

SOLIDARITY THROUGH THE LENS OF FUNCTIONAL CONSTITUTIONALISM

EDUARDO GILL-PEDRO*

This article investigates solidarity as a concept and/or a norm of EU law from the perspective of functional constitutionalism. It asks how solidarity fits within the normative framework of the EU legal order if we understand this framework as being founded on a functional constitution. Under functional constitutionalism, the EU is understood as a purposive polity and the authority of the legal order is justified, not by reference to popular sovereignty and individual rights, but from the functional requirements ordained by the purposes, or objectives, of that polity. From this perspective, the normative value of solidarity in EU law is contingent on effectiveness. Where the effective achievement of EU objectives requires Member States to act in solidarity to each other, or to exercise transnational solidarity towards citizens of other Member States, then EU law will impose a duty on them to do so. Conversely, if the exercise of national solidarity within the Member State undermines the effective achievement of EU objectives, then EU law will impose a duty on those Member States not to allow such exercise. The article concludes that, through the lens of functional constitutionalism, solidarity has a purely instrumental value within the EU normative order.

1 INTRODUCTION

In this article, I explore the concept of solidarity in EU law through the lens of ‘functional constitutionalism’. Functional Constitutionalism is a theoretical framework to think through the nature of the EU as a polity and as a legal order, most systematically presented by Turkuler Isiksel.¹ However, I rely on my own take of functional constitutionalism, which does not necessarily follow closely Isiksel’s approach, but it may be helpful to refer to her in order to help locate the theoretical framework relied on here. The task of this article is to try to understand solidarity as a concept and/or a norm of EU law within the framework of functional constitutionalism. In other words, how does solidarity fit within the normative framework of the EU legal order if we understand this framework as being founded on a functional constitution?

The article will set out a brief outline of functional constitutionalism as a theoretical framework which seeks to explain the EU legal and political order. It will then sketch out solidarity as a concept in legal and political discourse. Finally, it will assess the normative nature of different conceptions of solidarity, in the different contexts in which it is applicable – Member State solidarity, transnational solidarity and national solidarity. The article concludes that, through the lens of functional constitutionalism, solidarity has a purely instrumental value within the EU normative order.

* Associate Professor and Ragnar Söderberg Senior Research Fellow, Faculty of Law, Lund University.

¹ Turkuler Isiksel, *Europe’s Functional Constitution* (Oxford University Press 2016). Note that this approach should not be confused with *neo-functionalism*, the theory of European integration developed by Haas, Burley and Mattli, Stone Sweet and others.

2 FUNCTIONAL CONSTITUTIONALISM

Functional constitutionalism holds that the EU amounts to a supranational constitutional system because it ‘guides, constrains and enables the domestic institutions of the Member States’.² Whilst the EU may have emerged as a result of treaties between states under international law, it has developed in a way which establishes a ‘new configuration of political authority’,³ which cannot be reduced to the simple exercise of delegated powers by an international organisation acting as agent for the Member States.⁴ The EU legal order can be described in constitutional terms because it constitutes this new configuration of political authority. Crucially, this configuration is autonomous of both the legal orders of the Member States, and of the international legal order under which the treaties were made.⁵ As Tuori puts it: ‘Through this claim to normative autonomy, a legal order asserts exclusive power to identify the norms it comprises, and to determine their legal effects and relations to other normative orders’.⁶

It should be clear that functional constitutionalism should not be confused with ‘neo-functionalism’, the influential political scientific theory advanced by Haas and others, which describes the project of European integration as a strategic choice by national elites, to transfer policy competences to the European institutions,⁷ and the development of institutional dynamics within those European institutions.⁸ In contrast to neo-functionalism, the ambition of functional constitutionalism is not to describe causal relations between political, social and economic forces that lead to European integration, but to describe a ‘normative pattern of justification’ for the European project.⁹

This constitutional practice is, however, qualitatively different from the one that operates in the Member States. The authority of the constitution is not justified ‘by reference to the principles of popular sovereignty and individual liberty’, as national constitutions, but rather ‘from the claim to govern effectively’.¹⁰ Functional constitutionalism thus describes ‘the teleological re-purposing of constitutional rule’.¹¹ Functional constitutionalism recognises that the European Union is what Gareth Davis called a ‘purposive polity’.¹² The Member States conferred a number of competences on the EU in order to achieve the objectives set out in the Treaties.¹³ Central among these objectives is the establishing of an internal market. Flanking this central objective are the objectives to establish an economic and monetary union, to ‘offer its citizens’ an area of freedom, security and justice, as well as more nebulous aims to promote peace, its values and the well-being of its people. The EU

² Isiksel (n 1) 6.

³ *ibid* 72 ff.

⁴ cf. Peter L. Linseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford University Press 2010).

⁵ As the Court of Justice emphasised already in Case 6/64 *Costa v ENEL* EU:C:1964:66.

⁶ Kaarlo Tuori, *European Constitutionalism* (Cambridge University Press 2015) 53.

⁷ Ernst Haas, *The Uniting of Europe: Political, Social and Economic Forces* (first published 1958, University of Notre Dame Press 2004) esp 17- 19.

⁸ *ibid* esp. 299 ff. See also Alec Stone Sweet and Wayne Sandholtz, ‘European Integration and Supranational Governance’ (1997) 4(3) *Journal of European Public Policy* 297.

⁹ Isiksel (n 1) 73.

¹⁰ *ibid* 7

¹¹ *ibid*.

¹² Gareth Davies, ‘Democracy and Legitimacy in the Shadow of Purposive Competence’ (2015) 21(1) *European Law Journal* 2.

