

INTRODUCTION

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When this book was first conceived back in 2021, when we applied for funding, the European Union faced pressing internal challenges in safeguarding the rule of law and preventing democratic backsliding within its own ranks. Hungary and Poland stood at the forefront of this debate, having openly contested the EU’s constitutional architecture, for instance by creatively arguing that national legislation had primacy over EU law. Their cases seemed to epitomise a more profound tension within the European project: a tension between state sovereignty and collective constitutional principles, between majoritarian government and liberal democracy, and between national selfishness and the EU’s founding values. At that time, the concern was that these challenges would set dangerous precedents, erode trust in the Union’s legal order, and ultimately test the very credibility of the European experiment.

Today, those concerns remain far from resolved. The dynamics in Hungary and Poland continue to unfold – perhaps a bit less so in the latter Member State, where illiberal forces have suffered a major political setback in the Polish parliamentary elections of October 2023. The underlying issues, however, remain urgent - democratic norms are still at risk, institutional checks and balances

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remain fragile, and fundamental rights are still being contested. The Union's toolbox has proven largely insufficient despite several attempts to improve it. Yet, these once-front-and-centre matters have been dwarfed in the public debate and international agenda by even more immediate and worrisome developments.

Foremost among these, from a European perspective, is the Russian war of aggression against Ukraine, an event that has radically reshaped the European political and security landscape. Faced with the return of conventional warfare on the continent, the EU has found itself preoccupied with existential questions concerning defence, energy security, refugee protection, and geopolitical stability. Another issue of rule of law has reemerged: the international rule of law and the role of the EU in protecting and promoting it. The crisis provoked by the war in Ukraine offers both challenges and opportunities for the EU. On the one hand, it spurs greater unity, prompting Member States to close ranks around shared European values. On the other hand, it further exacerbates vexed questions, such as the rigidity of the decision-making process in the Common Foreign and Security Policy (CFSP). These critical aspects have become even more apparent and urgent following Donald Trump's return to the White House.

Meanwhile, the process of EU enlargement has been reinvigorated by the war, following a much more 'geopolitical' rationale than in the past. The EU appears to be much keener on integrating Ukraine and Moldova as new Member States in order to counter Russian attempts to draw them – by force or, in the latter case, through interference in domestic elections – into Moscow's sphere of influence. However, the geopolitical factors behind the EU's drive for enlargement has raised questions on whether the Union might make too many concessions in terms of conditionality, including the respect of the rule of law in prospective members, in order to achieve its geopolitical goals.

Similarly, the ongoing crisis in Gaza and the EU's struggle to respond coherently and humanely to evolving events in the Middle East add yet another layer of complexity. Faced with urgent humanitarian crises and volatile diplomatic landscapes, European leaders must navigate an environment where the defence of legal principles and fundamental rights outside the Union collides with political realities and conflicting interests. While the Union has been unanimous in condemning Hamas terror attacks on 7 October 2023 – including the hostage-taking of over 200 people, many Member States have been reluctant to condemn or even criticise Israel's disproportionate response – including the killing of thousands of Palestinians and the destruction of vast parts of the Gaza Strip. When, in November 2024, the International Criminal Court (ICC) issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Minister of Defence Yoav Gallant – as well as Hamas commander Mohammed Deif – some EU members and leaders expressed reservations about the ICC's

decision. Some high-level European politicians have stated that Netanyahu would be welcome in their country despite the pending accusations at the ICC. Furthermore, Israel went on to conduct targeted military operations in Lebanon (from where Hezbollah had been launching rockets towards northern Israel) and Syria with the direct or indirect support of some Western allies.

The EU and the West, more broadly, have thus faced accusations of double standards in the application of the international rule of law. These accusations emanated not only from geopolitical rivals such as Russia and China, but also from countries of the so-called Global South. It has been noted that Western leaders increasingly refer to the ‘rule-based international order’ in their public pronouncements and much less to international law or to the UN Charter. According to an interpretation, this is because ‘rule-based international order’ is a much less clear expression that can be filled with meaning selectively by Western leaders, for instance to condemn geopolitical rivals when they violate international norms, while absolving allies when they do the same.

Against this backdrop, the essays collected in this volume serve as a reminder that the issue of the rule of law within the EU is not merely an internal housekeeping matter. It is intricately connected to Europe’s global role and credibility as an international actor committed to democratic principles and fundamental rights. While the eyes of the world are drawn to the tragedies and aggression unfolding in Europe’s east and south, the need to ensure robust democratic institutions at home has not weakened. On the contrary, these tumultuous times only reinforce the importance of reflecting critically on the EU’s internal legal order and renewing our commitment to the rule of law as a foundational stone of the European project.

