures.

## Keywords

EU Law – Legal History – Legitimacy – Anachronisms

## I. Introduction: A Festschrift for EU Law

*70 Years of EU Law – A Union for Its Citizens* celebrates EU law and its continued relevance for the project of European integration. The premise of the book is that EU law matters – especially for the citizens it refers to in its subtitle. The story of the book will be familiar to any scholar of EU law. It presents the evolution of the EU legal order as part of a linear and progressive movement towards a more integrated future. While the foundational values of Article 2 TEU are a new element in this story, they serve to reinforce its central theme, forming the new integrative force that pushes the EU legal order forwards. This legal-integrative movement concretely benefits citizens, or so the argument goes. Most substantive chapters of the book are written in a way to substantiate this point, showcasing how EU law provides rights to citizens, protects consumers, and improves the lives of all. Overall, *70 Years of EU Law* reads as a Festschrift in honour of EU law, depicting its history as a success that is worth celebrating.

The framing, structure and style of the book reflect a sustained effort to present EU law in the best possible light. But to achieve such a highly idealistic representation, the history and evolution of EU law appear in a heavily redacted form. Moments of crisis and political contestation are omitted from the historical record or framed in such a way that obscures their impact and consequences. Controversial judgements of the Court of Justice are either completely missing or relegated to the footnotes. Several areas of EU law are entirely left out.<sup>1</sup> Finally, there is the cast and characters:

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<sup>1</sup> Despite being increasingly central to EU legal order, the AFSJ is only mentioned once in the entire book. See Daniel Calleja and Tim Maxian Rusche, 'Introduction' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn,

while Walter Hallstein and Jean Monnet prominently figure throughout the book, Ms. Dano and Ms. Achbita have not made it in the final text.<sup>2</sup>

The aim of this article is to critically discuss these and other omissions, gaps, and blind spots in *70 Years of EU Law*. It does by contrasting the narrative of the Legal Service with insights from recent legal scholarship which aims to move beyond a purely doctrinal approach to the study of EU law. In response to the various crises the EU has faced over the last decades, EU legal scholarship has witnessed a ‘critical turn’.<sup>3</sup> Rather than just analysing legal doctrine, scholars have begun to point out the weaknesses of EU law’s conceptual paradigms, they routinely criticise the Court and Commission for their (in)actions, and try to identify the blind spots, inequalities, and hierarchies that are reproduced through EU law.<sup>4</sup> While such deconstructive attitudes might appear to undermine the authority of the EU and its law, there are good reasons to include the insights from this body of scholarship in any future celebrations or Festschriften dedicated to EU law. European citizens only stand to benefit when EU institutional actors adopt a more reflexive posture and present their successes alongside their failures.

The article proceeds as follows. First, it discusses how *70 Years of EU Law* frames the role of law as central to the process of European integration (section II.). Secondly, it dissects how the Legal Service frames the evolution of the EU from a Community of law to a Union of values (section III.). Finally, it turns to the question of how *70 Years of EU Law* presents the role and positions of EU citizens (section IV.). Each of these sections aims to show that the reality of European legal integration is far more complex than the narrative of the Legal Service suggests. By showing how *70 Years of EU Law* smooths over virtually all of the more contentious aspects of the past and present of EU law, this article ultimately concludes that the book

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Publications Office of the European Union 2023), 11-28 (21). Also see the contribution of Christian Thönnies, ‘Invisible Infringements: On the AFSJ’s Under-Constitutionalisation’, HJIL 86 (2026), 299-330.

<sup>2</sup> ECJ, *Elisabeta Dano and Florin Dano v. Jobcenter Leipzig*, judgement of 11 November 2014, case no. C-333/13, ECLI:EU:C:2014:2358; ECJ, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, judgement of 14 March 2017, case no. C-157/15, ECLI:EU:C:2017:203.

<sup>3</sup> Loïc Azoulay, ‘Editorial Comments: The Critical Turn in EU Legal Studies’, CML Rev. 52 (2015), 881-888. Also see Päivi Neuvonen, ‘The “Crisis of Critique” in EU Law’, Verfassungsblog, 7 May 2025, doi: 10.59704/cb13eadbe0ff62fe.

<sup>4</sup> Ivana Isailović, ‘Introduction: Critical Legal Approaches in EU Law – Reflections on New Research Directions’, *Transnational Legal Theory* 15 (2024), 493-499; For an early effort see for example Damjan Kukovec, ‘Economic Law, Inequality, and Hidden Hierarchies on the EU Internal Market’, *Mich. J. Int’l L.* 38 (2016), 1-55. Also see Päivi Neuvonen and Paul Linden-Retek (eds), *Critical Theory and European Union Law: The Question of Postnational Emancipation* (Hart Publishing, forthcoming 2026).

presents a missed opportunity to initiate a more productive engagement between institutional lawyers and legal academics (section V).

## II. How Central is EU Law? The Role of Law in Times of Crisis and Contestation

While the EU has dramatically changed over the past seven decades, the central artifacts, concepts, and motives of the book appeal to a distant past, ranging from the preamble of the Treaty of Paris (1951) to Walter Hallstein's *Rechtsgemeinschaft* (1962) and Jean Monnet's famous dictum that 'Europe is forged in Crisis' (1976). These concepts are mobilised to assert the importance of European integration over the past seven decades and to present EU law as a key instrument in ensuring peace, tackling crisis, and promoting economic prosperity (II. 1.). As a consequence, however, the overall framing of *70 Years of EU Law* appears outdated and anachronistic, overlooking how the role of EU law has increasingly been marginalised during the crisis-era (II. 2.) and failing to come to terms with the increased contestation of EU law (II. 3.).

### 1. The Centrality of Law in European Integration

To understand how *70 Years of EU Law* explains the role of law in the process of integration, it is necessary to consider the wider narratives about the role of EU law that appear throughout the book. In the words of Robert Cover, '[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning'.<sup>5</sup> The book appeals to various 'foundational narratives' of European integration, which explain and justify the integration project with an appeal to peace, stability, and prosperity.<sup>6</sup> While these narratives emerged 70 years ago, they continue to influence the politics of the European Union in the present, capturing the 'collective imagination and collective intentions about how political societies should be organised'.<sup>7</sup> By reaffirming these old justifications of European integration,

<sup>5</sup> Robert M. Cover, 'Foreword: Nomos and Narrative', *Harv. L. Rev.* 97 (1983), 4-68; For an illustration, see Fernanda Nicola and Bill Davies (eds), *EU Law Stories: Contextual and Critical Histories of European Jurisprudence* (Cambridge University Press 2017).

<sup>6</sup> Catherine E. De Vries, 'How Foundational Narratives Shape European Union Politics', *JCMS* 61 (2023), 867-881.

<sup>7</sup> De Vries (n. 6), 869.

*70 Years of EU Law* continues to speak in the messianic register that has characterised the integration process from its very founding.<sup>8</sup>

The main message of *70 Years of EU Law* is that EU law has played and continues to play a central role in the project of European integration. In the introduction to the volume, Commission president Von der Leyen states that the law forms ‘the driving force behind the deeper integration of the EU’ and a ‘unique feature of the European Project’, meaning that the ‘community of law is the foundation of everything we have achieved and everything we are yet to do. It is Europe’s hallmark’.<sup>9</sup> Similarly, the Legal Service of the Commission introduces the volume by emphasising the distinctiveness of law to the project of European integration, claiming that ‘law has been at the centre of European integration’, that ‘the heart of the European project is the existence of rule-based institutions’ and that everything ‘the EU does is possible first and foremost because it is based on the respect of EU law’.<sup>10</sup> Finally, in her guest contribution, the president of the European Parliament Roberta Metsola states that the on-going war in Ukraine illustrates why ‘our unique community based on values and laws is so important’. In her narration of the past, the absence of a shared legal framework even appears as a cause of war: ‘with countries applying their own rules and standards, Europe started the only two world wars our planet has ever seen’.<sup>11</sup>

The book also frames EU law as a powerful instrument to get things done. Specifically, the law is presented as an effective tool to tackle the various crises that the EU has faced. Von der Leyen emphasises that the EU has used ‘its legal framework as a tool to successfully tackle recent crises such as COVID-19 and the repercussions of Russia’s war of aggression against Ukraine’.<sup>12</sup> Roberta Metsola stresses how EU law allows the integration project to ‘persist even when faced with autocratic threats’.<sup>13</sup> The Legal Service claims that whenever confronted with crises ‘the law of the Union has been the tool to successfully deal with them, to bring change and to adapt to new challenges’.<sup>14</sup> Consequently, it presents the Carbon Border Adjust-

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<sup>8</sup> Joseph H.H. Weiler, ‘The Political and Legal Culture of European Integration: An Exploratory Essay’, I.CON 9 (2011), 678-694.

<sup>9</sup> Ursula von der Leyen, ‘Preface’ 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), 3-4.

<sup>10</sup> Roberta Metsola, ‘Guest Contribution’ 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), 8-10.

<sup>11</sup> Metsola (n. 10), 8.

<sup>12</sup> von der Leyen (n. 9), 3.

<sup>13</sup> Metsola (n. 10), 10.

