towards 'just sustainabilities'. From this perspective, sustainability could still function as a justification and a normative horizon of the international legal system – albeit tainted with the knowledge that the broader framework in which sustainability-oriented reforms unfold precludes the achievement of sustainability as an end goal. The other dimension is that of centralized legal designs that seek to fundamentally restructure the international political economy and deliver on aspirations of global justice through planning and centralized social action. In this case, sustainability is not an aspiration to be approached but never reached, but rather a condition of limits to growth that can be articulated and achieved by political means within the international legal order. While Ponte focuses his normative section on the former of those two dimensions, I argue that *Business, Power and Sustainability in a World of Global Value Chains* should be read as a work that also highlights the urgency of the latter dimension. Even if such re-arrangements currently appear politically distant, political feasibility need not – in fact, it should not – define institutional imagination.

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Pavlos Eleftheriadis. ***A Union of Peoples: Europe as a Community of Principle***. Oxford: Oxford University Press, 2020. Pp. 304. £84. ISBN: 9780198854173.

1 Introduction

The central claim of Pavlos Eleftheriadis's book is that the European Union is not a constitutional order, or a federation, or a federal union; it is, instead, a construct of international law that primarily regulates the relations between its member states and is, as such, part of the law of nations. Thus, *A Union of Peoples* radically differs from most conventional analyses of the EU legal order, which conceive of the European Union as somehow distinct from ordinary international law. The book, however, also takes a controversial view of public international law by arguing that it has a distinct and limited role, as the law that only operates between sovereign states. Drawing on political and legal theory, the result is an original and provocative attempt to offer a distinctly *jurisprudential* account of the European Union's nature.

The book can be divided in two parts. The first part, comprising chapters 1 to 5, outlines Eleftheriadis's theory of the EU legal order. He calls this theory 'progressive internationalism' (at 109–111). Progressive internationalism is both a political theory and a theory of law. In the tradition of Ronald Dworkin's jurisprudence, it aims to both explain and justify the nature and characteristics of the EU legal order and its relationship to (inter)national law. The second part, comprising chapters 6 to 10, focuses on the three key principles which contribute to the integrity of EU law as a progressive internationalist order: accountability, liberty and fairness.

Progressive internationalism builds on the legal theories of Kant and Dworkin in conceiving of law as a justification of state coercion. In this sense, *A Union of Peoples* is a project of normative jurisprudence. But the book also engages with analytical theories of law such as the ones of Hans Kelsen, H.L.A. Hart and Joseph Raz. Furthermore, building on the premise that a theory of law must be rooted in political theory, the book also contributes to debates on transnational constitutionalism as well as to political theory more generally.

In doing so, *A Union of Peoples* offers an insightful, stimulating and complex defence of 'progressive internationalism' as a new theory of EU law. In some respects, however, the book is perhaps overly ambitious and does not fully live up to its promise of providing a theoretically robust substantiation of the main argument. At several instances, Eleftheriadis's claims read more like declarations than actual argument, and discussion of opposing viewpoints does not always do full justice to their positions. I shall return to this point later, after having discussed the individual chapters and the overall claims of the book in more detail.

2 The European Union as a Construct of the Law of Nations

The first chapter sets the scene by discussing the main existing legal and political interpretations of the nature of the EU legal order and its alleged 'autonomy'. From a legal perspective, Eleftheriadis presents the main positivist and interpretivist conceptions of the legal system as they may apply to EU law. Politically, the key question is how the European Union can be justified from the perspective of *self-governance*. For Eleftheriadis, the two answers that have been presented – either the EU should evolve towards a federal state, or state sovereignty ought to be protected against further integration – are both unsatisfactory. This leads Eleftheriadis to present his theory of progressive internationalism. Progressive internationalism is both a theory of sovereignty and a theory of power-sharing and international commitment, as the subsequent chapters aim to elucidate.