¹³ Article 5(1) TEU.

is afforded the competences necessary to achieve those objectives. As Davies points out, these are purposive competences – defined as ‘powers to take measures to achieve a particular goal [or goals]’¹⁴ - rather than sector specific competences. The purposive nature of these competences entails that, while the EU is constrained to follow the specified objectives set out in the Treaties, it is not constrained in respect of the subject matter at issue, nor the breadth of the impact of EU measures – the EU will have competence to regulate any and all areas of the Member States’ legal orders, provided such regulation is necessary to achieve the specified objectives. As Lenaerts observes: ‘There simply is no nucleus of sovereignty that the Member States can invoke, as such, against the [Union]’.¹⁵

Of course, this competence to legislate, to positively harmonise the laws of the Member States, is conditioned by the principles of subsidiarity and proportionality.¹⁶ Under the principle of subsidiarity ‘the Union shall act only, and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States’.¹⁷ However, in a large range of policy areas, Member States acting alone cannot achieve the objectives, because the objective is precisely to harmonise the laws of the Member States, something which individual Member States, by definition, cannot do. Subsidiarity therefore plays a limited role in constraining the legislative competence of the EU.¹⁸ Proportionality, which requires Union action to be no more than necessary to achieve the objectives of the Treaty,¹⁹ may seem more promising, but the Court grants considerable discretion to the Union legislator to determine what measures may be necessary.²⁰

This peculiar, functional, nature of the European constitution requires us to pay due attention to what Neil Walker called ‘the problem of translation’.²¹ The constitutional nature of the EU does not correspond to that of its Member States, and normative concepts that emerged and are part of national constitutional frameworks may not be applicable in the same way in the context of a transnational functional constitution. In fact, the Court of Justice of the EU has confirmed that normative concepts within EU law must be understood and applied in relation to the objectives of the EU project. As the Court put it first in *Internationale Handelsgesellschaft*,²² and then, 44 years and one day later, in *Opinion 2/13*, norms of EU law²³ ‘must be ensured within the framework of the structure and objectives of the [Union]’.²⁴ The Court went on to note in *Opinion 2/13* that

¹⁴ Davies ‘Democracy and Legitimacy in the Shadow of Purposive Competence’ (n 12) 3.

¹⁵ Koen Lenaerts, *Constitutionalism and the Many Faces of Federalism* (1990) 38(2) *The American Journal of Comparative Law* 205, 220. So even in sectors where the member sought to limit the competence of the EU, such as public health, wage setting or direct taxation, the EU has been able to intervene, both through positive and negative harmonisation, in order to ensure the effective functioning of the internal market.

¹⁶ Article 5(1) TEU.

¹⁷ Article 5(3) TEU.

¹⁸ For an elaboration of this argument, see Gareth Davies, ‘Subsidiarity: the wrong idea, in the wrong place, at the wrong time’ (2006) 43(1) *Common Market Law Review* 63.

¹⁹ Article 5(4) TEU.

²⁰ Stephen Weatherill, ‘The Limits of Legislative Harmonization Ten Years after Tobacco Advertising: How the Court’s Case Law has become a “Drafting Guide”’ (2011) 12(3) *German Law Journal* 827.

²¹ Neil Walker, ‘Postnational constitutionalism and the problem of translation’ in Joseph H H Weiler and Marlene Wind (eds), *European Constitutionalism beyond the State* (Cambridge University Press 2001).

²² Case 11/70 *Internationale Handelsgesellschaft* EU:C:1970:114.

²³ In the specific case the Court was referring to fundamental rights as general principles of EU law.

²⁴ Case 11/70 *Internationale* (n 22), para 4; *Opinion 2/13* of 18 December 2014 EU:C:2014:2454, para 170.

The pursuit of the EU's objectives, as set out in Article 3 TEU, is entrusted to a series of fundamental provisions, such as those providing for the free movement of goods, services, capital and persons, citizenship of the Union, the area of freedom, security and justice, and competition policy. Those provisions, which are part of the framework of a system that is specific to the EU, are structured in such a way as to contribute — each within its specific field and with its own particular characteristics — to the implementation of the process of integration, which is the *raison d'être* of the EU itself.²⁵

The Court thus makes it clear that the EU constitutional structure is designed and guided by the achievement of the objectives of (primarily economic) integration. Norms of EU law, including fundamental norms of the EU which grant rights to individuals, derive their normative status not on account of their moral salience, but because 'they are indispensable to forging an economic union among Member States'.²⁶

3 THE CONCEPT OF 'SOLIDARITY'

Before exploring the place of solidarity within the framework of the structure and objectives of the EU, it will be necessary to briefly sketch out solidarity as a concept, as it has evolved in European political thought. There is a peculiar elusiveness and ambiguity to solidarity. It is often used in a descriptive sense, to refer to shared practices, attitudes or feelings that pertain within a specific group or community, but it carries with it normative connotations which are not always made explicit.²⁷ As Bayertz puts it, 'a wavering, inexact and often suggestive use of the term is [...] dominant [...] in the literature'.²⁸ The ambition of this article is to try to provide a more minimalistic account of solidarity as a concept, without loading it with normative connotations.²⁹ To this end, Rainer Forst provides a helpful framework with which to approach the concept of solidarity.³⁰ He notes that, while there may be many *conceptions* of solidarity, it is possible to delineate the essential features of the

²⁵ *Opinion 2/13* (n 24), para 172.

²⁶ Isiksel (n 1) 96. See also Daniel Augenstein, 'Disagreement—Commonality—Autonomy: EU Fundamental Rights in the Internal Market' (2013) 15 *Cambridge Yearbook of European Legal Studies* 1.

²⁷ Lawrence Wilde, 'The Concept of Solidarity: Emerging from the Theoretical Shadows' (2007) 9(1) *Journal of British Politics and International Relations* 171.

²⁸ Kurt Bayertz, 'Four Uses of "Solidarity"' in Kurt Bayertz (ed), *Solidarity. Philosophical Studies in Contemporary Culture* (Springer 1999) 4.

²⁹ This can be contrasted with other proposals for a concept of solidarity that vest the concept with quite extensive normative criteria. Stjernø asserts that 'solidarity can most fruitfully be defined as the preparedness to share resources with others by personal contribution to those in struggle or in need and through taxation and redistribution organised by the state' (Steinar Stjernø, 'The Idea of Solidarity in Europe' (2011) 3 *European Journal of Social Law* 156). Sangiovanni intends to provide an account of solidarity that can explain how solidarity can give rise to genuine moral obligations, and in particular an account of solidarity that will 'inform a defence of social justice' (Andrea Sangiovanni, 'Solidarity as Joint Action' (2015) 32(4) *Journal of Applied Philosophy* 340). On a similar vein Gould links solidarity to a shared commitment to the elimination of suffering (Carol C Gould, 'Transnational Solidarities' (2007) 38(1) *Journal of Social Philosophy* 148). These may all be valid accounts of specific *conceptions* of solidarity, but are too narrow and normatively loaded to function as a suitable *concept* of solidarity.

³⁰ Rainer Forst, 'Solidarity: Concept, Conceptions and Context' (2021) Normative Orders Working Paper 02/2021 <https://publikationen.ub.uni-frankfurt.de/opus4/frontdoor/deliver/index/docId/60890/file/Rainer-Forst_Solidarity-Concept-Conceptions-and-Contexts.pdf> accessed 01 August 2023.

concept of solidarity in a way which is reasonably intelligible, and which is applicable to all the different conceptions of solidarity which have been developed in different contexts, both historical and contemporary.