<sup>14</sup> Calleja and Rusche (n. 1), 13.

ment Mechanism as ‘an important tool for tackling global climate change.’<sup>15</sup> And in similar vein, it describes the rule of law conditionality regulation as an ‘essential addition to the EU’s toolbox to protect the budget [...] in light of the declining respect for the rule of law in some parts of the EU’.<sup>16</sup> The idea that runs throughout the book, in other words, is a claim first made by Walter Hallstein, namely that the Union ‘exclusively depends on law in order to carry out its functions [...] its only tool, its only weapon, is the law that it establishes’.<sup>17</sup>

Finally, EU law is also presented as a functional means to generate prosperity for businesses and consumers alike. The goal of prosperity appears throughout the book. Roberta Metsola writes how ‘enactment of EU law was a means to achieve a Europe of everlasting peace *and prosperity*’.<sup>18</sup> The introduction of the Legal Service recounts how ‘the pursuit of a functionalist method of integration [allows] Europe to develop this successful and original process of integration’.<sup>19</sup> Similarly, the book emphasises the importance of level-playing fields for businesses and consumer rights for citizens. The centrality of these rights is repeated time and again; from discussions on food regulation,<sup>20</sup> to the enforcement of competition law in the pharmaceutical sector<sup>21</sup> and in relation to the liberalisation of the railway sector.<sup>22</sup> Even EU citizenship is framed through the functional lens of (economic) rights as the legal service speaks about the ‘gradual awareness of the importance of rights of citizens *as recipients of goods and services*’.<sup>23</sup> As such, as Päivi Leino-

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<sup>15</sup> Giacomo Gattinara et al., ‘Protecting the Environment and Tackling Climate Change’ 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), 158-178 (174 ff.).

<sup>16</sup> Julio Baquero Cruz and Jean-Paul Kepenne, ‘Fundamental Values, Constitutional Identity and the Protection of the European Union Budget Against Breaches of the Rule of Law’ 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), 58-75.

<sup>17</sup> Calleja and Rusche (n. 1), 16.

<sup>18</sup> Metsola (n. 10), 9 (my emphasis).

<sup>19</sup> Calleja and Rusche (n. 1), 15.

<sup>20</sup> Isabel Galino Martín et al., ‘From an Economic Community to a Union for Its Citizens’ 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), 133-156 (150-152).

<sup>21</sup> Lianne Wildpanner and Clio Zois, ‘The Benefits of European Union Competition Law Enforcement for Consumers’ 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), 229-250 (245-248).

<sup>22</sup> Luigi Malferrari and Dimitrios Triantafyllou, ‘The European Commission: The Clock Master of the European Union Internal Market’ 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), 311-334 (320 ff.).

<sup>23</sup> Galino Martín et al. (n. 20), 147 (my emphasis).

Sandberg observes elsewhere in this special issue, *70 Years of EU Law* ‘relies on the classic justification for EU integration: privileging of function demand [...] as the primary driver of legal or institutional change’.<sup>24</sup>

In summary, by presenting EU law as central to the success of the European integration project, *70 Years of EU Law* celebrates the success of legal procedures, lawyers, and courts in pushing the project forward. The red thread that runs through the book is straightforward: ‘the reality speaks for itself. EU law in Europe has been a success’.<sup>25</sup>

## 2. The Marginalisation of EU Law in Times of Crisis

In light of the EU’s recent past, however, the ‘reality’ presented in *70 Years of EU Law* appears overly idealised. Over the last decades, the EU has been confronted with a prolonged series of overlapping and mutually re-enforcing crises, which have dispelled many previously held convictions about European integration. As the editors of *The End of the Eurocrats’ Dream* aptly remarked, the crises gave rise to the need to ‘re-examine what we once thought were valid assumptions’.<sup>26</sup> Yet such a reflexive attitude is entirely missing from the book. Rather than questioning or revisiting past certainties, *70 Years of EU Law* does everything it can to reaffirm the centrality of EU law, thereby obscuring moments of crisis in which EU law is contested.

In 2008 the historian Mark Gilbert published an article titled *Narrating the Process: Questioning the Progressive Story of European Integration* in which he questioned the conviction, implicit in much scholarship on the EU, that ‘the institutions of the EU are the outcome of a historical process whereby national institutions are being superseded and replaced by supranational ones’.<sup>27</sup> He argued that such a view is overly simplistic and unhistoric, as it prematurely discounted the possibility that the future would look different than both the past and present.

In hindsight, the timing of his message proved prescient. The 2008 worldwide financial crisis marked the beginning of a tumultuous period for the EU of recurrent and profound crisis. The 2010 Eurozone crisis not only exposed deep structural problems within the EU’s legal-political framework, but

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<sup>24</sup> See also the contribution of Päivi Leino Sandberg, ‘70 Years of EU Law – The Politics of a Professional Language’, *HJIL* 86 (2026), 59–83.

<sup>25</sup> Metsola (n. 10), 9.

<sup>26</sup> Christian Joerges, Damian Chalmers and Markus Jachtenfuchs (eds), *The End of the Eurocrats’ Dream: Adjusting to European Diversity* (Cambridge University Press 2016), ix–x.

<sup>27</sup> Mark Gilbert, ‘Narrating the Process: Questioning the Progressive Story of European Integration’, *JCMS* 46 (2008), 641–662 (641).

questioned the very foundations of the integration process as such.<sup>28</sup> This was a time when European Council meetings captured the attention of the entire continent, when public dissatisfaction with the EU reached unprecedented level (remember the famous Greek *ochi*), and when the structural inequalities between the Member States were at display with more clarity than before. Today the lives of many European are still shaped by the aftermath and effects of the Eurozone crisis (the impact of the crisis on youth unemployment, poverty, and health in Greece and other debtor countries is telling in this regard<sup>29</sup>). The migrant crisis that followed shortly after not only brought an unspeakable degree of human suffering to the European continent, but also shattered the image of the European Union as a cosmopolitan political actor.<sup>30</sup> The Covid-19 Pandemic, the climate emergency, and the rise of illiberalism continue to highlight the social and political faultlines within and between the EU's Member States.

Yet none of the political drama, uncertainty, and despair that are part of the collective memory of so many Europeans<sup>31</sup> are reflected in *70 years of EU Law*. In the story of the Legal Service European legal integration occurs unencumbered by public contestation, political strife, or struggles over alternative directions. Instead, the Legal Service presents crises as moments of political opportunity and institutional building. It discusses how during the Eurozone crisis the EU centralised the banking system (thereby 'creating a quasi-federal regulatory structure') and the Member states 'created the European Stability Mechanism outside the system of EU law'.<sup>32</sup> The refugee crisis, in contrast, 'showed the difficulties of agreeing on a just mechanism for redistributing refugees between Member States'. On a more optimistic note, we read that the COVID-19 crisis 'demonstrated the full potential of EU law' inter alia through 'the issuing of EU debt to finance the reconstruction of the EU economy'.<sup>33</sup> Without explicitly referring to the 'rule of law crisis',

<sup>28</sup> Agustín José Menéndez, 'The Existential Crisis of the European Union', GLJ 14 (2013), 453-526.

<sup>29</sup> See e.g. Maria Drakaki et al., 'Inequalities, Vulnerability and Precarity Among Youth in Greece: The Case of Neets', *Urbanities* 12 (2022), 114-130; George Petrakos, Konstantinos Rontos, Chara Vavoura and Ioannis Vavouras, 'The Impact of Recent Economic Crises on Income Inequality and the Risk of Poverty in Greece', *Economies* 11 (2023), 166-188; John Yfantopoulos, Athanasios Chantzaras and Platon Yfantopoulos, 'The Health Gap and HRQoL Inequalities in Greece Before and During the Economic Crisis', *Frontiers in Public Health* 11 (2023), 1-13.

<sup>30</sup> Annette Jünemann, Nikolas Scherer and Nicolas Fromm (eds), *Fortress Europe?: Challenges and Failures of Migration and Asylum Policies* (Springer 2017).

<sup>31</sup> Depending to a large extent, of course, on whether one experienced these events in the centre or the periphery, or in a debtor or a creditor state.

<sup>32</sup> Calleja and Rusche (n. 1), 22.

<sup>33</sup> Calleja and Rusche (n. 1), 22.

finally, we also learn that the EU has successfully adopted various instruments ‘to defend the values at the heart of the European project’.<sup>34</sup>

The purport of the Legal Service’s characterisation of the crisis-era is essentially a repetition of Jean Monnet’s famous dictum that ‘Europe will be forged in crises’ (which is indeed approvingly cited).<sup>35</sup> Yet there are at least two profound problems with such a framing.<sup>36</sup> The first issue is that it displays ‘too much optimism’ about how ‘crisis politics [can be] deployed as a solution’ and pays too little attention to the ‘essential challenges exposed [...] by crisis’.<sup>37</sup> This point has perhaps most forcefully been made by the political theorist Luuk van Middelaar, who argues that the EU’s rules-based approach (relying on depoliticization, expert-knowledge, and bureaucracy) is completely unequipped to address moments of crisis characterised by high political salience, unpredictability, and time sensitivity.<sup>38</sup> In other words, technocratic and depoliticised procedures fall short in addressing highly political and emotive situations. The difficulty noted by the Legal Service to come to a ‘just mechanism for redistributing refugees between the Member States’ illustrates the point. In the words of van Middelaar, negotiating fish quota is not the same as devising mandatory refugee quotas; to treat them as such is simply a category error that confuses policy with politics.<sup>39</sup>

The second problem with the frame that the EU is forged in crises is that it hides the qualitative changes of the EU’s legal political framework as a result of the way in which the EU attempts to overcome moments of crisis. While the Legal Service explains the various crises that the EU has faced in a familiar vocabulary of institution building, legal scholarship has conceptualised the changes in rather different terms such as mutation, disintegration, and re-foundation.<sup>40</sup> This scholarly vocabulary acknowledges that the crisis over the last fifteen years have challenged the centrality of law in the integration process. In doing so, scholars have not only shown how the EU’s response to the crises led the marginalisation of EU law as an instrument of integration,

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<sup>34</sup> Calleja and Rusche (n. 1), 24.

