

EUROPEAN SOCIETY AND ITS ANTAGONISTS

ARMIN VON BOGDANDY*

Abstract

This article answers the four questions posed in this issue by showing how antagonists of the European Union shape it. The article does so through the concept of 'European society', read via Simmel's conflict theory, proposing it as a legally grounded and sociologically plausible term that synthesizes 70 years of European integration. Antagonists have not disintegrated European society, but have rather propelled it, despite their likely intentions. By substantiating this claim, the article answers the leading questions: what does Europe stand for? And what is its place in the wider world? On the question of how to enhance Europe's collective agency, it suggests that 'society' does so by providing a helpful 'collective singular' that grasps the collective of the Europeans. As for the role of EU law and EU lawyers, the article defends 'integration through law'. EU lawyers can and should continue developing innovations that serve ever closer union.

1. Introduction

This issue examines, in a forward-looking way, the prospects of the European Union (EU). This contribution is requested to do so by engaging with the impact of its 'antagonists', external and internal. While their erosive effects have been extensively analysed, less attention has been paid to how they strengthen, contrary to their probable intentions, ever closer union. This is particularly true for European society, this essay's focus.

After World War II, European society developed as part of Western society. After the fall of the Iron Curtain, it also became a segment of the emerging global society. Today, those two societies are under strain: Western society is being weakened by antagonist politics of the Second Trump Administration; global society is fracturing under the pressure of geopolitical antagonism. In this shifting landscape, *European society* is gaining in relevance, including in the legal field. In 2022, the Court of

* Director at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg and Professor for Public Law at the University in Frankfurt/Main.

Justice invoked *European society*, for the first time, in the context of the Russian war against Ukraine. The General Court justified the Council's suspension of an antagonistic Russian news channel to 'protect democracy in European society'.¹

Conflicts with internal 'antagonists', who often have ties to external ones, are similarly strengthening the relevance of European society. In 2024, the European Commission characterized Hungary's anti-LGBTQI law as a 'frontal attack against European society'.² Advocate General Ćapeta even concluded that Article 2 TEU 'expresses the choice ... as to the type of society that the Member States have pledged to create together within the framework of the European Union'.³

As the Treaty links European society to European values, European society is present, and indeed at stake, in almost every debate on European values. And if one calls for *collective* action from Europe, the Europeans, or the EU against external and internal antagonists, as many do, the question arises: who is the collective of that action? According to Article 2 TEU, it is European society.

In the following, I will answer the four guiding queries of this issue through the lens of European society. This implies substantiating the concept as legally grounded and sociologically plausible. I do so via a mere sketch of a juridical *idée directrice*, so much remains open. Moreover, my answers are not conceived as exhaustive, but as contributions to the broader picture that will emerge from this issue.⁴

2. What Europe stands for

The first question is what Europe stands for, the one institutionalized by the EU. As for its constitutional law, my answer is this: since 2009, it stands for *European society*. This answer has a normative and a factual dimension, and Europe's antagonists go against both.

For the purpose of this piece, I categorize as antagonists those that I see as operating against the European constitutional core as laid out in the

1. Case T-125/22, *RT France v Council of the European Union*, EU:T:2022:483, paras 55–56, 88.

2. Case C-769/22, *European Commission v Hungary*; Lena Kaiser, Andreas Knecht and Luke Dimitrios Spieker, 'European Society Strikes Back. The Member States Embrace Article 2 TEU in *Commission v Hungary*' (*Verfassungsblog*, 26 November 2024) <verfassungsblog.de/european-society-strikes-back/> (all websites last visited 13 November 2025).

3. Opinion of AG Ćapeta in Case C-769/22, *European Commission v Hungary*, EU:C:2025:408, para 155.

4. I rely on my article 'On Meaning and Promise of European Society' (2025) ELO (forthcoming).

Articles 1, 2, and 3(1) TEU.⁵ This implies a radical stance because contestation is normal, indeed essential, to a democratic society. Some basic conflicts, such as the one on the extent of EU primacy, might even be defining Europe's constitution.⁶ To be sure, being an antagonist can be legal and legitimate. External actors are not bound by the European constitutional core anyway, and even internal antagonists may, in the framework of European law, pursue such policy.⁷ Exit is an option, as is Treaty change. Moreover, the meaning of the constitutional core is open and not set in stone.