First, the concept of solidarity ‘refers to a particular practical attitude of a person towards others’.³¹ This practical orientation is very important. As Prainsack and Buyx insist, solidarity is not merely a sentiment or a feeling, but is necessarily connected to action. According to them, solidarity entails ‘[s]hared practices reflecting a collective commitment to carry “costs” (financial, social, emotional or otherwise) to assist others’.³² This does not mean that solidarity only manifests itself in action. Solidarity is the *commitment* to act, a particular attitude towards others which Forst described as ‘a form of standing by’.³³

Second, the commitment is based on a particular normative bond with others (in respect of whom one has committed to act). According to Forst, this normative bond consists of either a common cause or a shared identity, or both.³⁴ Sangiovanni’s account of the concept of solidarity asserts that solidarity is additionally linked to ‘shared experience of adversity’.³⁵ It may well be that a shared identity is forged through a shared experience of adversity. But linking solidarity necessarily to shared adversity risks introducing extraneous normative connotations.³⁶ To be sure, a shared experience of adversity may give rise to a shared identity – the biblical account of the Jewish exodus from Egypt providing a striking example of how the experience of bondage under the tyrannical pharaohs helped forge the identity of the Jewish people.³⁷ It may also have united them in the common goal of reaching the promised land. But a shared experience of adversity reflects a particular *conception* of solidarity, it is not a necessary element of the *concept* of solidarity.³⁸

Third, solidarity requires a member to commit to carry costs even where this may not be in the narrow self interest of that particular member.³⁹ Whilst there may be an element of reciprocity involved in solidarity, in that all members share equally the commitment to further the common cause, or to uphold the shared identity, solidarity requires members to act even where there is no immediate *quid pro quo* from the other members.

Fourth, solidarity may require members to act, and to carry costs, to assist another member, even where that other may not be in a position to reciprocate.⁴⁰ Nonetheless, even where there are asymmetric burdens imposed on members, the relationship is still a

³¹ Forst (n 30).

³² Barbara Prainsack and Alena Buyx, ‘Solidarity in Contemporary Bioethics – Towards a New Approach’ (2012) 26(7) *Bioethics* 343.

³³ Forst (n 30) 4.

³⁴ *ibid* 3.

³⁵ Sangiovanni, ‘Solidarity as Joint Action’ (n 29).

³⁶ And indeed Sangiovanni, as already indicated above, intends to provide a specific conception of solidarity that will ‘inform a defence of social justice’ (*ibid* 356). Forst intends to provide a more general account of the concept of solidarity.

³⁷ Kimberly B Stratton, ‘Narrating Violence, Narrating Self: Exodus and Collective Identity in Early Rabbinic Literature’ (2017) 57(1) *History of Religions* 68.

³⁸ One can speculate that the Egyptian overlords displayed solidarity towards each other in ensuring that any runaway Jewish slaves were brought back to the ‘rightful’ owners. Indeed, many have commented on how, in modern capitalist societies, the rich appear to display greater class solidarity than the working class.

³⁹ Forst (n 30) 4.

⁴⁰ *ibid* 5.

reciprocal relationship between two subjects of solidarity, rather than one where one is the subject and the other merely the object – such as charity and altruism.⁴¹

Finally, and this is a point which Forst is not clear on, solidarity is not to be equated with justice. There may, of course, be occasions where not to comply with an obligation imposed by solidarity would result in injustice. And there may be bonds of solidarity centred on a common cause which strives for justice⁴² - but the relationship between solidarity and justice is contingent, not necessary. This implies that solidarity imposes duties to act to the benefit of someone even where this person does not, from a justice perspective, have a *right* to that benefit.⁴³

This outline of the concept of solidarity described by Forst is ‘normatively promiscuous’:⁴⁴ it can be applied in many different settings, in pursuit of different ends, and it is not necessarily connected with a particular moral, political or ethical value. Whilst solidarity has the clang of a positive virtue, normatively, it does not necessarily have a positive valence. A member of a criminal gang may engage in shared practices which reflect their commitment to carry costs to assist others, by not informing on other gang members when arrested by the police, even if it means a higher sentence to them. Understood from the internal perspective of the criminal gang, this will be valuable; but from a societal perspective, it can be extremely harmful.⁴⁵

This means that, in order to look at different conceptions of solidarity, and the normative implications that they carry, it will be necessary to examine the *context* of solidarity. Forst claims that contexts of solidarity specify:

1. The *normative nature* of the solidarity bond. What is the point of this bond – what common identity does it uphold, what common cause does it further.
2. The *community* of solidarity. Who is tied together by the bonds of solidarity.
3. The *context of justification* within which solidarity applies. How are the reasons which justify the solidarity obligations determined and assessed within the community of solidarity. This plays out both at the general level, in respect of the entire community and at the particular level – how is an individual obligation of solidarity in a specific case determined.

If we follow Forst, then we can see that it may not be very helpful to approach solidarity in the EU legal order as a single monolithical phenomenon. We will need to examine the particular conceptions of solidarity by reference to the contexts within which they are operationalised. This is perhaps particularly true in respect of solidarity in the EU

⁴¹ As Prainsack and Buyx put it ‘solidarity assumes symmetry in the respect which is relevant’, Prainsack and Buyx (n 32).

⁴² Forst describes this context of solidarity as a *political social* form of solidarity, and gives the examples of movements that struggle for gender and racial equality.

⁴³ Véronique Munoz-Dardé notes that solidarity and fraternity do not ‘sit comfortably in the logic of individual rights’ (Véronique Munoz-Dardé, ‘Fellow Feelings: Fraternity, Equality and the Origin of Stability and Justice’ (2018) sup. 7, *Daimon: Revista Internacional de Filosofía* 107, 108).

⁴⁴ Forst (n 30) 5.

⁴⁵ Nonetheless, even from this empirical perspective, there are strong arguments that successful societies require a high degree of solidarity between its members. Bo Rothstein, ‘Creating a Sustainable Solidaristic Society: A Manual’ (2011) QoG Working Paper 2011:07, <https://www.gu.se/sites/default/files/2020-05/2011_7_rothstein.pdf> accessed 01 August 2023.

legal and political order. EU solidarity displays what Karageorgiou describes as its diachronical nature⁴⁶ in the Treaties themselves. It manifests both as a phenomenon that pertains to the functioning of the Member States' societies, and as a norm that regulates the relations between those Member States. Sangiovanni provides a helpful taxonomy which encompasses three contexts of solidarity within the normative framework of the EU.⁴⁷ *National solidarity*, that is to say, solidarity between the citizens and residents of the Member States, *Member State solidarity*, which refers to solidarity between the Member States themselves, and *transnational solidarity* – solidarity between EU citizens *qua* EU citizens.