<sup>35</sup> Calleja and Rusche (n. 1), 17.

<sup>36</sup> De Vries (n. 6), 872-875.

<sup>37</sup> Christian Joerges and Christian Kreuder-Sonnen, ‘European Studies and the European Crisis: Legal and Political Science Between Critique and Complacency’, *ELJ* 23 (2017), 118-139 (118).

<sup>38</sup> Luuk van Middelaar, *Alarums and Excursions* (Agenda Publishing 2019).

<sup>39</sup> van Middelaar (n. 38), 6.

<sup>40</sup> Nicole Scicluna, ‘Integration Through the Disintegration of Law? The ECB and EU Constitutionalism in the Crisis’, *Journal of European Public Policy* 25 (2018), 1874-1891; For the idea of ‘mutation’, see Kaarlo Tuori and Klaus Tuori, *The Eurozone Crisis* (Cambridge University Press 2013); For the notion of re-foundation, see van Middelaar (n. 38).

but also conceptualised the crises of the EU as *a crisis of EU law*.<sup>41</sup> A few examples will suffice.

During the eurozone crisis, constitutional requirements, procedural guarantees, and fundamental rights protection were frequently set aside to facilitate political decision-making.<sup>42</sup> Decision-making was centralised in informal institutions such as the Eurogroup and the *Troika* that were neither subject to democratic accountability nor judicial review. In the literature, the consequences of these developments have been described as the emergence of legal ‘grey zones’ and situations of ‘liminal legality’ in which various elements of the bailout programmes imposed on debtor states existed ‘in a contested border zone between law and non-law’, raising profound questions about the justiciability and justifiability of the exercise of public authority.<sup>43</sup>

Throughout the refugee crisis similar patterns have been observed in the field of EU asylum and migration law. The EU and its member States have increasingly turned to ‘soft law’ and informal methods of cooperation to control migratory flows. The ‘constitutional dismantling’ in the field of external migration policy has the explicit purpose to ‘realise the “paramount priority” of increasing return rates and foster “fast and operational expulsions” – whatever the cost to the rule of law’.<sup>44</sup> Such an impetus also underpins the EU Pact on Migration and Asylum that was presented in 2024, which has been described as a form of ‘embedded illiberalism’ and as ‘hollowing out the very essence of international asylum law’.<sup>45</sup>

A final example relates to how Member States have circumvented their obligations under EU primary law through the use of inter-se agreements and by concluding international agreements with third countries. Examples of such forms of ‘parallel integration’ include the creation of the European Stability Mechanism and the EU Turkey Deal, which expand the power of

<sup>41</sup> Christian Joerges, ‘Integration Through Law and the Crisis of Law in Europe’s Emergency’ in: Damian Chalmers, Markus Jachtenfuchs and Christian Joerges (eds), *The End of the Eurocrats’ Dream* (Cambridge University Press 2016).

<sup>42</sup> Jonathan White, *Politics of Last Resort: Governing by Emergency in the European Union* (Oxford University Press 2019).

<sup>43</sup> Claire Kilpatrick, ‘The EU and Its Sovereign Debt Programmes: The Challenges of Liminal Legality’, *Current Legal Probs.* 70 (2017), 337-362; also see: Claire Kilpatrick, ‘On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe’s Bailouts’, *Oxford J. Legal Stud.* 35 (2015), 325-353.

<sup>44</sup> Violeta Moreno-Lax, *EU Constitutional Dismantling Through Strategic Informalisation: Soft Readmission Governance as Concerted Dis-Integration* (2023). EUI Working Paper LAW 2023/3, available at: <https://hdl.handle.net/1814/75959>.

<sup>45</sup> Sarah Wolff, ‘The New Pact on Migration: Embedded Illiberalism?’, *JCMS* 62 (2024), 113-123. Also see Maciej Grześkowiak, ‘EU Asylum Law in the Face of a Paradigm Shift – The latest trends in EU asylum law amount to hollowing out the very essence of international asylum law’, *Verfassungsblog*, 1 November 2024, doi: 10.59704/f450711bdb171fd.

the EU while acting outside the remit of its legal framework.<sup>46</sup> The problematic consequences of this approach can be illustrated with the ruling of the General Court in *NF v. Others*.<sup>47</sup> The General Court decided that the controversial EU-Turkey Statement fell outside of its jurisdiction. The General Court reached this conclusion after it found that the agreement was not concluded by the EU as such but rather by the collective of the Member States, even though various strong indications suggested the contrary.<sup>48</sup> The reasoning of the General Court in this case has been widely denounced as an ‘avoidance technique’ which was used to hide the real issue at stake, namely ‘the dubious consistency of the Statement with international and EU law’.<sup>49</sup>

Of course, all of these examples are well known – that is precisely the point. The history of EU law, especially during the past few decades, is much more complicated, ambiguous, and multi-faceted than presented in *70 Years of EU Law*. One could easily come up with a completely alternative account than the one presented by the Legal Service. In this alternative story, legal procedures and constitutional constraints fade away as the EU’s *modus operandi* becomes one of ‘a politics of last resort’.<sup>50</sup> It emphasises how legal instruments and tools are increasingly supplemented and replaced by alternative forms of governance such as soft law, financial coercion and intergovernmental co-operation and coordination.<sup>51</sup> Consequently, EU law appears not only as less central to the process of European integration, but also as a less effective tool in solving problems than in *70 Years of EU Law*. This alternative story also stresses the structural shortcomings of the EU’s legal framework, as exemplified by the structural shortcomings of the European Monetary Union and the Asylum and Refugee framework.<sup>52</sup> Finally, it also foregrounds how EU law was instrumental in shifting economic and social costs from the centre to the periphery and from creditor to debtor states.<sup>53</sup> In

<sup>46</sup> Sacha Garben, ‘Competence Creep Revisited’, *JCMS* 57 (2019), 205-222.

<sup>47</sup> General Court, *NF v. European Council*, order of 28 February 2017, case T-192/16.

<sup>48</sup> The agreement was negotiated by the President of the European Council and the President of the Commission, adopted at a meeting between the European Council and Turkey, and communicated by the European Council as a decision of the European Council. See Council of the European Union, *EU-Turkey Statement*, 18 March 2016, <<https://www.refworld.org/policy/statements/council/2016/en/114316>>, last access 4 February 2026.

<sup>49</sup> Enzo Cannizzaro, ‘Denialism as the Supreme Expression of Realism – A Quick Comment on *NF v. European Council*’, *European Papers* 2 (2027), 251-257 (257).

<sup>50</sup> White (n. 42).

<sup>51</sup> Christopher J. Bickerton, Dermot Hodson and Uwe Puetter, ‘The New Intergovernmentalism: European Integration in the Post-Maastricht Era’, *JCMS* 53 (2015), 703-722.

<sup>52</sup> Agustín José Menéndez, ‘The Refugee Crisis: Between Human Tragedy and Symptom of the Structural Crisis of European Integration’, *ELJ* 22 (2016), 388-416.

<sup>53</sup> Paul Linden-Retek, *Postnational Constitutionalism: Europe and the Time of Law* (Oxford University Press 2023).

the most damning version, this alternative story narrates how EU law sustained and perpetuated a form of ‘authoritarian liberalism’.<sup>54</sup>

### 3. The Absence of Contestation in 70 Years of EU Law

For the purposes of this paper it is not necessary to determine which story is more accurate, but it is important to note that the alternative version discussed above has an explanatory advantage: it helps to account for the increased contestation of EU law over the past decades. The increased contestation of the EU and its law forms a manifestation of the changed nature of the integration project: what once perhaps could be understood as a technical and a-political process, has now become decisively political and controversial.<sup>55</sup> Decisions of the EU institutions affect both the redistribution of resources within and between Member States (think for example about the EU Green Deal and the NextGeneration EU initiative) and concern highly sensitive social and cultural issues, as the different responses of the Member States to the refugee crisis illustrate. As such, the EU not only generates prosperity, but also inequality and (perceived) inequities. The crisis-era can thus be seen as a catalysator that has brought many of the deep political cleavages in the EU to the foreground.