My antagonism-centred approach does not follow Carl Schmitt, but Georg Simmel.⁸ While both share an understanding of conflict as a fundamental social and political dynamic, they diverge in their conceptualization, function, and normative implications of conflict within society.⁹ Simmel views internal conflict as an ambivalent but a normal and even essential part of social integration. Social conflict is not intrinsically erosive, but often generates, consolidates, and develops a society, provided it is managed and contained. Schmitt, by contrast, sees any intense conflict as destructive and tends to exclude internal antagonists. In my understanding, all internal antagonists are members of European society and protected by EU law, including those who trigger possibly destructive conflicts.¹⁰ EU law even protects external antagonists.¹¹ The title of this piece is not 'European society and its enemies'.

On this basis, I explore the normative and factual dimensions of European society, as they emerge from the Treaties. As for the normative dimension, it is the choice for a European society of high standards, one in which the principles of Article 2 TEU prevail. In the French version, it even stands for a society that is *characterized* by these principles. Article 3(1) TEU adds that it is a society at peace and well-off. As utopian¹² as this may

5. Jürgen Bast and Armin von Bogdandy, 'The Constitutional Core of the Union: On the CJEU's New, Principled Constitutionalism' (2024) 61 CML Rev 1471, doi: 10.54648/COLA2024099.

6. Daniel Halberstam, 'Constitutional Hierarchy. The Centrality of Conflict in the European Union and the United States' in Jeffrey L Dunoff and Joel P Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (CUP 2009).

7. On their crucial importance in EU history see Dermot Hodson, *Circle of Stars. A History of the EU – and the People Who Made It* (Yale University Press 2023).

8. Responding to Martin Loughlin, 'The Construction of European Society by European Lawyers: A Methodological Critique' (2025) HJRL <link.springer.com/article/10.1007/s40803-025-00251-w>, who diagnoses a Kantian Schmittianism.

9. Georg Simmel, *Soziologie. Untersuchung über die Formen der Vergesellschaftung* (Duncker & Humblot 1908); Carl Schmitt, *The Concept of the Political* (University of Chicago Press 1996).

10. On that distinction with examples see Ana Bobić, *The Jurisprudence of Constitutional Conflict in the European Union* (OUP 2022) 66–71.

11. Case C-872/19 P, *Venezuela v Council*, EU:C:2021:507.

12. Giuliano Amato and others (eds), *The History of the European Union. Constructing Utopia* (Bloomsbury 2019).

sound, this is the Member States' choice, not an academic fancy. Their high standards invite critique of what the Union does as well as what it omits. So, critique of all kinds has been mainstreamed, even among committed EU studies.¹³ But only antagonists deny that a constitutional commitment to European society of this kind is an achievement worth standing for.

As the normative dimension is explored by other contributions to this issue, I focus on the factual one. I explore three aspects to better grasp what Europe stands for: (1) a society not only as a normative aspiration, but also as a social fact; (2) a society that develops through its conflicts over values; and (3) a society that stands for its diversity.

(1) Article 2 TEU proclaims with *society* what Europe stands for today. The authors of the Treaties state that 70 years of European integration have ushered in one European society. The very fact of this society irks antagonists such as Orbán, Putin, and Trump. It fits neither their Schmittian world views nor their political projects. European society is therefore a transnational social reality of great political importance. Even if not as integrated as societies which double as a State, a people and a nation, European society's political relevance far exceeds that of Western or global society even at their best moments. This can be shown in a simple interpretation of *society* in Article 2 TEU that thickens the understanding of what Europe stands for.

Society, though a contested concept, carries some plain meaning. Society conveys an idea of a totality of human relations in a stabilizing framework. Most people understand that society occurs whenever individuals and groups engage with one another. They also understand that society reaches far beyond direct engagement: individuals who have never met and never will meet are fellow members of one society insofar as their interdependence is mediated by a common framework. In European society, EU law and institutions provide for this framework of interdependence, one that is evidently far thicker than any framework for Western or global society has ever been. The Schuman Declaration of 9 May 1950 bet on such interdependence to create a new Europe. Eurostat holds reams of data showing how the bet worked out.