Chapter 2 provides Eleftheriadis's general theory of state legitimacy and the moral relevance of borders. Drawing on Kantian ethics, Eleftheriadis posits the formal equality of persons as a premise for legitimate government and justice. The equality of persons can only be guaranteed under a coherent and coercive system of 'public right' that guarantees everyone's equal moral standing under law. A state is politically legitimate, and creates constitutional justice, insofar as it ensures equal citizenship. Eleftheriadis calls such a system a 'jurisdiction'. Unlike state law, international law can never be a jurisdiction because its legitimate substantive scope is confined to the relationships between sovereign states. This viewpoint may strike many international lawyers as odd, given numerous developments in international law doctrine and scholarship towards an increasing relevance of the individual. Nonetheless, *A Union of Peoples* does offer an interesting analysis worthy of critical scrutiny, precisely

because it purports to theorise the relationship between national and international law from a *substantive* perspective.

The distinction between national and international law fits Eleftheriadis's broader political-theoretical claim that borders matter morally. Each person has a moral duty to respect one's fellow citizens as persons of equal moral standing. There is, however, no global moral duty of equality that extends towards non-citizens. In fact, Eleftheriadis claims that persons as well as states have a duty to respect the self-government of other jurisdictions. We have a duty to respect and defer to the politically legitimate institutions and officers of foreign states.

Chapters 3 and 4 flesh out the distinctly *legal* implications of this theory of political legitimacy. Based on the notion of a 'jurisdiction', national law and international law are not merely formally distinct legal orders. There is a crucial, *substantive* difference between them. While a national legal order comprises a jurisdiction that guarantees the equal moral standing of its citizens, the fundamental moral premise of international law is the equality of sovereign states. International law is 'the law of nations' properly so called: it is confined to '[allowing] states to enter into agreements with other states and provides a specific law of treaties setting out how this can work in practice' (at 48). This is a remarkably controversial viewpoint, which Eleftheriadis nonetheless defends unequivocally. He claims simply that '[c]onstitutional law and public international law do not overlap' and that even if national and international law overlap in subject-matter, for instance in protecting human rights, 'they do not overlap in legal content. International law is in principle a matter for state responsibility and only indirectly a matter for the domestic courts' (at 48).

Since the European Union is, for Eleftheriadis, a creation of international justice, it is not a jurisdiction. It is not an 'autonomous' legal order, as the Court of Justice of the European Union (CJEU) claims it is,[1] nor does it 'compete' with national legal orders along the lines described by theories of constitutional pluralism.[2] From a legal-theoretical viewpoint, EU law can only be either a 'monist' legal order, in which case it would absorb all national legal orders, or part of international law, in which case its relationship to the national legal orders is governed by dualism.[3] Since EU law is not a jurisdiction, Eleftheriadis claims dualism is the only coherent theory of EU law (at 72–79). Even though EU law governs the relationships between private individuals, the mechanism which generates this result is the requirement for EU member states to incorporate EU law obligations into their domestic legal orders. Thus, while most conventional scholarship tends to conceive of the doctrines of direct effect and primacy of EU law as a negation of orthodox international law doctrine, Eleftheriadis claims that

[1] Case 26/62, *Van Gend & Loos* (EU:C:1963:1), at 12; *Opinion 2/13 on accession of the EU to the European Convention on Human Rights* (EU:C:2014:2454), paras. 166–176.

[2] See, e.g., N. MacCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (1999); Walker, 'The Idea of Constitutional Pluralism', 65 *Modern Law Review* (2002) 317; Kumm, 'The Jurisprudence of Constitutional Conflict: Constitutional Supremacy in Europe before and after the Constitutional Treaty', 11 *European Law Journal* (2005) 262.

[3] According to Eleftheriadis, (radical) pluralism should be conceived as a theory of 'overlapping monisms' (at 64–69).

these doctrines are best conceptualized as an EU law obligation for member states 'to take a *constitutional* step of *ex ante* incorporation' (at 88, emphasis in original). Most audacious, perhaps, is the book's claim that this is not only the position of *all* national courts of the member states, but that it is also the position of the CJEU. The CJEU, according to Eleftheriadis, does not endorse EU law monism, but instead commits to a dualist jurisprudence of EU law (at 91–95), a point to which I return below.