This article will now examine the conceptions of solidarity that pertain to these three different contexts of solidarity, through the perspective of functional constitutionalism.

3.1 MEMBER STATE SOLIDARITY

In respect of relations between Member States, solidarity, as Karageorgiou notes, has come to be understood as an expression of the principle of equality between Member States of the EU.⁴⁸ In this context of solidarity, the *community* of solidarity are the Member States. The *normative bond* which links this community together are the common objectives set out in the treaties. If all Member States have an equal interest in achieving the objectives set out in the Treaty, then they all have an equal duty to cooperate sincerely in discharging the tasks required to achieve those objectives.⁴⁹ Karageorgiou highlights the distinction between sincere cooperation (or loyalty) and solidarity, in that the former governs the relations between Member States and the Union and the latter 'mainly refers to relations between Member States'.⁵⁰ Nevertheless, in both cases the focus is on the need for all countries to 'put their shoulder to the wheel'. A Member State that fails to do its share in achieving the objectives of EU law breaches solidarity.⁵¹ As the Court put it, 'in permitting Member States to profit from the advantages of the community, the Treaty imposes on them also the obligation to respect its rules'.⁵² States that do not follow the rules where this does not suit their national interest are 'free-riders' and fail to show solidarity with the other Member States.

From the perspective of functional constitutionalism, this understanding of solidarity makes perfect sense. It reflects what Karageorgiou terms the 'governing-by-goals logic' under which solidarity serves as a 'guiding principle for the effective and efficient pursuit of goals'.⁵³

⁴⁶ Eleni Karageorgiou E, *Rethinking solidarity in European asylum law: A critical reading of the key concept in contemporary refugee policy* (PhD Thesis, Media-Tryck Lund University 2018).

⁴⁷ Andrea Sangiovanni, 'Solidarity in the European Union' (2013) 33(2) *Oxford Journal of Legal Studies* 213.

⁴⁸ Karageorgiou (n 46) 67.

⁴⁹ The principle of sincere cooperation is set out in Article 4(3) TEU, and stipulates that 'the Union and the Member States shall, in full mutual respect, assist each other in carrying out the tasks which flow from the Treaties'.

⁵⁰ Karageorgiou (n 46). See also Casolari's contribution in this Special Issue for an exploration of the relationship between solidarity and loyalty as EU principles.

⁵¹ This implies that the duties of solidarity pertain only to those countries that are committed to Treaty objectives and to the project of European integration, and who have the shared identity of EU Member States. So called 'third countries', who are not committed to the same objectives and do not identify as EU Member States will not be subject to Member State solidarity (though they may be attached by other bonds of solidarity, there is evidence that European countries share bonds of solidarity with Ukraine in the face of Russian aggression, for example).

⁵² Case 39/72 *Commission v Italy (Slaughterhouse Premium)* EU:C:1973:13.

⁵³ Karageorgiou (n 46) 209.

Understood in this way, the value of solidarity as a normative principle of EU law is entirely instrumental to the goals of the EU, and thereby contingent on the value of those goals.⁵⁴

There is a range of provisions in the Treaties requiring Member States to act in solidarity with each other in the context of energy policy,⁵⁵ economic policy⁵⁶ and asylum, immigration and border policy,⁵⁷ and common foreign and security policy.⁵⁸ These provisions refer to different *contexts of justification*, but they are all clearly linked to specific common objectives of the EU, with a clear link between the common objective as the normative bond uniting the members of the community of solidarity, and the obligations which solidarity imposes.

The specificity of the community of solidarity, and the limited and focused nature of the duties that arise from solidarity, was made apparent in the case of XXXX.⁵⁹ The case concerned the interpretation of the Standards Directive.⁶⁰ The Member State concerned intended to refuse an application for subsidiary protection by XXXX, even though he had two young daughters resident in that Member State, who had already received subsidiary protection. Refusing the application would interfere with the right to respect for the family life both of XXXX and of his daughters, as well as being contrary to the best interests of the child in respect of his daughters.⁶¹ Nonetheless, the Grand Chamber held that the duty of solidarity of the Member State was towards the other Member States, and towards the common objective of creating an area of freedom, security and justice, based on mutual trust between the Member States. There was no question that solidarity imposed any kind of duty on Member States to ensure that children lawfully resident in the respective territory were able to be joined by their father.⁶²

This case can be contrasted with the earlier case of *N.S.*⁶³ where the Court held that the Member State concerned was under a duty *not* to remove the asylum seeker to ‘the member state responsible’ under the Dublin Regulation, where there are systemic deficiencies in that other Member State which would lead to a real risk that the asylum seeker be subject to inhuman or degrading treatment. The Court referred to solidarity and burden sharing, implying, as Karageorgiou points out, that Member States ‘can use the discretion

⁵⁴ In Case 39/72 *Commission v Italy* (n 52), the goal was the reduction in the overall production of milk in the EEC, under the CAP. Therefore solidarity required Italy to pay a premium to farmers who slaughtered their milk cows. In *Zaizoune* the goal was the establishment of an effective removal and repatriation policy in respect of third country nationals. Therefore, solidarity required Spain to carry out the removal of Mr. Zaizoune promptly (Case C-38/14 *Extranjería v Samir Zaizoune* EU:C:2015:260).

⁵⁵ Article 194 TFEU.

⁵⁶ Article 122 TFEU.

⁵⁷ Article 80 TFEU.

⁵⁸ Article 24 TEU.

⁵⁹ Case C-483/20 XXXX *v Commissionnaire Général aux Réfugiés apatrides* EU:C:2022:103

⁶⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L337/9.

⁶¹ Opinion of AG Pikamäe in Case C-483/20 XXXX EU:C:2021:780. These are rights protected under Article 7 and 24 of the Charter.

⁶² The Court noted the requirement that the common policy on asylum and immigration be ‘fair’ towards third country nationals, but did not refer to solidarity as extending beyond the obligations of the member state towards other Member States (para 28).