To fully see Schuman's point, it helps to understand society, as Simmel does, as the process of linking individuals (*Vergesellschaftung*). Society materializes above all in processes of social integration and socialization. Focusing on process avoids the perils of reification (society as an entity) and, worse, anthropomorphism (society as possessing human features). With this process-oriented understanding of society, the Member States' statement

13. Editorial comments, 'The critical turn in EU legal studies' (2015) 52 CML Rev 881, doi: 10.54648/COLA2015073.

of European society is supported by all knowledge gathered under the concepts of European integration and Europeanization.¹⁴ Both are process-oriented concepts that articulate what has happened under the Treaties over the past 70 years. They synthesize all evidence that the Member States (and thus national societies) have integrated under common institutions and have Europeanized. While much is disputed, nobody denies the process as such, nor the stark differences between Western, global, and European *Vergesellschaftung*.

Integration and Europeanization articulate an accumulative process. How can that bring about a new phenomenon, such as European society? It is common knowledge that accumulative processes can trigger qualitative change: a poor woman might become rich, an agrarian society an industrial one, the strengthening of US federal government after the Civil War transformed the United States from plural to singular; today, the United States *has* a government and *goes* to war. In our case, the qualitative change consists in the emergence of European society. In 2009, Article 2 TEU's stipulation of European society coins an evolutionary achievement and concretizes what ever closer union means. The Brexiteers were perhaps the first to fully grasp this.

How convincing is this rebranding of integration and Europeanization? Sociology has not identified thresholds where interaction between societies, their structural alignment and their developing of a common framework generate a common society. Making the claim that there is European society involves a choice some academics, citizens and most antagonists of the EU refrain from. But all Member States made that choice when ratifying the Lisbon Treaty. Given the depth and breadth of 70 years of EU integration and the Europeanization of national societies, their choice in Article 2 TEU rests on firm empirical ground.

(2) To substantiate European society, I, a reconstructive scholar, focus on values because the authors of the Treaties substantiate European society through values: Article 2 TEU declares that the Union 'is founded' on values that are shared in European society. The Member States imply that, for these values, European society has a common structure deep in the hearts of its members.

How true is this? Until recently, evidence was scarce. For many years, European discourse on values was shallow, as shown by the Commission's 2017 White Paper on the Future of Europe.¹⁵ The latter's superficiality is all

14. Stephanie Börner and Sören Carlson, *Europasozioologie* (Nomos 2023) 33–59.

15. European Commission, 'White Paper on the Future of Europe. Reflections and Scenarios for the EU27 by 2025' (1 March 2017).

the more remarkable, as Orbán's challenge to those values was already under way.

Today, European discourse on values is no longer shallow. This is not, however, because all Europeans march to the beat of the same drum, but rather because there is much in-fighting on what they mean and what they demand. Values stand at the heart of major cleavages in European society; the clash over the Hungarian anti-LGBTQI law is just one in a long series. Article 2 TEU values have been key in the conflict with the Polish PiS government, but also in the conflicts on how to react to the Eurocrisis, the influx of migrants, or the pandemic.

And yet, relying again on Simmel, I understand these European conflicts over European values as not eroding but rather thickening European society.¹⁶ They were key to framing the conflicts as European ones and they provided a common language for articulating and processing them. Stunning EU legislation as the outcome of these conflicts validates Simmel's point on their integrative potential; just consider Regulation 2020/2092 on a general regime of conditionality or Regulation 2020/2094 establishing a European Union Recovery Instrument.

European society has strengthened with the relevance of Article 2 TEU values in legal, political, and media discourse. The fact that their meaning remained controversial does not undermine, but rather underlines their social relevance. Today, the centrality of European values is obvious. The Court has defined with them the identity of the EU legal order.¹⁷ And when politicians looked for good grounds to confront Russia, an aggressive nuclear power, to spend huge sums of money for supporting Ukraine, and to welcome millions of Ukrainian refugees, they turned to 'our values'. This policy and this take are, of course, disputed. Precisely for that reason, 'our' European values are on the news and on the minds of Europeans. *European society* grasps the collective that is implied in 'our'.

(3) The Treaty's emphasis on values does not imply that Europe purports to stand for a homogenous society, let alone a Schmittian people, the kind of thought that informs many of its antagonists. The organ directly representing European citizens, the European Parliament, counts deputies from over 200 different political parties. This is but one expression of Europe's heterogeneity, the 'nice' part of which is celebrated as diversity: according to the Treaty establishing a Constitution for Europe, it stands for 'united in diversity'.