The first part of the book culminates in chapter 5, in which Eleftheriadis conceives of the EU as a 'community of principle'. He contrasts his theory of EU law with various federalist theories of the EU legal order. Given the fundamental distinction between state law as the law of a jurisdiction and international law as the law of nations, federalist theories of EU law invariably fail because the EU is not a (federal) state. Building on Kant's theory of international justice, Eleftheriadis claims that the EU is a legally voluntary – but perhaps ethically required – 'congress' of states (at 137–138). Its nature is a treaty between sovereign states which does not replace the relationship between citizen and state, nor establish a new constitutional order.

3 Accountability, Liberty and Fairness

Having presented his theory of the political and legal nature of the European Union, the second half of the book outlines three principles central to its integrity: accountability, liberty and fairness. Chapter 6 deals with the first substantive principle of the European Union as a 'community of principle'. This is the principle of accountability. Since Eleftheriadis does not believe that 'democracy' is a principle that can be applied to the European Union, he aims to set out the various ways in which member states and the EU institutions are held accountable, both at the international level (e.g. in procedures before the CJEU) and at the domestic level (e.g. through the doctrines of direct effect and primacy). He emphasizes in particular the importance of the equality – or better, the 'reciprocity' – of the member states as a fundamental, structuring principle that governs various modes of EU governance (at 145–151).[4]

Chapter 7 is about liberty. The principle of liberty is the key principle in EU free movement and citizenship law. Unsurprisingly, Eleftheriadis denies that EU citizenship is a 'real' citizenship: it only connects nationals of EU member states indirectly to the governments of *other* member states: '[EU citizenship] is not a formal recognition of membership or a legal act with permanent and formal, legal and political, results. It does not create a new bond with a political community. It just creates new legal consequences for the existing one' (at 186). Free movement, then, is conceptualized as a 'cosmopolitan right' which requires member states to treat the nationals of other member states – to some degree – as equal to their own nationals. These cosmopolitan rights and entitlements are only possible, concludes Eleftheriadis, because of the mutual trust and reciprocity among member states (at 193).

[4] Eleftheriadis favours 'reciprocity' over 'equality' because both in international law and in EU law the equality of states is not absolute.

Chapters 8 and 9 introduce what Eleftheriadis calls the principle of fairness. Fairness is a principle that entails legal and moral obligations for member states to support each other in certain circumstances. Building on his general discussion of moral claims and distributive justice in chapter 2, Eleftheriadis contends that there is no principle of distributive justice among states, because distributive justice is only relevant within the state. Corrective justice, however, does play an important role in the relations between member states (at 203–208). Since all member states have a shared responsibility towards the European Union as a common project, member states also have a duty to assist one another in situations where one or more member states are unfairly burdened by flaws in the design of the European Union (at 211–216). In chapter 9, Eleftheriadis argues that the systemic deficiencies in the design of the Economic and Monetary Union (EMU) required member states to assist Greece and other member states during the euro crisis.

The tenth and final chapter serves as a conclusion to the main project of *A Union of Peoples*: the claim that the European Union is not a federal state and, currently at least, does not aspire to become one. Consequently, neither is the European Union a threat to sovereignty or national democracy. National democracy and deeper European integration can co-exist – even reinforce each other – as long as we see that the European Union is conceived as an international political project which promotes freedom, equality and democracy within its legitimate, international domain.