Yet none of these controversies and moments of contestation feature in *70 Years of EU Law*. The increased contestation of the EU by political and social actors remains unmentioned: think only about the farmers in Brussels, the rising euroscepticism in both national and European Parliaments, and the illiberal governments that defy what they consider to be ‘the diktats’ from Brussels.<sup>56</sup> Brexit is mentioned only once (!) in the entire book; not to discuss its profound constitutional and political implications, but in relation to the mundane matter of the shared management of fishing stock.<sup>57</sup> Similarly, the various instances of contestation by national constitutional courts are only

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<sup>54</sup> Michael A. Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford University Press 2021).

<sup>55</sup> Liesbet Hooghe and Gary Marks, ‘A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus’, *B. J. Pol. S.* 39 (2009), 1–23.

<sup>56</sup> Sara B. Hobolt and Toni Rodon (eds), *Domestic Contestation of the European Union* (Routledge 2021); Tanja A. Börzel, Philipp Broniecki, Miriam Hartlapp, Lukas Obholzer, ‘Contesting Europe: Eurosceptic Dissent and Integration Polarization in the European Parliament’, *JCMS* 61 (2023), 1100–1118.

<sup>57</sup> Jacqueline Aquilina et al, ‘Of Farms, Fish and Forks: Towards Safe, Sustainable and High-Quality Farming and Fishing in the EU’ 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), 179–206 (197).

present in their absence. Famous rulings of national constitutional courts in the Member States, such as *Ajos*, *Gawweiler*, *Taricco*, and *Weiß*, are not part of this history of EU Law; even the infamous K-3/21 ruling of the Polish Constitutional Court that challenged the primacy of EU law only appears in the footnotes.<sup>58</sup> In other words, the book completely ignores those who disagree or contest the process of European integration in its current form and thereby perpetuates an idea of European integration as ‘an elite-led project, far removed from public contestation and therefore highly depoliticized’.<sup>59</sup>

### III. From Community of Law to Union of Values? Contextualising the Evolution of EU Law

While *70 Years of EU Law* predominantly relies on past narratives and ideals, it also innovates by foregrounding the centrality of the foundational values of Article 2 Treaty on European Union (TEU) within the EU’s legal order, presenting these as being ‘at the heart of the European project’<sup>60</sup>. As such, the book presents a story in which EU law is transforming from a Community of law to a Union of Values. This story, however, is told in a rather decontextualised manner that obscures the agency of different actors, the contingency of EU law’s evolution, and the continuous contestation of its development. Recent sociological and historical research has emphasised these contextual factors in the making of the EU as a Community of Law (III. 1.). Their insights are also relevant in reflecting on the way in which *70 Years of EU Law* narrates the emergence of the Union of Values (III. 2.).

#### 1. Contextualising the Constructing of the Community of Law

Throughout *70 Years of EU Law* the Legal service reiterates the ‘common sense’<sup>61</sup> narrative of legal integration by invoking Walter Hallstein’s idea of

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<sup>58</sup> Friedrich Erlbacher and Katarzyna Hermann, ‘Fundamental Values of the European Union: From Principles to Legal Obligations’ 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) 34–57 (53, n. 125).

<sup>59</sup> De Vries (n. 6), 869.

<sup>60</sup> Calleja and Rusche (n. 1) 23.

<sup>61</sup> See Antoine Vauchez, ‘Integration-Through-Law’: Contribution to a Socio-History of EU Political Commonsense (2008). EUI Working Paper No. RSCAS 2008/10, available at: <https://hdl.handle.net/1814/8307>.

the EU as a *Rechtsgemeinschaft*: ‘The EU is a community of law, a union built on law’.<sup>62</sup> This narrative chronicles the evolution of EU law as a process of integration through law and underlines the role of the Court of Justice in constructing the EU legal order through its case law. The story begins with the Court of Justice’s landmark judgements *Van Gend en Loos* and *Costa v. ENEL* in the 1960s. These are seen as essential to the success of the integration project, because they shaped the EU legal order as a self-referential legal system operating according to its own rules and principles. Acting as a ‘self-made Statesman’, the judicial interventions of the Court helped to overcome political paralysis, constrained the Member States’ nationalistic tendencies and enabled the pursuit of common objectives.<sup>63</sup> In the words of *70 Years of EU Law*, these were ‘seminal judgements’ in which ‘the Court of Justice upheld the primacy and autonomy of the EU legal order, in favour of which Member States have limited their sovereignty’.<sup>64</sup> The European Commission, of course, played a major role in this story by presenting the arguments and rationales that often paved the way for the Court’s judgements.<sup>65</sup>

The commonsense narrative explains EU law’s evolution as a result of the intrinsic logic of the Treaties. It is best captured in former European Court of Justice (ECJ) judge Mancini’s claim that the ‘preference for Europe is determined by the *genetic code transmitted to the Court by the founding fathers*’.<sup>66</sup> As a consequence, the evolution of EU law is portrayed in a way that is both anachronistic and decontextualised. It is illustrative, in the words of Judith Shklar, of the belief that law ‘has an integral history of its own, that it follows a definite pattern of evolution, and, above all, that its laws of growth can be understood without reference to the history of the societies in which law exists’.<sup>67</sup>

Over the past decades, this decontextualised narrative of legal evolution has increasingly been challenged in the work of sociologists and historians who foreground the role of specific actors in the construction of EU law.

<sup>62</sup> Calleja and Rusche (n. 1), 17.

<sup>63</sup> This is the central argument in publications such as Robert Lecourt, *Le juge devant le Marché commun* (Institut universitaire de hautes études internationales 1970); Pierre Pescatore, *The Law of Integration: Emergence of a New Phenomenon in International Relations* (Sijthoff 1974); For a more academic and nuanced version of the same story see Eric Stein, ‘Lawyers, Judges, and the Making of a Transnational Constitution’, *AJIL* 75 (1981), 1-27; Joseph H. H. Weiler, ‘The Transformation of Europe’, *Yale L. J.* 100 (1991), 2403-2483 (2405).

<sup>64</sup> Baquero Cruz and Kepenne (n. 16), 76.

<sup>65</sup> Morten Rasmussen, ‘Revolutionizing European Law: A History of the Van Gend En Loos Judgment’, *I.CON* 12 (2014), 136-163.

<sup>66</sup> G. Federico Mancini and David T. Keeling, ‘Democracy and the European Court of Justice’, *M. L. R.* 57 (1994), 175-190 (186).

<sup>67</sup> Judith Shklar, *Legalism: Law, Morals, and Political Trials* (Harvard University Press 1986), 137.

Through archival research, and armed with Bourdieu's field theory, these scholars have reconstructed in detail how transnational elites produced 'in-house legal and political doctrines (narratives, rationalizations, theories, etc.) that would interpret the European Treaty as providing them with a degree of autonomy, even if relative'.<sup>68</sup> In this rendering, concepts like 'community of law' appear as weapons in a conceptual struggle about the form and content of the integration project rather than as neutral descriptions of reality. Indeed, one of the key lessons of this strand of research is that the success of such concepts depended less on their ability to capture the 'reality' of the integration project than on the social and political capital of the actors who used these concepts.<sup>69</sup> In this way their work shows how EU law does not naturally *evolve* as a result of its inherent logic, but is *made* through social processes and political struggles.<sup>70</sup>

One of the main contributions of this literature is that it reintroduces a sense of contingency in EU law's evolution by showing how EU law could have developed. At the time that Hallstein developed his concept of *Rechtsgemeinschaft*, for example, there were at least two alternative ways to conceptualise the integration project. The first promoted the idea of a European constitutional democracy founded on a constitutional assembly; the second depicted the integration project as a purely functional project of market building.<sup>71</sup> Similarly, the legal-functionalist approach that the Court of Justice promoted through its foundational rulings was only one among various paths by which legal integration could have proceeded.<sup>72</sup> These alternative visions and roads not taken illustrate the contingency of our current understanding of what EU law is and highlight the agency of institutional actors in its making.<sup>73</sup>

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<sup>68</sup> Antoine Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press 2015), 22.

<sup>69</sup> See e. g. Hugo Canihac, 'The Making of an Imagined "Community of Law": Law, Market and Democracy in the Early Constitutional Imaginaries of European Integration', *Eu Const. L. Rev.* 18 (2022), 2-29; Anne Boerger and Morten Rasmussen, 'The Making of European Law: Exploring the Life and Work of Michel Gaudet', *Am. J. Legal Hist.* 57 (2017), 51-82; William Phelan, 'The Revolutionary Doctrines of European Law and the Legal Philosophy of Robert Lecourt', *EJIL* 28 (2017), 935-957.

<sup>70</sup> See also the contribution of Giulia La Torre, 'The Formation of the EU Legal System', *HJIL* 86 (2026), 133-166.

<sup>71</sup> Canihac (n. 69).

<sup>72</sup> Vauchez (n. 61).

<sup>73</sup> For further discussions of 'roads not taken' see Grainne de Burca, 'The Road Not Taken: The European Union as a Global Human Rights Actor', *AJIL* 105 (2011), 649-693; Aurélie Dianara Andry, *Social Europe, the Road Not Taken: The Left and European Integration in the Long 1970s* (Oxford University Press 2023).