16. For the legal field Marco Dani, *Il diritto pubblico europeo nella prospettiva dei conflitti* (CEDAM 2013).

17. Case C-157/21, *Poland v Parliament and Council*, EU:C:2022:98, paras 145, 264, 268.

To express this heterogeneity, some see Europe as standing for European *societies*.¹⁸ There are three meanings of such plural *societies*. The first makes the obvious point that various societies are set in one geographical area. The second expresses that today, after 70 years of integration and Europeanization, the participating national societies are Europeanized societies, but yet different ones, as expressed by the plural. The third meaning, speaks of European *societies* to account for how complex, diverse, fragmented, and even divided European society is: between the skilled and the unskilled, the urban and the rural, the centres and the peripheries, the GALs and the TANs,¹⁹ between those in favour of, and those against ever closer union. This plural speaks to the cleavages on which the antagonists thrive.

While I recognize the point, I suggest working with the singular term *society*. The legal reason for this is that legitimate political authority (the ratifying Member States) has posited the singular. The singular is a democratic choice; this is relevant for scholarly terminology. But there is more: however heterogeneous and conflictual the various fields of European society are, all of them must respond to the standards of Article 2 TEU. The European constitutional core is valid for all social relationships. The singular *society* expresses the responsibility Europe stands for.

3. What kind of wider world Europeans want to live in

The second question asks what kind of wider world Europeans want to live in. My answer deepens what Europe stands for. It comes with three prongs: (1) it is a wider world in which Europeans form their own society; (2) but it is one integrated in a wider world; and (3) possibly shaped by its own image.

(1) As for EU constitutional law, Europeans want a wider world in which they form their own society. Article 2 TEU relates European society to the Union and its Member States; this makes a clear inside/outside distinction. This distinction applies to its law and institutions, to its values, to its market, and, not least, to its borders. Geographically, Article 2 TEU's European society is centred within the external borders of the Union. Its borders are not set in stone: the Union is designed for enlargement (Article 49 TEU) and allows for Member States' exit (Article 50 TEU). Yet, the EU borders are

18. Loïc Azoulay, 'Reconnecting EU Legal Studies to European Societies' (*Verfassungsblog*, 19 March 2024) <verfassungsblog.de/reconnecting-eu-legal-studies-to-european-societies/>.

19. Standing for Green-Alternative-Libertarian and Traditional-Authoritarian-Nationalist respectively.

there, evident and relevant, today perhaps more than ever before. European society refers to circumscribed physical space, to a 'place'.

This distinction within the wider world hails from the Member States' 1973 Declaration on European Identity.²⁰ Its backdrop was turmoil reminiscent of ours today: an estrangement from the United States for its Vietnam War and its unethical Nixon presidency; economic depression and dark prophesies of the Club of Rome's 'Limits to Growth'; hard, even violent political contestation, at the time mostly from the extreme left. In these circumstances, the Member States proclaimed their intention to use the European Communities' external relations 'to achieve a better definition of their relations with other countries and of their responsibilities and the place which they occupy in world affairs'. European society is a totality with physical borders that mark Europeans' place in the world.

(2) Europe is a place, but an open one; the EU-centred European society is an open society. Even in our times of geopolitical conflict, only some antagonists question global interdependence, be it environmental, political, economic, social, or cultural. The way the Treaty asserts European society is compatible with assertions of global (or world or international) society (or community). European society's openness, as for its constitutional law, is deep. It hails from the very fact that the authors of the Treaties chose *society* as the concept for the social totality, not nation, people, citizenry, or community. It includes all resident individuals in the social totality, not only citizens. All third-country nationals who live in the EU belong to European society. It fits that Article 2 TEU defines European society not by history, culture, ethnicity, religion, or origin, but by values that claim to be universal. The Treaty does not conceive the wider world as one divided into incommensurable civilizations separated by ethnonationalist or religious fault lines.

(3) Rather, the Treaty projects a global society that resembles European society, only writ large. It proclaims the Union's values as universal (2nd recital of the TEU Preamble) and endorses international law and institutions as no other constitutional document does.²¹ Indeed, global constitutionalism is a mostly European idea.²² One can even detect some messianism: Article 21 TEU mandates the Union to 'action on the international scene ... guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world ...'.

20. Toni Marzal, 'EU Values and the Place of European Society: An External-Focused Account' (2025) *European Law Open* forthcoming.

21. Alexander Somek, *The Cosmopolitan Constitution* (OUP 2014).

22. Matthias Goldmann, 'Hopes of Progress. European Integration in the History of International Law' (2018) MPIL Research Paper No 2018-26 <ssrn.com/abstract=3262453>.