⁶³ C-411/10 *N. S. v Secretary of State for the Home Department* EU:C:2011:610.

offered by the sovereignty clause in the Regulation for solidarity reasons'.⁶⁴ One of the Member States, Greece, was experiencing particular difficulties in complying with the obligations entailed by the implementation of the Common European Asylum System.⁶⁵ In such a case, solidarity required other Member States to process the asylum claim domestically, instead of removing asylum seekers back to Greece. Following this case, and in light of the difficulties which Italy and Greece in particular were facing in dealing with processing asylum applications in their respective territories, the EU enacted Decision 2015/1601,⁶⁶ with the express intention of reinforcing solidarity towards frontline Member States. When some Member States challenged this decision, they were implicitly chided by the Court for failure to show solidarity towards the other Member States.⁶⁷

These two cases show that Member State solidarity operates both as 'one for all' logic, where Member States are required to act in order to achieve the common objective, and the 'all for one' logic where Member States are required to act in order to support a specific state that is faced with particular difficulties. In her contribution to this issue, Küçük⁶⁸ highlights a recent case of the court in the field of energy policy, *OPAL*,⁶⁹ where the Court annulled a decision by the Commission on the basis that it failed to sufficiently take into account the interests of one Member State (Poland) in respect of security of gas supply. By failing to properly consider the interests of this Member State, the Commission had breached the principle of energy solidarity. But even in these types of 'all for one' cases, the reasoning of the court links the obligation to respect solidarity to the objectives of the EU, rather than to any conception of a common identity of the Member States. As the Court put it:

in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, European Union policy on energy is to aim, in a spirit of solidarity between Member States, to ensure the functioning of the energy market, ensure security of energy supply in the European Union [...]⁷⁰

The obligation of solidarity in respect of the particularly vulnerable individual Member State ('all for one' solidarity) is a corollary of the common objective, shared by all the EU Member States. In *OPAL*, the common objective was a functioning energy market, and more broadly, the establishment and functioning of the internal market. In *N.S.* the common objective was the Common European Asylum System, and more generally the creation of an area of freedom, security and justice. In all cases, the normative nature of Member State solidarity is based on the achievement of common objectives agreed on by the Member States.

⁶⁴ Karageorgiou (n 46) 157.

⁶⁵ Case C-411/10 *N.S.* (n 63) para. 90.

⁶⁶ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L248/80.

⁶⁷ Case C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the EU* EU:C:2017:631. Advocate General Bot, in his Opinion, was more explicit in affirming that 'solidarity between the Member States when one of them is faced with an emergency situation [...] is the quintessence of what is both the *raison d'être* and the objective of the European project' (Opinion of AG Bot in Case C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the EU* EU:C:2017:618).

⁶⁸ See Küçük's contribution in this Special Issue.

⁶⁹ Case C-848/19 P *Germany v Commission (OPAL)* EU:C:2021:598.

⁷⁰ *ibid* para 37.

3.2 TRANSNATIONAL SOLIDARITY

Transnational solidarity is described as ‘the fair return owed by EU citizens to one another’. According to Sangiovanni, this aspect of solidarity has its clearest expression in the rules governing EU citizenship and allows nationals of one Member State to live, reside and receive social assistance in another Member State.⁷¹ The rationale is that, when a Member State extends rights which are normally provided to its own nationals and also to citizens of other Member States, this is an expression of ‘Solidarity with all citizens [of the EU]’.⁷²

This conception of transnational solidarity should be distinguished from the universalistic understanding of solidarity which would bind the whole of mankind – what Bayertz terms ‘moral solidarity’ which ‘renders the entire moral world one big whole, in which each individual is “co-responsible” [...] for every other individual’.⁷³ Rather, transnational solidarity presupposes ‘[t]hicker relationships [which] embody the idea of mutual aid and support’.⁷⁴ It is therefore closer to Bayertz conception of ‘social solidarity’ between members of a limited community (EU citizens) who stand in a relation of mutual dependency with each other. This ‘social solidarity’ is close in spirit to Durkheim’s conception of ‘organic solidarity’ – solidarity between autonomous individuals, who are not embedded in traditional communities, but instead are bound by interdependent relations of production with others.⁷⁵

This would seem to imply that the community of solidarity, the persons who owe each other solidarity, are the individual EU citizens. As Gould points out, the people engaged in solidaristic relations are ‘reciprocally concerned about each other and mutually disposed to aid each other when required’.⁷⁶ If transnational solidarity is, in Sangiovanni’s account ‘the fair return owed by EU citizens *to one another*’,⁷⁷ this implies that EU citizens owe obligations of solidarity directly towards each other. However, EU law does not impose duties on individual citizens. Whilst some areas of EU law impose duties directly on individual undertakings,⁷⁸ the EU imposes duties on the Member States, who in turn impose duties on individuals. As Barnard put it:

the Union gives rights but [...] demands little by way of duties from its citizens (e.g. to pay taxes, to participate in the defence of the country, to obey the law, the vote, willingness to work, etc.). These duties are owed to Member States.⁷⁹

⁷¹ Sangiovanni, ‘Solidarity in the European Union’ (n 47) 233.

⁷² Malcolm Ross, ‘Solidarity: A new constitutional paradigm for the EU’ in Malcolm Ross and Yuri Borgmann-Prebil (eds), *Promoting Solidarity in the EU* (Oxford University Press 2010) 16, addressing specifically EU rules prohibiting discrimination.

⁷³ Bayertz (n 28).

⁷⁴ Arto Laitinen, ‘From Recognition to Solidarity: Universal Respect, Mutual Support and Social Unity’ in Arto Laitinen and Anne Birgitta Pessi (eds), *Solidarity: Theory and Practice* (Lexington Books 2014) 145.

⁷⁵ For an overview see Gould (n 29).

⁷⁶ *ibid* 154.

⁷⁷ Sangiovanni, ‘Solidarity in the European Union’ (n 47).

⁷⁸ Specifically in the context of competition law provisions, as well as directly applicable regulations that impose duties directly on market actors in some areas of regulatory law.

⁷⁹ Catherine Barnard, *The Substantive Law of the EU* (4th edn, Oxford University Press 2013) 436. On a similar note, Weiler states that ‘EU citizenship is a category which comes with rights, but no active (or even passive) duties’. (Joseph H H Weiler, ‘Individuals and Rights - the Sour Grapes’ (2013) 21(2) *European Journal of International Law* 277, 278).

There is therefore a lack of a direct reciprocal relationship between EU citizens that could be seen as an expression of the kind of transnational solidarity which would link all EU citizens to a common project, or to a common identity. What we have instead are obligations imposed on Member States to ascribe rights to EU citizens from other Member States. Transnational solidarity in the context of the EU legal order is therefore not the solidarity of EU citizens towards each other, but the requirement that Member States display solidarity towards the citizens of other Member States present in their territory.