4 The (Ir)relevance of the Individual in International Law?

While *A Union of Peoples* is an impressive and thought-provoking book that does not shy away from taking controversial positions and challenging the status quo in EU law scholarship, there are four aspects of the book which invite some critique, or at least warrant engagement. Firstly, the book virtually ignores the extensive doctrine and scholarship on the relevance of non-state actors in international law. Secondly, it is often inaccurate or not quite fair in discussing the philosophical positions of competing, legal positivist theories. Thirdly, in defending its theory of EU law, *A Union of Peoples* appeals persistently – but in my view quite unconvincingly – to the case law of some national apex courts and the CJEU. Finally, the discussion of substantive EU law doctrines is at times somewhat crude and inaccurate. In turn, I shall discuss each of these points in some more detail.

The first point goes to the core of the identity of public international law. As a theory of *international* law, *A Union of Peoples* unabashedly commits to the traditional theory of international law as the law of nations, in which the individual basically has no direct role whatsoever.[5] This may be a legitimate position to take, and Eleftheriadis's Kantian analysis of the criteria for law to constitute a 'jurisdiction' is overall well argued. Nonetheless, the position of the individual in international

[5] See, e.g., Manner, 'The Object Theory of the Individual in International Law', 46 *American Journal of International Law* (1952) 428.

law has been widely discussed in recent years, and the book hardly engages with evolving doctrine and literature at all.[6] Does the development of international criminal law and the establishment of the International Criminal Court (ICC), for example, not challenge the orthodox conception of international law at least to some extent? Surely, the ICC is created by an international treaty among states, but at the same time it directly exercises coercive jurisdiction over individuals. This latter point may be highly relevant especially as one of Eleftheriadis's arguments for his dualist theory of EU law is that the CJEU has a very limited jurisdiction in disputes involving individuals (at 134–135).

But the ICC is only one among numerous counterexamples. What about the International Court of Justice's observations in its *Kosovo* Advisory Opinion on the capacity of the Security Council to impose binding obligations onto non-state entities, including individuals?[7] What about decisions of investment tribunals that directly bear on individuals' rights? Police action by peacekeepers under United Nations command? It seems that Eleftheriadis, at least in the EU context, gives considerable weight to the fact that the coercive nature of international law in most cases depends on national enforcement mechanisms.[8] At the very theoretical minimum, however, this does not seem to take seriously the *normative* existence of direct international law rights and obligations for individuals. Surely, such rights and obligations have a legal reality of their own, irrespective of their ultimate provenance and the relevant modalities of enforcement.

While Eleftheriadis could perhaps point to the salience of treaties and state practice and the central role of state enforcement authorities to maintain his theory of dualism, his analysis at this point remains unsatisfactory. Deeper engagement with the scholarly literature on the degree to which international law may extend beyond mere relations among sovereign states seems crucial for a book that explicitly defies multiple decades of international law scholarship.

5 International Law in Legal Theory

My second point of criticism is the book's discussion of existing theories of law. The philosophical argument of the book is at times imprecise and does not always do full justice to the position of its adversaries, including in particular Kelsen and Hart. For example, against Kelsen's defence of the unity of legal order, Eleftheriadis simply concludes that it 'is too radical', 'fails to explain the [US Supreme Court's] *Medellin* judgment' and that '[monism] is a practice that no state follows anywhere in the world' (at 63). But this argument misses its mark. Why should Kelsen – or international law for that matter – care about what the US Supreme Court says? Kelsen rightly would not be

[6] See recently, e.g., K. Parlett, *The Individual in the International Legal System: Continuity and Change in International Law* (2010).

[7] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010*, ICJ Reports (2010) 403.