This constitutional projection of what kind of wider world Europeans want to live in has triggered all kinds of evaluation. While some ridicule Europeans for being ‘from Venus’, helplessly naïve in world affairs (while US-Americans ‘from Mars’ are calling the shots), others read their constitutional law as a mask for the postcolonial policies of just another capitalist empire. In any event, the projection has to adapt: over the last 20 years, the gulf between the European and the international legal order has grown ever deeper. The Union’s support for the Agreement on establishing a Special Tribunal for the Crime of Aggression against Ukraine from 25 June 2025 will not help here, but rather highlight the weakness of the order it purports to support. The same is true for its 2025 inaction against Israel in light of likely international crimes in Gaza and the West Bank.

4. How to ensure that Europeans’ fate rests in their own hands

The third query concerns Europe’s million-dollar question that has gained further urgency in our antagonistic epoch. I discuss two prongs of this question: European agency and European democracy. My response, again through the lens of European society, proposes two contributions to a full answer: (1) the concept of *European society* offers a powerful *collective singular* that puts debates on European collective action as well as on European democracy on a solid basis; (2) European society also helps to gauge how much European collective identity it takes ‘to ensure that the Europeans’ fate rests in their own hands’.

(1) Modern political and legal thought requires some *collective singular*, that is, a word in the singular that conceptualizes a multitude.²³ Indeed, most humans need such a concept to make sense of their polity and locate themselves within the social world. There is a choice of concepts: the most common are State, people, nation, constituent power, or society. Familiar tropes include: that all power originates from the people; that parliament represents the nation; that all constitutional legitimacy rests on the constituent power; that all authority is ultimately vested in the State; or that the infinity of social interactions eventually amounts to one society. Variations abound. Yet, in the end, constitutional theories and doctrinal arguments, treatises of political science and theory, public or private discourses ultimately relate back to one of these concepts. God has that role in Western religious thought.

23. Reinhart Koselleck, *Futures Past. On the Semantics of Historical Time* (Columbia University Press 2004).

Accordingly, pro-European voices have advocated a European nation, a European (federal) State, a European people, a European constituent power, a European demos. None of these concepts made it into the Treaties, nor imposed itself in European discourse. The authors of the Treaties do use these notions, but they use them exclusively for collective phenomena at the *national* level: the ‘peoples’ and the ‘Member States’ (for example Article 1 TEU).

For many decades, EU law went without a powerful collective singular for the social totality it constitutes and organizes. *Union* did not do the trick, nor *Rechtsgemeinschaft*, *multilevel system* or just *Europe*; as notions, they are flimsy. This absence contributed to the impression that the EU lacked substance and was therefore somehow deficient and intrinsically weak,²⁴ particularly in comparison with the type of society its antagonists propagate. I consider this absence of a widely used collective singular as a relevant cause of much European uncertainty, and a constraint on European action that ‘ensures that the Europeans’ fate rests in their own hands’. How can Europeans act convincingly for their collective if they have no good idea of – and not even a term for – their collective in the first place?

Since 2009, European society has existed as a legal concept in the Treaty’s second article, which was ratified by all Member States. Society is a collective singular as important as the people, State, nation, or constituent power, a key concept of modern social, political, legal thought (different to *union*). What distinguishes society from people, State, nation, or constituent power is that State-centred thinking (a group to which all of Europe’s antagonists belong, but that is broader than them) does not claim society as a central category. Margaret Thatcher famously quipped that there is no such thing as society. To me, the term in Article 2 TEU appears as a typical European compromise: it provides a collective singular that helps ever closer union, dear to European federalists, but leaves the key concepts of the State-centred view for the national level. While it indicates a collective, this is not a collective of self-determination, not least as it includes resident foreigners. European society is broader than the European citizenry of Article 10(2) TEU, just as German society is broader than the German people.

Society shares with the State, people, nation, or constituent power the feature of being a collective singular. However, these concepts are not univocal, but provide different thrusts to public authority and political thought. Of all collective singulars, society best grasps the web of interaction and interdependence that has emerged over 70 years of European integration. In comparison with the concept of people (or nation), society is more open to heterogeneity. *People* remains bound up with the

24. Ulrich Haltern, *Europarecht und das Politische* (Mohr Siebeck 2005) 534–540.

metaphysics of collective self-determination, with community, a common language, a common origin, a common history, notwithstanding considerable efforts of adaptation to contemporary society. With respect to the concept of State, one distinction is that the common institutions in European society do not command coercive force, neither to the inside nor to the outside.²⁵ Such force is key to most understandings of State, but not of society. Moreover, society grasps the social totality more from the interacting individuals and groups (legacy of its origins in the Roman legal concept *societas*), whereas State centres on institutions of public authority.