The archival investigations of the ‘New Legal Historians’ further emphasise such contingencies by showing how EU legal doctrines have faced continuous resistance from national courts and political actors.<sup>74</sup> For example, Bill Davies has shown how key principles of EU constitutional law were debated and contested in Western Germany’s legal, political, and public discourses.<sup>75</sup> Similarly, Rasmussen narrates how the Court of Justice’s introduction of direct effect of directives led to such significant resistance from French national courts that the Court ultimately changed course.<sup>76</sup> Moreover, their findings suggest that it was not EU law’s normative strength, but rather its relative insignificance that allowed the building process of this legal order to proceed.<sup>77</sup>

Concludingly, these sociological and historical insights, brought back to us from the archives, reveal that EU law’s evolution was neither logical, nor necessary, nor without controversy. Rather, the construction of legal knowledge appears as a haphazard and pragmatic process that occurred in the heat of the moment – a form of *bricolage*, so to speak.<sup>78</sup> Moreover, it shows how EU legal knowledge is neither neutral nor objective, but always reflects the perspective of those actors with a specific vision of the integration process. And finally, it reveals how the evolution of EU law has always been accompanied with contestation and dissent.

## 2. The Decontextualised Emergence of the Union of Values

These insights help to understand how *70 Years of EU Law* frames the evolution of the EU from a Community of law to a Union of Values – and specifically the Commission’s own role in that process. Throughout the book the Commission presents itself as the guardian of the EU’s foundational values. For example, Ursula von der Leyen writes that the ‘Commission has

<sup>74</sup> Bill Davies and Morten Rasmussen, ‘Towards a New History of European Law’, *Contemporary European History* 21 (2012), 305-318; Morten Rasmussen, ‘Towards a Legal History of European Law’, *European Papers* 6 (2021), 923-932.

<sup>75</sup> Bill Davies, *Resisting the European Court of Justice West Germany’s Confrontation with European Law, 1949-1979* (Cambridge University Press 2012).

<sup>76</sup> Morten Rasmussen, ‘How to Enforce European Law? A New History of the Battle Over the Direct Effect of Directives, 1958-1987’, *ELJ* 23 (2017), 290-308.

<sup>77</sup> Rasmussen, ‘How to Enforce?’ (n. 76); Morten Rasmussen and Dorte Sindbjerg Martinsen, ‘EU Constitutionalisation Revisited: Redressing a Central Assumption in European Studies’, *ELJ* 25 (2019), 251-272; Anne Boerger and Morten Rasmussen, ‘Transforming European Law: The Establishment of the Constitutional Discourse from 1950 to 1993’, *Eu. Const. L. Rev.* 10 (2014), 199-225.

<sup>78</sup> Mark Tushnet, ‘The Bricoleur at the Center’, *U. Chi. L. Rev.* 60 (1993), 1071-1116.

acted decisively to protect our common values' and that it 'uses its powers to ensure that Member States respect the common values on which the EU is built'.<sup>79</sup> In doing so, however, the narrative in *70 Years of EU Law* understates the agency of the Court of justice and the contestation of EU law that has driven the turn to Article 2 TEU values.

During the last decade, the EU has begun to deploy to use Article 2 TEU values as legal instruments that contain binding legal obligations on the Member States. The foundational values have been central to the efforts of the Court of Justice's to impose novel obligations on EU member states to safeguard the rule of law. The values play a central role, for example, in the Court of Justice's reasoning in the rule of law conditionality judgement, which Chapter 2 of the book discusses in detail.<sup>80</sup> Yet in the narrative of the Commission, the agency and the intervention of the Court of Justice mostly disappear. Instead, the emergence of 'values' as enforceable norms appear as an evident and logical consequence of the choices made by the Masters of the Treaty and as the inevitable result of the EU's incremental development.

To frame the legal mobilisation of Article 2 TEU values in this way, *70 Years of EU Law* essentially tells a story of incremental evolution and continuity. In the words of Von der Leyen, the 'EU has grown into a Union founded on values in which we stand together for fundamental rights, democracy and the rule of law, as directly enshrined in the treaties'.<sup>81</sup> The legal mobilisation of Article 2 TEU values is presented as reaffirming the original *sui generis* approach of the law-driven integration model that has characterised European integration from the start. This is most obvious when the book claims that '70 years of putting one stone on another *have brought the inner idealistic heart of the EU into the daylight* of the ongoing political and legal construction of the EU'.<sup>82</sup>

Even when recognising a moment of juncture, the narrative foregrounds continuity. This is specifically clear when the Legal Service argues that the succession from the Treaty of Maastricht (1992) to the Treaty of Amsterdam (1999) led to a 'paradigmatic shift' as the former Treaty explicates certain foundational principles to which the EU *is bound*, whereas the latter states that the Union *is founded* on principles such as liberty, democracy, and

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<sup>79</sup> von der Leyen (n. 9), 8.

<sup>80</sup> Baquero Cruz and Kepenne (n. 16). See also the contribution of 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.

<sup>81</sup> von der Leyen (n. 9), 3.

<sup>82</sup> Calleja and Rusche (n. 1), 30.

respect for human rights.<sup>83</sup> The claim is that as a result of this changed wording the value-provision ‘grew from a restrictive obligation to a constitutive and forward-looking one’.<sup>84</sup> While at first sight, this might appear as a moment of rupture, the story of the Legal Service foregrounds how the emergence of values as binding legal provisions was a deliberate choice of the Member States that is in line with the gradual and incremental evolution of EU law.<sup>85</sup>

In other words, in the narrative of the Legal Service the emergence of values as binding legal obligations appears a natural and logical unfolding of EU law’s inner logic. In doing so, this decontextualised account obscures moments of agency, contingency, and contestation, thereby helping to legitimise the legal mobilisation of Article 2 TEU values.

Specifically, the narrative told of the Legal Service overlooks the real moment of disjuncture, namely the Court of Justice’s ruling in *Associação Sindical dos Juízes Portugueses*.<sup>86</sup> In this ruling the Court found for the first time that Article 2 TEU can serve to articulate binding legal principles. While the Legal Service recognises this judgement as ‘seminal’ it does not feature in the section that explains the genesis of Article 2 values. This in stark contrast to the academic literature, in which *Associação Sindical dos Juízes Portugueses* is seen as a pivotal. The judgement has been described as ‘on par with the Court’s judgements in *Van Gend en Loos* and *Costa*’.<sup>87</sup> An even starker description of this judgement is found on the pages of this special issue, namely as marking the change ‘from a functional (effet-utile) constitutionalism [...] to a genuine, a principled constitutionalism’.<sup>88</sup>

Secondly, and relatedly, the Legal Service also obscures the agency of the Court. As such, the narrative presented in *70 Years of EU Law* stands in stark contrast to the academic literature, which has shown how the Court of Justice ‘strategically exploited suitable characteristics of an inconspicuous

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<sup>83</sup> Erlbacher and Hermann (n. 58), 37.

<sup>84</sup> Erlbacher and Hermann (n. 58), 36.

<sup>85</sup> In more detail, see the contribution of Paolo Mazzotti, ‘An Archaeology of EU Legal Discourse: The Legal Imagination Between Continuity and Discontinuity’, HJIL 86 (2026), 85–131. For further discussion on the question of continuity and juncture, see also the contributions of Giulia La Torre (n. 70) and Armin von Bogdandy, ‘The Republican Thrust of *70 Years of EU Law*: Theorizing “A Union for Its Citizens”’, HJIL 86 (2026), 379–408.

<sup>86</sup> 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.

<sup>87</sup> Laurent Pech and Dimitry Kochenov, *Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments Since the Portuguese Judges Case* (SIEPS 2021), 32.

<sup>88</sup> See the contribution of von Bogdandy (n. 85).

case to produce a landmark ruling'.<sup>89</sup> The legal controversy in *Associação Sindical dos Juizes Portugueses* did not concern the values of Article 2 TEU and none of the parties before the Court, including the Legal Service of the Commission, invoked Article 2 TEU as a legal basis for their claims. The Court of Justice thus played a key role in the legal mobilisation of Article 2 TEU values.

Thirdly, and finally, *70 Years of EU Law* ignores the context in which Article 2 TEU values emerged as binding legal principles, namely the rise of illiberalism in various Member States of the EU, in particular Poland and Hungary. This context is decisive in understanding the Court's ruling, because it offers the only credible explanation as to why the Court turned to Article 2 TEU in *Associação Sindical dos Juizes Portugueses*. The Court's judgement was neither logically necessary nor inevitable but formed a contingent and deliberate intervention to address the increased contestation of EU law and safeguard the uniform interpretation and application of EU law.<sup>90</sup>

Overall, therefore, *70 Years of EU Law* can be read as an attempt to legitimise the legal mobilisation of Article 2 TEU by claiming that these values have always been intrinsic to the EU's legal order. In doing so, however, the book downplays the agency, contingency, and contestation of the legal turn to values and insufficiently recognises the risks of legally enforcing Article 2 TEU value in the EU Member States.

### 3. Old Wine in a New Bottle?

Overall, the narrative in *70 Years of EU Law* reads as an attempt to transpose the unifying, harmonising, and centralising dynamic of market-integration that underpinned the EU's 'community of law' to the highly conflictual social and political domains that characterise the emerging value Union. The idea of a 'Union of values', in other words, appears as an old wine in a new bottle, repackaging the formal legal order in the cloak of values without changing the political and institutional apparatus at its foundation. Problematically, such a legalistic approach to EU values reproduces the

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<sup>89</sup> Michal Ovádek, 'The Making of Landmark Rulings in the European Union: The Case of National Judicial Independence', *Journal of European Public Policy* 30 (2023), 1119-1141 (1119).