Approaching this understanding of transnational solidarity through the lens of functional constitutionalism, the first question to ask will be – what objective or objectives is the EU pursuing in the area of free movement of citizens? In the early caselaw of the EU, whilst the EU was still a European Economic Community and the central objective was the creation of a common market, the rights to move, reside and receive social advantages were only extended to those who were workers or otherwise economically active, as well as their family members. The requirement of Member States to express solidarity with nationals of other Member States only applied where this would contribute to the common market objective. *Lebon* provides a stark illustration.⁸⁰ Ms. Lebon, a French national who resided in Belgium for many years, but was economically inactive, could not call on the solidarity of the Belgium social security system. Her father, a worker also resident in Belgium could call on that solidarity, on behalf of his daughter. Providing social assistance to the dependents of workers contributes to the common market objective, whereas facilitating the movement of non-economically active persons does not.

As the EU objective evolved from a common market into an internal market, accompanied by an area of freedom, security and justice, so the range of right holders expanded. The Member States of the EU have agreed to achieve a common objective, of creating not just an internal market where the free movement of factors of production is guaranteed, but also an internal area of free movement, in which the free movement of nationals of the Member States is ensured.⁸¹ In order to achieve this objective, the status of ‘EU citizen’ is introduced, and individuals holding that status are given rights to move and reside in the territory of other Member States. However, unlike the common market objective, where the obligation to facilitate free movement only applies in respect of economically active persons, as demonstrated in *Lebon*, the objective of creating an AFSJ may require Member States to provide rights to EU citizens resident in their territory, even where those citizens are not economically active. In the seminal case of *Martinez Sala*⁸² the CJEU held that: ‘As a national of a Member State lawfully residing in the territory of another Member State, the appellant in the main proceedings comes within the scope *ratione personae* of the provisions of the Treaty on European citizenship’.⁸³ As such, the Member State in question was not entitled to discriminate against Ms Martinez Sala in respect of the grant of a child-raising allowance. The allowance was a social advantage that seemed suitable to facilitate mobility within the Union, Ms. Martinez Sala had exercised her mobility, so to deny her that allowance would hinder free movement.

⁸⁰ Case 316/85 *Centre public d'aide sociale de Courcelles v Marie-Christine Lebon* EU:C:1987:302.

⁸¹ Article 3(2) TEU.

⁸² Case C-85/96 *María Martínez Sala v Freistaat Bayern* EU:C:1997:335.

⁸³ *ibid* para 61.

The obligation to provide financial support to non-economically active citizens is not unconditional, and Member States are not required to provide such support where this entails an unreasonable burden on them. But Member States are expected to show ‘a certain degree of solidarity’ towards nationals of other Member States.⁸⁴ Moreover, and crucially for the purpose of this article, the obligation only exists where this will be necessary to achieve the objective. There is no general duty on Member States to display solidarity to EU citizens present in their territory, except where this is necessitated by the EU objective. This was made evident in the subsequent case of *Danó*.⁸⁵ This case concerned Ms Danó, a national of one Member State (Romania) lawfully resident⁸⁶ in another Member State (Germany). She applied for a benefit which the CJEU considered fell within the material scope of EU law.⁸⁷ According to its previous caselaw,⁸⁸ Germany should have had an obligation not to discriminate against Ms Danó, and it would be up to the Member State to show that denying her the benefit was necessary and proportionate in order to prevent her being a burden on its social assistance.

The CJEU did not follow its previous caselaw. Instead, the it did a ‘teleological twist [...] which [...] effectively reversed the objective of the CRD [Citizens' Rights Directive]’.⁸⁹ Whereas, as indicated above, the CJEU had previously held that the CRD should be identified in light of its objective of facilitating free movement of citizens. Now the CJEU held that it must be interpreted in light of its objective of ‘preventing Union citizens who are nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State’.⁹⁰ If the objective is to protect the social assistance systems of Member States, then the Member State has no obligation to display a ‘certain degree of solidarity’ towards her.

The implications for transnational European solidarity is that it is, as Brunkhorst notes, an asymmetric solidarity, secured from above.⁹¹ EU citizens are not consociates engaged in a common project, or sharing a common identity. They are passive recipients of rights, which are provided by the Member States in accordance with the functional imperatives of European integration, but they are merely the addressees of the law, not its co-authors.⁹²

3.3 NATIONAL SOLIDARITY

Within those national legal, political and social orders, the question of solidarity assumes a central practical political dimension. It is, as Bayertz insists ‘the question as to how the

⁸⁴ Case C-184/99 *Rudy Grzelezyk* EU:C:2001:458. For an exploration of the nature of this solidarity, see Stefano Giubboni, ‘A Certain Degree of Solidarity? Free Movement of Persons and Access to Social Protection in the Case Law of the European Court of Justice’ in Malcolm Ross and Yuri Borgmann-Prebil (eds), *Promoting Solidarity in the EU* (Oxford University Press 2010).

⁸⁵ Case C-333/13 *Elisabeta Dano, Florin Dano v Jobcenter Leipzig* EU:C:2014:2358.

⁸⁶ She had been issued by the German authorities with a residence certificate of unlimited duration (ibid para 36).

⁸⁷ ibid para 55.

⁸⁸ Such as *Martinez Sala*, as discussed above.

⁸⁹ Daniel Thym, ‘The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens’ (2015) 52(1) *Common Market Law Review* 17.

⁹⁰ Case C-333/13 *Dano* (n 85) para 74.

⁹¹ Hauke Brunkhorst, *Solidarity* (MIT Press 2005) 172.