In a famous quote, former Secretary-General of the United Nations, Mr Ban Ki-moon, said that “[t]he rule of law is like the law of gravity. It is the rule of law that ensures that our world and our societies remain bound together and that order prevails over chaos. It unites us around common values and anchors us in the common good”.¹ These words are particularly apposite for the European Union. We are convinced that everything in the EU would fall apart without the rule of law. This volume attempts to offer a small contribution to one of the most, if not the most, pressing political and legal challenges the Union is currently facing. It features 8 chapters dealing with different yet interrelated issues from different disciplinary perspectives, in line with the interdisciplinary nature of the project from which it emanates.

In **Chapter 2**, written in Italian, **Angela Taraborrelli** deals with the Italian model of civil integration of migrants, assessing its compatibility with the legal framework of the so-called *espace juridique européen* from the perspective of

¹ See United Nations General Assembly, 67th session, A/67/PV.3, p. 2.

the rule of law. Her critical assessment concludes that more must be done to promote and develop democracy in both the political sphere and the social, civil and cultural dimensions.

Chapter 3, written by **Marco Siddi** and **Barbara Gaweda**, investigates the political dimension of the rule of law and democratic backsliding. It analyses concepts used in recent scholarship to qualify democratic backsliding with a focus on Europe, but with an eye to broader global developments. It focuses more specifically on selected national case studies – Hungary, Poland, Italy – that are particularly relevant and representative of democratic backsliding, even if in different ways and to varying extent. A discussion of democratic backsliding at the European level is also presented, with references to trends in EU politics and to the current domestic politics of other Member States.

Chapter 4 also deals with political issues. Here, **Manuel Müller** examines the far-right parties in the main EU institutions at the onset of the 2024-29 legislature, including the ways in which they are likely to influence European policy. When in government, these parties have often been associated with decision-making leading to the infringement of the rule of law (i.e. in Hungary and Poland). The chapter outlines the various political families that make up the European far right, which is currently fragmented into three European political parties and three corresponding groups in the European Parliament. It also takes a closer look at each of the three main EU institutions – the European Parliament, the European Commission, and the EU Council – to ascertain both the quantitative presence of far-right parties and their role in political majority-building and decision-making.

Chapter 5, written by **Anne Hamonic**, is the first one dealing with the legal dimension of the crisis. In her contribution, Anne examines one of the silver linings of Russia's war against Ukraine, which has opened a new chapter for EU cooperation in military and defence matters. Using the original case of solidarity in the field of defence in the context of the Union's response to the war of aggression in Ukraine, the chapter highlights the interactions between the internal and external dimensions of the promotion of the Union's essential values and principles, which could perhaps benefit the rule of law.

In **Chapter 6**, **Sara Poli** focuses on a very specific yet extremely delicate rule of law issue generated by the Russian war of aggression. As is well-known, the post-war reconstruction of Ukraine will be highly costly. While the EU is willing to support Ukraine financially, a debate has arisen about confiscating Russian assets to pay for such reconstruction. While this might sound like a good idea that adheres to conventional wisdom (you break it, you pay it), Sara aptly demonstrates that there are several legal issues at stake, including the risk of breaching the international rule of law (as well as undermining trust in the Euro in the financial markets) that the EU is committed to protect and promote.

Chapter 7, co-authored by **Luca Pantaleo** and **Beatrice Sanna**, also deals with the international rule of law issues raised by the Russo-Ukrainian war. In their contribution, they observe that the crisis has been judicialised by intensive use of so-called lawfare instruments, reinforcing a trend towards judicialisation that has already emerged in international politics.

Chapter 8, written in Italian by **Alessandra Pisu**, is devoted to the analysis of a different front of the rule of law battlefield, that of biopolitics and biolaw. Alessandra provides an insightful overview of the current situation, focusing on the most recent developments in Hungary and Italy. She demonstrates that the general backsliding taking place in some countries in this field is part of a profoundly illiberal political project unfolding globally. Alessandra sees the EU Charter of Fundamental Rights and the European Convention of Human Rights as the last bastions of hope that can ensure durable resistance and protection.

Finally, **Chapter 9** examines a relatively new dimension of the rule of law and democratic crisis that is connected with the rise of digital democracy. After a comprehensive analysis, **Massimo Farina** emphasises the ambivalent nature of technology for the future of democracy, offering both opportunities and risks. He concludes that its ultimate impact will depend on the ability of democratic systems to adapt to technological transformations without betraying their fundamental principles of freedom, equality, and participation.