<sup>90</sup> Matteo Bonelli and Monica Claes, 'Judicial Serendipity: How Portuguese Judges Came to the Rescue of the Polish Judiciary: ECJ 27 February 2018, Case C-64/16, *Associação Sindical Dos Juizes Portugueses*', *Eu Const. L. Rev.* 14 (2018), 622-643.

depoliticised and top-down approach to European integration that at least explains in part the on-going political contestation of the EU.<sup>91</sup>

It seems therefore likely that the attempt to legally enforce common values will generate new forms of contestation and amplify existing ones.<sup>92</sup> The original impetus to provide Article 2 TEU with legal bite was the profound political disagreement about the meaning of the values (such as the rule of law) between the Member States. According to some, translating such political conflicts in legal terms will help to push the EU and its legal order forward, because EU law: ‘conceptualizes the conflicts as European conflicts, civilizes them, and renders their legal outcomes valid, effective, and legitimate’.<sup>93</sup> The most optimistic reading then sees judicial proceedings as a means to forge a consensus about the meaning of values. For example, some scholars interpreted the recent infringement proceedings against Hungary’s LGBTQ+ law as an instance of ‘European society striking back’ because sixteen Member States intervened in support of the European Commission.<sup>94</sup>

Such a view, however, appears overtly optimistic: of those sixteen Member States only two are Eastern European Member States.<sup>95</sup> Rather than enhancing the legitimacy of the EU, the legal mobilisation of values might thus also intensify political conflict over their meaning. The fact that these values are cast by the Court of Justice of the European Union (CJEU) as an expression of the *identity* of the EU’s legal order, rather than – say – the *autonomy* of EU legal order is telling in this regard. The Court essentially mirrors the language of national constitutional courts but thereby adopts a discourse that is more openly political and conflictual, casting competence disputes in existential terms.<sup>96</sup>

While National Constitutional Courts have so far been acquiescent with regards to the Court of Justice’s mobilisation of Article 2 TEU values, the future might look very different. It is one thing to protect the formal and

<sup>91</sup> Floris De Witte, ‘Interdependence and Contestation in European Integration’, *European Papers* 2 (2018), 475-509.

<sup>92</sup> Matteo Bonelli and Monica Claes, ‘Crossing the Rubicon? The Commission’s Use of Article 2 TEU in the Infringement Action on LGBTIQ+ Rights in Hungary’, *Maastricht J. Eur. & Comp. L.* 30 (2023), 3-14.

<sup>93</sup> Armin von Bogdandy, *The Emergence of European Society Through Public Law: A Hegelian and Anti-Schmittian Approach* (Oxford University Press 2024), 6.

<sup>94</sup> Lena Kaiser, Andreas Knecht, Luke Dimitrios Spieker, *European Society Strikes Back: The Member States Embrace Article 2 TEU in Commission v. Hungary*, *Verfassungsblog*, 26 November 2024, doi: 10.59704/00f6c17a50fc172c.

<sup>95</sup> Namely Slovakia and Estonia.

<sup>96</sup> Loïc Azoulay, ‘Contesting EU Law in Identity Terms’ in: Mark Dawson, Bruno de Witte and Elise Muir (eds), *Revisiting Judicial Politics in the European Union* (Edward Elgar Publishing 2024), 35-48.

institutional structure on which the EU depends for its functioning with an appeal to the value of the rule of law, but it would be another for the Court to articulate a common understanding relating to, for example, the value of democracy or equality. As a ‘modus vivendi’ for the EU this might not be the best way forward, in the words of John Gray, ‘[w]e do not need common values in order to live together in peace. We need common institutions in which many forms of life can coexist.’<sup>97</sup>

## IV. Who Are ‘the Citizens’ for Whom the Union Exists? Hierarchies in EU Citizenship Law

The Legal Service not only reaffirms the importance of law and the centrality of values, but also foregrounds the role of EU citizens. In the narrative of *70 Years of EU Law*, both the ‘Community of Law’ and the ‘Union of Values’ operate in the service of the Union’s citizens. In her introduction, for example, the president of the Commission stresses that ‘EU law protects every single EU citizen in the same way, across all Member States’. To this end, the Commission is tasked ‘to ensure that all EU citizens can fully enjoy the rights granted to them by EU law’.<sup>98</sup> Throughout, *70 Years of EU Law* catalogues the many rights and freedoms EU citizens possesses and provides an emancipatory perspective on EU citizenship (section IV. 1.). In doing so, however, the book obscures how EU law perpetuates social hierarchies and how one’s individual circumstances shape the extent to which EU citizens can enjoy formal rights (section IV. 2.). In other words, the book fails to recognise that EU law considers some citizens more equal than others (section IV. 3.).

### 1. Constructing the EU Citizen Through Law

Throughout *70 Years of EU Law* one of the central messages is that the EU and its law exist ‘for’ its citizens. Indeed, EU law is claimed to provide rights to EU citizens, improve the lives of EU citizens and as ‘being in the service of EU citizens’.<sup>99</sup> The narrative of the book thereby corresponds to a

<sup>97</sup> John Gray, *The Two Faces of Liberalism* (Polity Press 2000), 25.

<sup>98</sup> von der Leyen (n. 9), 4.

<sup>99</sup> 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* (2nd edn, Publications Office of the European Union 2023), 96–114.

familiar theme in institutional and scholarly discourses which emphasise the way in which EU law empowers individuals. A defining feature of EU law is that it grants individuals the capacity to invoke norms of EU law directly before national courts. For example, during the conference the Court organised to celebrate the 50th anniversary of *Van Gend en Loos*, it was repeatedly emphasised how EU law contributes to ‘the constitution of the individual as a European subject’ and places ‘the individual at centre stage’.<sup>100</sup> This is also the reading of *70 Years of EU Law*, which foregrounds how the ‘Court of Justice established the major principles that ensure that, to this day, EU law is first and foremost a law for citizens’.<sup>101</sup>

The book, however, does not mention that the appeal to the legal heritage of individuals always has had functional undertone. In its appeal to the ‘legal heritage’ of individuals, the Court was motivated by a desire to promote the creation of the internal market rather than, in the words of Advocate General Jacobs, ‘any moral duty on the part of the [EU] to protect individual rights’. In his estimation, the ECJ’s focus on the individual ‘has been essentially pragmatic and the recognition of individual rights has almost been instrumental, being seen as necessary to ensure the effectiveness of the legal order’.<sup>102</sup> The importance of individual rights to the construction of EU law is well-known: by litigating questions of EU law before national courts, individuals not only ensured the enforcement of EU law in specific instances (acting as decentralised enforcement agents) but also helped to generate a steady stream of preliminary references to the Court in Luxembourg.<sup>103</sup> In this reading, however, the citizens operates *for* the Union rather than the other way around.

The Legal Service also recounts many of the Court of Justice’s landmark judgements in which it elaborated ‘concrete rights of citizens’.<sup>104</sup> It is not necessary to recount this jurisprudential thread that runs from *Internationale Handelsgesellschaft*, to *Foster and Others v. British Gas*, via *Factortame* and *Francovich*, to *Roquette v. Council* and *Defrenne v. SABENA*.<sup>105</sup> The gist of the story is well known and is perhaps best captured by Jean Monnet’s famous

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<sup>100</sup> Court of Justice of the European Union, *50th Anniversary of the Judgment in Van Gend en Loos, 1963-2013*, (Publications Office 2013), 14, 53.

<sup>101</sup> Calleja and Rusche (n. 1) 18.

<sup>102</sup> Francis Jacobs, ‘The Evolution of the European Legal Order’, *CML Rev.* 41 (2004), 303-316 (308).

<sup>103</sup> Tommaso Pavone, *The Ghostwriters: Lawyers and the Politics Behind the Judicial Construction of Europe* (Cambridge University Press 2022).

<sup>104</sup> Calleja and Rusche (n. 1), 19.

<sup>105</sup> Calleja and Rusche (n. 1), 19.

expression: ‘we are not forging coalition of states, we are uniting men’.<sup>106</sup> The academic expression of this slogan is found in the famous introduction to the *Integration Through Law* volumes. Here the editors of these volumes, Cappelletti, Seccombe, and Weiler, described how EU law no longer only engaged the individual in its economic capacity as a worker, but increasingly recognised individual as persons bearing certain inalienable rights. Reminiscent to the classic, ‘stone by stone’ approach of the Court, they noted that on the basis of an ‘*inductive exercise of adding the functional rights* [granted to individuals] *one by one*’ one could arrive at something like a ‘constitutional position of European citizenship’.<sup>107</sup> As such, they envisaged a role for the individual ‘not merely as an object of the law but as an active subject which can play a cardinal role in this transnational virtue’.<sup>108</sup>

The introduction of EU citizenship in 1992 Maastricht Treaty can be seen as the capstone and apex of this vision as it formally severed the link between rights and economic activity by extending free movement rights to citizens that are not economically active. All of this illustrates how the individual in EU law has increasingly been presented as an *ethical end* rather than a *functional means*.<sup>109</sup> Importantly, in this familiar story (that is also the story of *70 Years of EU Law*) the defining element of European ‘citizenship’ is not its political character. The political element of EU citizenship remains incomplete and derivative in comparison with national citizenship, as various contributions to this special issue point out.<sup>110</sup> Rather than enhancing political agency, the promise of EU citizenship lies in the capacity to travel across borders. It promotes an emancipatory ambition, namely, to enable individuals to access ‘forms and sites of self-realization beyond the control of the exclusionary processes of the nation states’.<sup>111</sup>

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<sup>106</sup> Jean Monnet, *Mémoires* (Fayard 1976) (‘nous ne coalison pas des États, nous unissons des hommes’).