Society is a familiar idea. Most individuals know they exist as some part of some society. They understand that society happens in almost all walks of life. With all the good and the bad of human relations, society is close to everybody's skin. If the term *European society* takes off, it promises a leap in understanding not only the European Union, but also the broader European union (sic!) of Article 1(2) TEU. If that union is conceived as relating to a society, people will better understand that they are deeply engaged on a European scale, in a European framework that matters to them. Europe is not only for those hopping on and off planes (Enrico Letta). European society will counter the Europeans' incomprehension of their union and integrate their heterogeneous European experiences (work, travel, family, holidays, news, well-being, security, or, importantly, disputes) into one familiar notion. It shows their conflicts as occurring *within one* society rather than between *discrete* Member States.

European society reveals as empty its antagonists' propaganda that imposing the one-will-of-the-one-people is the very idea of democracy. If most Europeans understand themselves as part of one heterogeneous European society, they will understand the Union as a deeply democratic polity precisely for all the haggling in Brussels. They will see that democracy for a heterogeneous society means a struggle for compromise that takes many mediations. The European legislative trilogues are a democratic achievement, not an abomination.²⁶ If this understanding is shared by most Europeans, it is more likely that their fate will rest in their own hands. It will also make life more difficult for its antagonists.

(2) Critics will object that only a people can act collectively. Their usual argument is that collective action, and indeed society properly understood, takes collective identity, and that this is missing at the European

25. Frontex wields some such powers for border management: Art 82(8) of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard [2019] OJ L 295/1.

26. Armin von Bogdandy, *The Emergence of European Society through Public Law: A Hegelian and Anti-Schmittian Approach* (OUP 2024) 1–2, 136–153.

level. My refutation of such critique has two prongs. First, some European identity is emerging, though nothing like ‘we-ness’. That leads to my second prong: the authors of the Treaties posit an understanding of society that goes without ‘we-ness’, a choice I praise.

Fostering European identity has been a European policy since the already mentioned 1973 Declaration on European Identity. The first von der Leyen Commission continued a long tradition when it chose the motto ‘Promoting our European way of life: Protecting our citizens and our values’. Russia’s aggressive stance is fanning such identity formation, as military confrontation often has done. The same is true for the Second Trump Administration.

Collective identity requires conscious social belonging. On that token, there is evidence of an emerging European identity. Contemporary psychology relates social identity to a person’s knowledge of group membership, in contrast to older theories that focused on emotions. As collective identity builds on shared experiences, public communication is important. Thus, identity-building is a meaningful policy goal; such policies have been successful in many societies. As mentioned, its crises have made the EU more visible, so that today it has far more cognitive relevance than 20 years ago. According to Eurobarometer 2024, as many as 74% of respondents consider themselves citizens of the Union, and many trust Union institutions more than those of their Member State.

European society, as posited in Article 2 TEU, has a socio-psychological dimension. But it does not amount to EU ‘we-ness’ (the strongest form of collective identity) as a pervasive sentiment among Europeans. Of course, European political actors use that language, in sync with the policy goal of identity formation. For example, the aforementioned 2017 Commission White Paper makes pervasive use of the first-person plural: ‘our achievements’, ‘our security’, ‘our role’, ‘we decide which path we want to take in the future’, and so do many EU politicians. But many will perceive such statements as rhetorical flourish, though that might have shifted with the war in Ukraine and Trump’s aggressive policies.

Should one require ‘we-ness’ for qualifying a web of social interaction as a society? Some, including all antagonists, do, stating that without such we-ness the web would not hold. They join those who observe an insurmountable European democracy deficit via the *no-demos thesis*. To me, such statements seem a postulate more than a finding. I see them as old ideas that already misrepresent the reality of most national societies today. Although ‘superdiverse’,²⁷ many of them are nevertheless viable democracies for corresponding procedures of decision-making. I consider as viable that the authors of the Treaties, after the

27. Steven Vertovec, *Superdiversity: Migration and Social Complexity* (Routledge 2022).

perhaps most complex political process Europe has ever witnessed, define Europe as a democratic society without postulating European ‘we-ness’.