⁹² For a more expansive understanding of individuals in EU law and of interpersonal solidarity, see Groussot and Karageorgiou in this Special Issue.

cohesion of society can be promoted and consolidated'.⁹³ Solidarity here operates in what Forst classifies as the 'ethical-political context'. It refers to 'national bonds and a shared history, or perhaps even an ethnic-historical identity interpreted as a political identity and as a project to be pursued and continued'.⁹⁴ This would seem to tie solidarity to some idea of nationalistic or identitarian politics. That is not necessarily so. Any form of political community entails a common conception of shared life form within which each person must take responsibility for the other.⁹⁵

According to Habermas, discourse ethics stipulates that both human rights and democracy co-originate from a discursive process in which legal subjects can understand themselves as both authors and addressees of those rights and that democracy. But this process cannot arise among a random collection of atomised individuals, but requires a value orientation of citizens, a certain attitude of citizens towards their fellow citizens.⁹⁶ This attitude is one of solidarity. Solidarity, in this ethical-political context, is thus a moral demand, that members of the political community adopt a particular attitude towards their fellow members, and as such, it is applicable only within a bounded political community.⁹⁷

These processes, institutions and normative demands, within which national solidarity is secured, either in its factual or normative dimension, do not seem to have a place within the normative framework of the EU's functional constitution. At best, they are a purely internal matter, which is the matter for the Member States within their individual spheres of competence,⁹⁸ or a national interest which can be relied on to justify derogating from obligations arising out of EU law.⁹⁹

At worst, they may be regarded as protectionist or nationalistic, and as obstacles to be overcome. Indeed, the process of European integration has been described as precisely aimed at loosening such national ties in order to make space for individual self-determination.¹⁰⁰ As Münch puts it: 'European law is a major force in advancing individual autonomy by emancipating the individual from traditionally established national constraints'.¹⁰¹

Even if one does not accept that the *objective* of the EU project is the weakening of national solidarity, there are good arguments that the *effects* of EU law, in particular internal market law, in practice, undermine national solidarity. As Scharpf describes,¹⁰² the

⁹³ Bayertz (n 28) 13.

⁹⁴ Forst (n 30) 10.

⁹⁵ Jürgen Habermas, 'Justice and Solidarity: on the discussion concerning Stage 6' (1989) 21(1) *Philosophical Forum* 32.

⁹⁶ *ibid.*

⁹⁷ Indeed, as Pierce notes, the moral demand of solidarity is a necessary condition for the flourishing, and perhaps for the very existence, of democratic political communities (Andrew J Pierce, 'Justice without Solidarity? Collective Identity and the Fate of the 'Ethical' in Habermas' Recent Political Theory' (2018) 26(1) *European Journal of Philosophy* 546).

⁹⁸ E.g., Case C-67/96 *Albany International BV* EU:C:1999:430.

⁹⁹ See, tangentially, Case C-699/17 *Allianz Vorsorgekasse AG* EU:C:2019:290.

¹⁰⁰ Loïc Azoulay, 'The European Individual as Part of Collective Entities' in Loïc Azoulay, Ségolène Barbou des Places, and Etienne Patout (eds), *Constructing the Person in EU Law: Rights, Roles, Identities* (Hart Publishing 2016).

¹⁰¹ Richard Münch, 'Constructing a European Society by Jurisdiction' (2008) 14(5) *European Law Journal* 519.

¹⁰² Fritz W Scharpf, 'Legitimacy in the Multi-level European Polity' in Petra Dobner and Martin Loughlin (eds), *The Twilight of Constitutionalism?* (Oxford University Press 2010).

mechanism of negative integration, underpinned by directly effective individual rights and the principle of supremacy, have a corrosive effect on the systems of mutual solidarity constructed within Member States' legal orders.¹⁰³

4 SOLIDARITY AS THE TELOS OF THE EU

Another possible locus of solidarity within the EU legal order, conceived as a functional constitution, is as the telos of European integration. On this view, solidarity is not another norm, or principle, of EU law, but is the *raison d'être* of the European project.¹⁰⁴ This would reflect the famous statement in the Schuman declaration that: 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity'.¹⁰⁵

As such, the objectives set out in the Treaties are not ends in themselves, but are merely means to achieve the ultimate goal of European solidarity. In this vein, and as already pointed out above, Advocate General Bot, in his Opinion in *Slovakia and Hungary v Council*, asserts that, when referring to solidarity as a cardinal value of the European Union, one refers to 'the quintessence of what is both the *raison d'être* and the objective of the European project'.

The question that arises is: what is the normative effect of European solidarity? To put it in arithmetic terms, if European solidarity is the sum of the objectives set out in the treaty, then what is the difference between those objectives and solidarity - in other words, if one subtracts the objectives from solidarity, what is Europe left with? Solidarity entails an obligation to act. To what end are Member States required to act? In order to create solidarity? The formulation of 'an ever closer union', if taken as the *finalité politique* of the European project becomes an empty tautology,¹⁰⁶ and solidarity is demanded solely for solidarity's sake.

5 CONCLUSION

This article sought to analyse solidarity as a concept of EU law in light of a functional constitutionalist understanding of the EU legal order. It started with a concept of solidarity stripped, to the extent possible, of any normative connotations and substantive assumptions, in order to identify that role that solidarity plays in the various contexts in which it arises within the EU legal framework.

The conclusion is that, from this perspective, the normative value of solidarity in EU law is contingent on effectiveness. Where the effective achievement of EU objectives requires Member States to act in solidarity to each other, or to exercise transnational solidarity towards citizens of other Member States, then EU law will impose a duty on them to do so. Conversely, if the exercise of national solidarity within the Member State undermines the

¹⁰³ For an exposition of this effect in respect of national democracy see Eduardo Gill-Pedro, *EU Law, Fundamental Rights and National Democracy* (Routledge 2019).

¹⁰⁴ Echoing the language of the Court in *Opinion 2/13*.

¹⁰⁵ Schuman Declaration of 9 May 1950 <https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en> accessed 16 May 2023.

¹⁰⁶ Michelle Everson and Christian Joerges, 'Facticity as validity: the misplaced revolutionary praxis of European law' in Emiliós Christodoulidis, Ruth Dukes, and Marco Goldoni (eds), *Research Handbook on Critical Legal Theory* (Edward Elgar 2019).

effective achievement of EU objectives, then EU law will impose a duty on those Member States not to allow such exercise.

This may not be a very satisfying conclusion for those who would wish the EU to represent the embodiment of higher values or nobler principles. But a functional constitutionalist perspective takes seriously the purposive nature of the EU legal order. The EU has no competence to impose duties on Member States or on EU citizens to act in solidarity with others, except where such solidarity facilitates the achievement of EU objectives.