<sup>107</sup> Mauro Cappelletti, Joseph H.H. Weiler and Monica Seccombe, *Integration Through Law: Europe and the American Federal Experience. Volume 1: Tools and Institutions*, (Walter de Gruyter 1986), 48.

<sup>108</sup> Cappelletti, Weiler and Seccombe (n. 107), 68.

<sup>109</sup> For some sceptical thoughts see Ulrich Haltern, ‘Pathos and Patina: The Failure and Promise of Constitutionalism in the European Imagination’, *ELJ* 9 (2003), 14–44; Niamh Nic Shuibhne, ‘The Resilience of EU Market Citizenship’, *CML Rev.* 47 (2010), 1597–1628.

<sup>110</sup> See the contributions of Leino-Sandberg (n. 24); 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 and von Bogdandy (n. 85).

<sup>111</sup> Floris de Witte, ‘The Liminal European: Subject to the EU Legal Order’, *YBEL* 40 (2021), 56–81.

The Legal Service embraces this emancipatory vision of EU citizenship in the Chapter titled *From an Economic Community to a Union for its Citizens*.<sup>112</sup> This Chapter opens with the fictional example of a young woman that dreams of ‘working in Lisbon despite coming from Helsinki’.<sup>113</sup> The example shows the various ways in which EU law and her status as an EU citizen facilitate this young woman in realising her dream that 70 years ago would have been impossible. Due to the rights and freedoms that EU law provides, her company is able to transfer her to another country with ease. She can exercise her right to export her social security benefits, has a right not to be discriminated against in her working environment on the basis of her sex, and is even able to ‘take for granted something as simple as having her family doctor’s prescription dispensed in another Member State while on holiday’.<sup>114</sup> The EU’s internal market also enables her to ‘buy Finnish food products in Lisbon’ while she also ‘benefits from a high level of protection of consumer rights across the EU’.<sup>115</sup> All in all, this illustrates how EU law puts ‘the citizen at the centre of the European project’.<sup>116</sup>

## 2. The Prescriptive Turn in EU Citizenship Law

This emancipatory – rather than functional – vision of free movement rights and EU Citizenship is and remains contested. As part of the ‘critical turn’ in EU legal scholarship, scholars have increasingly identified a variety of implicit hierarchies in free movement and EU Citizenship law, showing how EU law treats some individuals and citizens as more equal than others. These hierarchies remain mostly out of view in *70 Years of EU Law*, because the book simply does not discuss many of controversial cases. Indeed, the Legal Service presents ‘the citizen’ essentially as a legal status, as a bundle of formal rights and freedoms, without ever making concrete who the citizen is. The most embodied form in which the EU Citizen appears is the fictitious example discussed above, which presents the citizen as a highly educated and skilled worker employed by a multinational company. But what about all those other citizens? Those that work in low-skilled jobs, are economically inactive, or come from the EU’s periphery? These individuals do not fit the ‘emancipatory’ narrative of EU citizenship, because they are not able – either

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<sup>112</sup> Galino Martín et al. (n. 20).

<sup>113</sup> Galino Martín et al. (n. 20), 133.

<sup>114</sup> Galino Martín et al. (n. 20), 133–134.

<sup>115</sup> Galino Martín et al. (n. 20), 134.

<sup>116</sup> Galino Martín et al. (n. 20), 134.

*de iure* or *de facto* – to enjoy all rights potentially attached to that status. It is therefore telling that at no point in the book do these citizens appear to form part of the institutional imagination of ‘the citizen’ that the Legal Service promotes.

The absence of these citizens is reflected in the focus and framing of the chapter titled *EU Citizenship: In The Service of EU Citizens*, which analyses the development of the rights of family members and children of EU citizens.<sup>117</sup> This is a rather eclectic choice for a chapter on EU citizenship in a book that foregrounds the centrality of EU citizens to the project of integration. It stands in stark contrast to the conventional narrative of EU citizenship, that is found in most textbooks and taught in classrooms all over the continent. One version of this conventional story (the one I teach myself) would start with *Grzelczyk* in which the Court declared that EU citizenship is ‘destined to be the fundamental status of nationals of the Member States’.<sup>118</sup> Next, it would narrate how the Court of Justice in landmark cases such as *Baumbast*, *Martinez Sala*, and *Bidar* expanded EU citizens’ access to the welfare system of the host Member States with an appeal to equal treatment.<sup>119</sup> In other words, this conventional story is one of judicial expansion and integration through law. It would fit well with the celebratory and progressive narrative in *70 Years of EU Law* – it even seems as if the book is underselling the benefits of EU law to its citizens.<sup>120</sup> So why is it missing?

My suspicion is that it has something to do with how my class on EU citizenship normally continues. After narrating how the Court has expanded citizenship rights, we inevitably arrive at the turning point in its case law, namely the infamous ‘Dano Trilogy’. This is a line of cases that began with *Brey*, followed by *Dano*, and ultimately *Alimanovic*, in which the Court of Justice adopted a more restrictive approach to welfare benefits.<sup>121</sup> These

<sup>117</sup> Tomkin and Montaguti (n. 99).

<sup>118</sup> 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. 31.

<sup>119</sup> ECJ, *Baumbast and R v. Secretary of State for the Home Department*, judgement of 17 September 2002, case no. C-413/99, ECLI:EU:C:2002:493; ECJ, *María Martínez Sala v. Freistaat Bayern*, judgement of 12 May 1998, case no. C-85/96, ECLI:EU:C:1998:217; ECJ, *The Queen, on the application of Dany Bidar v. London Borough of Ealing and Secretary of State for Education and Skills*, judgement of 15 March 2005, case no. C-209/03, ECLI:EU:C:2005:169.

<sup>120</sup> See the contribution of Meeusen (n. 110).

<sup>121</sup> ECJ, *Pensionsversicherungsanstalt v. Peter Brey*, judgement of 19 September 2013, case no. C-140/12, ECLI:EU:C:2013:565; Case C-333/13; ECJ, *Dano* (n. 2); ECJ, *Jobcenter Berlin Neukölln v. Nazifa Alimanovic and Others*, judgement of 15 September 2015, case no. C-67/14, ECLI:EU:C:2015:597.

judgements have generated extensive academic commentary and debate about the question to what extent these judgements form a rupture with the previous expansive case law of the Court.<sup>122</sup> Beyond questions of doctrinal consistency, however, the importance of these judgements is also that they bring into focus how EU law increasingly prescribes a specific vision of EU citizenship – one that is stratified, gendered and exclusionary.<sup>123</sup>

This ‘prescriptive turn’ is exemplified in the *Dano* judgement, which concerned the question whether German authorities could refuse granting Ms. Dano access to certain non-contributory social security benefits. The Court of Justice found, in a rather circular fashion, that the right to equal treatment and residence of EU citizens depends on their economically self-sufficiency.<sup>124</sup> One of the reasons why this case is so controversial, is because of the way in which the Court describes the personal situation and character of the applicant. Ms. Dano is a Romanian national, and member of the Roma minority, who moved to Germany to care for her sister’s children. The Court of Justice’s description of Ms. Dano, however, focused on the fact that she did not obtain any educational qualifications, only has a limited grasp of the German language, has not been trained in any profession and has not worked in either Germany or Romania. On top of that, the Court also noted that even though ‘her ability to work is not in dispute, there is nothing to indicate that she has looked for a job’.<sup>125</sup> In other words, the Court essentially presents Ms. Dano as a ‘lazy non-deserving applicant’.<sup>126</sup>

*Dano* illuminates how EU citizenship law perpetuates social hierarchies in relation to class, gender, and ethnicity. The fact that Ms. Dano has a lower socioeconomic status, is a woman, and is part of the Romani minority shapes her (in)ability to fully exercise EU Citizenship rights – and part of

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<sup>122</sup> Moritz Jesse and Daniel William Carter, ‘Life after the “Dano-Trilogy”: Legal Certainty, Choices and Limitations in EU Citizenship Case Law’ in: Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship Under Stress* (Brill Nijhoff 2020), 135-169.

<sup>123</sup> de Witte (n. 111); Charlotte Rachel O’Brien, ‘Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights’, *CML Rev.* 53 (2016), 937-977; Sylvie Da Lomba and Rebecca Zahn, ‘Post-Enlargement (Free) Movement in the EU: Who Really Counts as EU Citizen? Understanding *Dano* Through the Lens of Orientalism’, *Griffith Law Review* 32 (2023), 387-409.

<sup>124</sup> ECJ, *Dano* (n. 2).

