

Series editors' preface: Europe in the Making – What Role for Unwritten Constitutional Norms?

Robert Schuman once remarked that 'Europe will not be built in a day, nor will it be built without a struggle. Nothing lasting is achieved without effort. Yet the process is already underway'.¹

This observation holds particularly true for the drafting of a constitution of a new political entity, which can equally be remarked for the United States in the late 18th century,² as for the ongoing European integration project.³ In this volume, Ziegler already called the European Union (EU) a 'maturing constitutional order', highlighting that, in such an order, 'it is precisely a function of unwritten norms to fill gaps in a legal framework'.⁴

Throughout the years, many authors in our book series have presented various ideas for strengthening the European integration project and advancing the values Europe could promote worldwide. For example, in 2017, one of us (D.K.) co-edited a volume of the protection of personal data in trans-Atlantic relationships, arguing, *inter alia*, for these relationships to conform to democratic standards, the rule of law (*Rechtsstaat*), and the protection and promotion of fundamental rights and freedoms. A proposition was also put that encryption – as a means of data protection – should enjoy a high level of legal protection.⁵

In 2020, with Terzis and Trottier, we argued, *inter alia*, that efforts to fight disinformation might conflict with the values and principles on which a democratic polity has been built, e.g., fair trial or the freedom of expression. A proposition was put to expand the reliance on the principle of proportionality to solve conflicts between rights, freedoms and interests.⁶

In 2025, with Lievens and Verdoodt, in our co-edited volume on the right not to use the internet, we explored whether (a degree of) the non-use of new or emerging technologies through fundamental rights could make it to the legal realm, either as a new, standalone right or one interpreted from other rights and freedoms, such as non-discrimination.⁷

Now, this book analyses a technique that could be used to better the European integration project, i.e., unwritten constitutional norms. It demonstrates that constitutional orders cannot be understood solely through what is written down, even in systems grounded in codified, formal constitutions. What is quietly understood plays a key role in shaping constitutional orders.

Inspired by the focus of this book, we are led to question whether and to what extent unwritten constitutional norms can contribute to advancing some of these ideas for bettering the European integration project, not only on a supranational level but also on national or regional levels. If, for instance, legal certainty was recognized by the Court of Justice of the EU as a general principle of EU law,⁸ then if and to what extent, for example, to protect personal data, the use of encryption or the non-use of new or emerging technologies could be safeguarded at the highest legal level by invoking

¹ Robert Schuman, *Pour L'Europe*, Éditions Nagel, Paris 1963, p. 14 (translation ours).

² Cf. e.g., Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention* (Little, Brown 1966).

³ Cf. e.g., Luuk Van Middelaar, *The Passage to Europe: How a Continent Became a Union* (Yale University Press 2013).

⁴ Chapter 7, in this volume.

⁵ Dan Svantesson and Dariusz Kloza, 'Landscape with the Rise of Data Privacy Protection' in Dan Svantesson and Dariusz Kloza (eds), *Trans-Atlantic Data Privacy Relations as a Challenge for Democracy* (Intersentia 2017), pp. 564-567.

⁶ Georgios Terzis, Dariusz Kloza, Elżbieta Kuzelewska and Daniel Trottier, 'Introduction: "They All Hear 'Ping' at the Same Time"' in Georgios Terzis, Dariusz Kloza, Elżbieta Kuzelewska and Daniel Trottier (eds), *Disinformation and Digital Media as a Challenge for Democracy* (Intersentia 2020), pp. xxx-xxxi.

⁷ Dariusz Kloza, Elżbieta Kuzelewska, Eva Lievens and Valerie Verdoodt, 'Introduction' in Dariusz Kloza, Elżbieta Kuzelewska, Eva Lievens and Valerie Verdoodt (eds), *The Right Not to Use the Internet* (Routledge 2025), p. 1.

⁸ Cf. e.g., Takis Tridimas, *The General Principles of EU Law* (2nd ed., Oxford University Press 2007).

unwritten norms? To what extent can these unwritten norms help solve conflicts between these ideas and other rights, freedoms and interests?

To help answering these and related questions, we are very pleased to include '*Unwritten Constitutional Norms: Theory and Implementation Beyond the Written Framework*', edited by Piotr Mikuli, in our book series.

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⁹ This preface contains solely my personal views and not those of any organisation I may be affiliated with.