LIST OF REFERENCES

Augenstein D, 'Disagreement—Commonality—Autonomy: EU Fundamental Rights in the Internal Market' (2013) 15 *Cambridge Yearbook of European Legal Studies* 1

DOI: <https://doi.org/10.5235/152888713809813549>

Azoulai L, 'The European Individual as Part of Collective Entities' in Azoulai L, Barbou des Places S, and Pataut E (eds), *Constructing the Person in EU Law: Rights, Roles, Identities* (Hart Publishing 2016)

DOI: <https://doi.org/10.5040/9781782259367.ch-009>

Barnard C, *The Substantive Law of the EU* (4th edn, Oxford University Press 2013)

DOI: <https://doi.org/10.1093/he/9780199670765.001.0001>

Bayertz K, 'Four Uses of "Solidarity"' in Bayertz K (ed), *Solidarity. Philosophical Studies in Contemporary Culture* (Springer 1999)

DOI: https://doi.org/10.1007/978-94-015-9245-1_1

Brunkhorst H, *Solidarity* (MIT Press 2005)

Davies G, 'Subsidiarity: the wrong idea, in the wrong place, at the wrong time' (2006) 43(1) *Common Market Law Review* 63

DOI: <https://doi.org/10.54648/cola2005083>

— —, 'Democracy and Legitimacy in the Shadow of Purposive Competence' (2015) 21(1) *European Law Journal* 2

DOI: <https://doi.org/10.1111/eulj.12079>

Everson M and Joerges C, 'Facticity as validity: the misplaced revolutionary praxis of European law' in Christodoulidis E, Dukes R, and Goldoni M (eds), *Research Handbook on Critical Legal Theory* (Edward Elgar 2019)

DOI: <https://doi.org/10.4337/9781786438898.00030>

Gill-Pedro E, *EU Law, Fundamental Rights and National Democracy* (Routledge 2019)

DOI: <https://doi.org/10.4324/9780429329142>

Giubboni S, 'A Certain Degree of Solidarity? Free Movement of Persons and Access to Social Protection in the Case Law of the European Court of Justice' in Ross M and Borgmann-Prebil Y (eds), *Promoting Solidarity in the EU* (Oxford University Press 2010)

DOI: <https://doi.org/10.1093/acprof:oso/9780199583188.003.0009>

Gould CC, 'Transnational Solidarities' (2007) 38(1) *Journal of Social Philosophy* 148

DOI: <https://doi.org/10.1111/j.1467-9833.2007.00371.x>

- Haas E, *The Uniting of Europe: Political, Social and Economic Forces* (first published 1958, University of Notre Dame Press 2004)
- Habermas J, 'Justice and Solidarity: on the discussion concerning Stage 6' (1989) 21(1) *Philosophical Forum* 32.
- Isiksel T, *Europe's Functional Constitution* (Oxford University Press 2016)
DOI: <https://doi.org/10.1093/acprof:oso/9780198759072.001.0001>
- Karageorgiou E, *Rethinking solidarity in European asylum law: A critical reading of the key concept in contemporary refugee policy* (PhD Thesis, Media-Tryck Lund University 2018)
- Laitinen A, 'From Recognition to Solidarity: Universal Respect, Mutual Support and Social Unity' in Laitinen A and Pessi AB (eds), *Solidarity: Theory and Practice* (Lexington Books 2014)
- Lenaerts K, *Constitutionalism and the Many Faces of Federalism* (1990) 38(2) *The American Journal of Comparative Law* 205
DOI: <https://doi.org/10.2307/840100>
- Linseth PL, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford University Press 2010)
DOI: <https://doi.org/10.1093/acprof:oso/9780195390148.001.0001>
- Münch R, 'Constructing a European Society by Jurisdiction' (2008) 14(5) *European Law Journal* 519
DOI: <https://doi.org/10.1111/j.1468-0386.2008.00428.x>
- Munoz-Dardé V, 'Fellow Feelings: Fraternity, Equality and the Origin of Stability and Justice' (2018) sup. 7, *Daimon: Revista Internacional de Filosofía* 107
DOI: <https://doi.org/10.6018/daimon/333881>
- Pierce AJ, 'Justice without Solidarity? Collective Identity and the Fate of the 'Ethical' in Habermas' Recent Political Theory' (2018) 26(1) *European Journal of Philosophy* 546
DOI: <https://doi.org/10.1111/ejop.12273>
- Prainsack B and Buyx A, 'Solidarity in Contemporary Bioethics – Towards a New Approach' (2012) 26(7) *Bioethics* 343
DOI: <https://doi.org/10.1111/j.1467-8519.2012.01987.x>
- Ross M, 'Solidarity: A new constitutional paradigm for the EU' in Ross M and Borgmann-Prebil Y (eds), *Promoting Solidarity in the EU* (Oxford University Press 2010)
DOI: <https://doi.org/10.1093/acprof:oso/9780199583188.003.0002>

Sangiovanni A, 'Solidarity in the European Union' (2013) 33(2) Oxford Journal of Legal Studies 213

DOI: <https://doi.org/10.1093/ojls/gqs033>

Sangiovanni, A.. 'Solidarity as Joint Action' (2015) 32(4) Journal of Applied Philosophy 340

DOI: <https://doi.org/10.1111/japp.12130>

Scharpf FW, 'Legitimacy in the Multi-level European Polity' in Dobner P and Loughlin M (eds), *The Twilight of Constitutionalism?* (Oxford University Press 2010)

DOI: <https://doi.org/10.1093/acprof:oso/9780199585007.003.0005>

Stjernø S, 'The Idea of Solidarity in Europe' (2011) 3 European Journal of Social Law 156

Stone Sweet A and Sandholtz W, 'European Integration and Supranational Governance' (1997) 4(3) Journal of European Public Policy 297

DOI: <https://doi.org/10.1080/13501769780000011>

Stratton KB, 'Narrating Violence, Narrating Self: Exodus and Collective Identity in Early Rabbinic Literature' (2017) 57(1) History of Religions 68

DOI: <https://doi.org/10.1086/692318>

Thym D, 'The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens' (2015) 52(1) Common Market Law Review 17

DOI: <https://doi.org/10.54648/cola2015002>

Tuori K, *European Constitutionalism* (Cambridge University Press 2015)

DOI: <https://doi.org/10.1017/cbo9781316091883>

Walker N, 'Postnational constitutionalism and the problem of translation' in Weiler JHH and Wind M (eds), *European Constitutionalism beyond the State* (Cambridge University Press 2001)

DOI: <https://doi.org/10.1017/cbo9780511495106.003>

Weatherill S, 'The Limits of Legislative Harmonization Ten Years after Tobacco

Advertising: How the Court's Case Law has become a "Drafting Guide"' (2011) 12(3) German Law Journal 827

DOI: <https://doi.org/10.1017/s2071832200017120>

Weiler JHH, 'Individuals and Rights - the Sour Grapes' (2013) 21(2) European Journal of International Law 277

DOI: <https://doi.org/10.1093/ejil/chq043>

Wilde L, 'The Concept of Solidarity: Emerging from the Theoretical Shadows' (2007) 9(1) Journal of British Politics and International Relations 171

DOI: <https://doi.org/10.1111/j.1467-856x.2007.00275.x>