<sup>125</sup> ECJ, *Dano* (n. 2), para. 39.

<sup>126</sup> Sarah Ganty, ‘Poverty in Judgecraft: New Narratives Through the Language of Equality’, *GLJ* 26 (2025), 170-179 (175). Also see Gareth Davies, ‘Has the Court Changed, or Have the Cases? The Deservingness of Litigants as an Element in Court of Justice Citizenship Adjudication’ in: Susanne Schmidt, Michael Blauberger and Dorte Martinsen (eds), *Free Movement and Non-Discrimination in an Unequal Union* (Routledge 2020), 52-70.

the problem is that EU law does not recognise how these different categories intersect.<sup>127</sup> First, Ms. Dano cannot claim a right to benefits under EU citizenship law, because she is not economically self-sufficient. Importantly, access to formal rights not only *de facto* depends on certain material preconditions, but EU law also *formalises* distinctions between citizens based on their material conditions. In the words of O'Brien, EU law is increasingly premised on 'an elitist model of free movement – alienating the working poor, and effectively awarding rights on the basis of socio-economic class'.<sup>128</sup>

Secondly, the fact that Ms. Dano is a woman also affects her capacity to exercise her free movement rights. Women who are exercising their right to free movement and decide to live in another Member State, as Nina Miller notes, 'are exposed to a disproportionately increased risk of legal and physical precarity, poverty, destitution, and exploitation'.<sup>129</sup> She argues that as a result of the *Dano* judgement, EU law no longer provides a social safety net to those with caring responsibilities, that prevent them from seeking employment, which in reality primarily concerns women. Strikingly, in *Dano* the Court of Justice does not consider that Ms. Dano cares for the children of her sister, thereby illustrating how care work is not recognised or rewarded as work under EU law.<sup>130</sup>

Finally, Ms. Dano is also part of an ethnic minority that has long been discriminated against, which undoubtedly has influenced her life opportunities and capacity to find work.<sup>131</sup> Again, however, the Court of Justice did not take this part of her personal circumstances into account. As such, the judgement also illustrates how EU citizenship law perpetuates an orientalist outlook in which Eastern Europeans in general (and Roma minorities in particular, I would add) are cast as the EU's 'internal other', namely as 'welfare tourist' or poverty migrant'.<sup>132</sup>

In sum, rather than as a 'fundamental status', EU citizenship appears, in the words of De Witte, as a *liminal* status, meaning it is a 'status bestowed on a *certain type of individual but never of the individual*'.<sup>133</sup> Enjoyment of the

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<sup>127</sup> Dagmar Schiek, 'On Uses, Mis-Uses and Non-Uses of Intersectionality before the Court of Justice (EU)', *International Journal of Discrimination and the Law* 18 (2018), 82-103.

<sup>128</sup> O'Brien (n. 123), 939.

<sup>129</sup> Nina Miller, 'Care on the Move: The Gender Care Gap and Intra-EU Mobility', *J. L. & Soc.* 50 (2023), 558-578 (558).

<sup>130</sup> Miller (n. 129).

<sup>131</sup> Julija Sardelic, *The Fringes of Citizenship: Romani Minorities in Europe and Civic Marginalisation* (Manchester University Press 2021).

<sup>132</sup> Da Lomba and Zahn (n. 123). Also see Dagmar Myslinska, *Law, Migration, and the Construction of Whiteness: Mobility Within the European Union* (Routledge 2024).

<sup>133</sup> de Witte (n. 111), 74.

rights attached to EU citizenship is conditional upon conforming to a prescriptive vision of the ‘good’ EU citizen, namely one that is economically active, has no criminal record and forms ‘a productive and integrated part of the society of the host State’.<sup>134</sup> In light of this, it is perhaps not surprising that the fictitious example in *70 Years of EU Law* is that of a Finnish woman moving from Helsinki to Lisbon, rather than, say, a Romanian woman moving to Germany. It rather adequately reflects the centre-periphery dynamics and class differences that shape how EU citizens move across the territory of the Union, but is that truly a cause for celebration?

### 3. All EU Citizens Are Equal, but Some Are More Equal than Others

Overall *70 Years of EU Law* presents a story in which the Court of Justice has created a coherent and ‘substantial body of case law’ that benefits individuals and has safeguarded ‘the effectiveness of the rights conferred directly on EU citizens by the treaties’.<sup>135</sup> As such, also in this area the Legal Service overlooks how EU free movement law shapes contestation and social conflict. The fictitious example of the woman moving from Helsinki to Lisbon is again illustrative, because in recent years local residents in Lisbon have repeatedly protested against the gentrification, higher rents and living costs that result from the influx of expats and ‘digital nomads’.<sup>136</sup> *70 Years of EU Law* fails to recognise how EU law is rife with tensions, conflicts, and contradictions that shape and fuel social conflicts. Yet many of the landmark cases that would be used in textbooks to explain how EU law deals with questions of redistribution (e.g. the famous ‘Laval quartet’<sup>137</sup>) or recognition

<sup>134</sup> de Witte (n. 111), 73; see also Stephen Coutts, ‘The Absence of Integration and the Responsibilisation of Union Citizenship’, *European Papers* 3 (2018), 761-780 (780).

<sup>135</sup> Galino Martín et al. (n. 20), 114.

<sup>136</sup> Catarina Demony and Goncalo Almeida, ‘Protesters Denounce Gentrification in Lisbon as Housing Prices Soar’, Reuters (22 September 2018), <<https://www.reuters.com/article/world/protesters-denounce-gentrification-in-lisbon-as-housing-prices-soar-idUSKCN1M20UL/>>, last access 4 February 2026.

<sup>137</sup> ECJ, *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, judgement of 18 December 2007, case no. C-341/05, ECLI:EU:C:2007:809; ECJ, *International Transport Workers’ Federation and Finnish Seamen’s Union v. Viking Line ABP and OÜ Viking Line Eesti*, judgement of 11 December 2007, case no. C-438/05, ECLI:EU:C:2007:772; ECJ, *Commission of the European Communities v. Grand Duchy of Luxembourg*, judgement of 19 June 2008, case no. C-319/06, ECLI:EU:C:2008:350; ECJ, *Dirk Ruffert v. Land Niedersachsen*, judgement of 3 April 2008, case no. C-346/06, ECLI:EU:C:2008:189.

(e. g. *Achbita* and *Bouagnaoui*<sup>138</sup>) are conspicuously absent from *70 Years of EU Law*, hidden under the fiction that EU law protects all citizens equally. As such, the volume does not come to terms with the contemporary reality of European integration in which it becomes increasingly apparent that the benefits and burdens of EU law are distributed unequally.

## V. Conclusion: 70 Years of EU Law as a Missed Opportunity

Overall, reading *70 Years of EU Law* is reminiscent of Martin Shapiro's famous description of Community legal scholarship as a form of 'constitutional law without politics'.<sup>139</sup> Writing in the 1980s, he critiqued the tendency of legal scholars to present the EU as a 'juristic idea' and focus on the formal law, rather than on the socio-economic and political dynamics that underpin the law, or the legal actors that played a role in its development. In similar vein, *70 Years of EU Law* tries to present EU law as an unqualified success story. Moments of political and legal crisis appear in a highly truncated form, instances of contestation and controversy are ignored, and rights only appear as paper abstractions, overlooking the messy practices of EU law on the ground.

Notwithstanding his criticisms, Shapiro recognised that from the perspective of 'European political action' a descriptive approach to EU law might be 'the best thing to do'.<sup>140</sup> In light of political contestation of the EU, he claimed it would be best 'to deal with juristic development as if they were autonomous, and to speak as little as possible about economic and political threats. *After all, legal realities are realities too.*'<sup>141</sup> But is this still true today? In light of contemporary scholarship, the 'legal realities' presented by the Legal Service appear outdated and no longer in line with the current practices of European integration. Indeed, the majority of the papers in this special issue question the perspective of *70 Years of EU Law* while pointing to the omissions, blind spots, and anachronisms it contains. In doing so, these contributions attest that a genuine commitment to EU law requires not

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<sup>138</sup> ECJ, *Achbita* (n. 2); ECJ, *Asma Bouagnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA*, judgement of 14 March 2017, case no. C-188/15, ECLI:EU:C:2017:204.

<sup>139</sup> Martin Shapiro, 'Comparative Law and Comparative Politics Symposium: Conference on Comparative Constitutional Law: Comment', *S. Cal. L. J.* 53 (1979), 537-542 (538).

<sup>140</sup> Shapiro (n. 139), 542.

<sup>141</sup> Shapiro (n. 139), 542(my italics).

deference to tradition, but a willingness to rethink and challenge its foundations.

One would wish the Legal Service of the European Commission to also acknowledge the complexities and compromises that are inherently part of the making of EU law. In doing so, it could have written a book that praised the role of EU law while also recognising shortcomings and highlighting areas in need for reform and change. Such a book would have invited legal scholars to commence a dialogue with the Legal Service about the inevitable blind spots, alternative possibilities, and future trajectories of the EU legal order. It would not only have signalled institutional maturity and strength, but also enabled a more productive and meaningful discussion between EU institutions and legal academia. Alas, this is not the book that the Legal Service wrote.