Summing up, European society is a concept that helps Europeans gain agency over their fate. The argument that such agency necessarily fails for want of ‘we-ness’ does not hold. There is no ontological reason why European agency should fail.

5. On the role and limits of EU law as a means of organizing society

The last query regards the role and limits of EU law as a means of organizing society. As for the role, I stress, against the scornors of ‘integration-through-law’, that (1) EU law is essential (though not sufficient) to develop European society and (2) this makes the limits all the more problematic.

(1) European society is a society through law, like any modern society. Given the growth of what I see as a ‘romantic’ movement in EU scholarship, the following points on ‘integration-through-law’, though rather obvious, are worth stressing.

To start with, law is the only legitimate instrument to build and organize a society that is democratic and complex.²⁸ But there is more. Take out the law of any modern society, and any modern society will implode, whatever else might integrate it: the imagined community some romantics long for, a common language, a shared narrative of a common history or a common ethnos, a common football team, or a shared antipathy to some neighbour (Carl W Deutsch).

I am with the critics of ‘integration-through-law’ that judicial decisions alone do not integrate a society. But courts and law are not the same thing. Nor does any advocate of ‘integration-through-law’ argue that law alone can provide for social integration. Any ‘integration through law’ depends on a decision outside the legal field, be it a political one (the Treaties and everything published in Series L of the *Official Journal of the European Union*),²⁹ an economic one (the myriad of contracts that build the internal market), a private one (marrying a person from another Member State). If there is European society today, this is thanks to decisions in many other fields. But most of these decisions take a legal form. Since Aristotle’s *Metaphysics* we know that form is essential, and that it impacts substance.

The basic insight is *ubi societas, ibi ius*, conceived as a dialectical relationship between human interaction and its normative frame. Human

28. For a synthesis see Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press 2008).

29. For the importance of politics through time, Robert Schütze, “‘Integration through Law’: Grand Theory, Revisionist History’ (2025) 4 ELO 1, doi: 10.1017/elo.2025.15.

interaction occurs in social structures, and these mostly have a legal dimension.³⁰ This is why EU law shows EU society. Of course, it shows only a fragment, but a fragment it shows. The legal perspective on European society has gaps and distortions, but so do all perspectives.

(2) The essential role of EU law makes its limits all the more disquieting. To begin with, there are the intrinsic limits of any contemporary legal order in organizing a modern society. Complex societies are notoriously difficult to shape. Indeed, legal regulation is often perceived as aggravating rather than alleviating the woes of a society. Antagonists know to exploit that impression. The intrinsic limits of all contemporary legal ordering are compounded by the ones specific to EU law: competences that fall short of the Union's declared aims (Article 3(1) TEU), cumbersome decision-making procedures, and the scarcity of coercive and financial means.

In European society, there is a deep mismatch between what most Europeans expect from the Union and the capacities their national systems have granted it. That triggers delusion, which feeds the Union's antagonists. According to traditional constitutional thought, it falls to the authors of the Treaties to resolve this mismatch by Treaty amendment. Yet such a prospect appears unlikely. To avoid erosion, the Union itself must narrow the distance between what Europeans expect and what it can deliver.

That will take some creative lawyering; European society can rely on its lawyers for that. With their help, European politics has proven surprisingly resilient, ever more supporting democracy in the Member States. In the past, the stability of European society seemed completely dependent on the stability of national societies. Today, the Union has become an important source of the stability of various national societies, while Britain, once among the most stable democratic societies, has been in turmoil ever since deciding to leave.³¹

But can that process continue, given that powerful external antagonists want to divide European society, and internal ones are winning elections and, in some countries, already govern? At first glance, its prospects may look dim. At second glance, there is more light. Even if nationalist forces should continue to gain power, the end of European society is not foretold. While evidence from Hungary, Poland, Italy, and the Netherlands is mixed, it confirms how powerful the socializing logics of European society remain. Moreover, the external antagonists are likely to push internal ones to cherish their membership. For they will grasp a simple truth: alone, they would be easy prey. In the antagonists' world, ideological kinship offers little protection.

30. Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Polity 1989) 31–43.

31. On the stabilizing role of transnational institutions, see Kim Scheppele, 'Restoring Democracy Through International Law' (2024) 39 *American University International Law Review* 587.