[8] Eleftheriadis writes, for instance: '[t]he EU has no police force or other enforcement mechanisms securing respect for its laws. It has no complete system of courts' (at 137).

troubled at all by the *fact* that national legal orders apply a dualist logic. What national courts believe to be the structure of legal normativity does not necessarily determine what *is* the – for Kelsen inevitably monist – structure of legal normativity, certainly not within the Dworkinian framework in which Eleftheriadis is operating.[9]

Another example is Eleftheriadis's framing of H.L.A. Hart and Raz as endorsing 'national monism', in which the law of nations is subsumed under national law (at 62–63). This is quite a radical interpretation of Hart and Raz's work.[10] In any case, to claim that Hart did not believe international law was 'law' does not withstand close scrutiny (at 61–62): in *The Concept of Law*, Hart clearly described international law as 'law', even though he questioned whether it was a 'legal system' in the sense of a union of primary and secondary rules.[11] What is more, I do not believe that either Hart or Raz ever endorsed the extremist position – which Eleftheriadis nonetheless attributes to them – that '[i]f the international legal order cannot be a legal system, then there cannot be international legal obligations at all' (at 62–63).

In defence of Eleftheriadis, his engagement with other theories of jurisprudence is only a limited portion of the book, and it would be impossible to cover all possible nuances in the philosophical debate. However, the aim of *A Union of Peoples* is to offer a jurisprudential, theoretically defensible theory of EU law as international law. This is an ambitious goal, and by setting up the entire argument as a separate theory of law that allegedly disproves other theories of law along the way, Eleftheriadis raises expectations upon which, in my view, he does not deliver from a philosophical perspective.

6 European Union Law as a Judicial Practice

My third point of critique relates specifically to the book's empirical claims regarding the positions of the CJEU and the national courts regarding the relationship between EU law and national law. The case law of both the CJEU and the national courts supports Eleftheriadis's theory, or so he claims.

The empirical justification of dualism is that both the CJEU and the national courts endorse it, and reject monism. Eleftheriadis claims that the CJEU effectively commits to his 'incorporation' requirement, according to which EU law must be incorporated

[9] See also Toh, 'Legal Philosophy à la carte', in D. Plunkett, S. Shapiro and K. Toh (eds), *Dimensions of Normativity* (2019) 221.

[10] Cf., e.g., Dyzenhaus, 'Kelsen's Contribution to Contemporary Philosophy of International Law' (4 May 2020), available at https://ssrn.com/abstract=3571343 (conceiving of Hart as a dualist legal philosopher); Raz, 'Why the State?', in N. Roughan and A. Halpin (eds), *In Pursuit of Pluralist Jurisprudence* (2017) 136 (which offers a somewhat nuanced account of the relevance of the state to the concept of law, while I fail to see how Raz's position – here and in earlier works – entails the necessary validation of international law by national law).

[11] H.L.A. Hart, *The Concept of Law* (3rd edn, 2012), ch. 10. Furthermore, Hart denies up front that nothing is law which is not such a legal system: 'though it would accord with usage to treat the existence of this characteristic union of [primary and secondary] rules as a sufficient condition for the application of the expression "legal system", we have not claimed that the word "law" must be defined in its terms' (*ibid.*, at 213).

by the national legal order *à la* ordinary public international law. This claim is difficult to defend in view of the actual text of judgments such as *Van Gend & Loos*,[12] *Costa/ENEL*[13] and *Simmenthal*,[14] and it requires at best a selective reading of those cases.[15]

Furthermore, Eleftheriadis ignores longstanding CJEU case law according to which national courts all have an autonomous EU law duty to ensure the effectiveness of EU law. In effect, national courts are – in the eyes of the CJEU – 'decentralized EU courts'[16] or 'arms of EU law'.[17] This viewpoint seems difficult to reconcile with Eleftheriadis's theory of dualism. If the CJEU's jurisprudence is dualist in nature, it would have to be a dualism in which national courts are not only national courts, but are members of both the national and the EU legal system at the same time. Eleftheriadis cannot accept this conclusion, and indeed there may be strong reasons to reject it. However, that does not mean that it is not the CJEU's position.

Eleftheriadis also claims that EU law monism and the 'autonomy' of EU law are false because *all* national courts reject monism, and only accept the doctrines of direct effect and primacy because they flow from their respective constitutions (at 95–99). The principal philosophical question is – even if this were true – why it matters normatively. What national courts believe to be true is not necessarily dispositive.[18] Furthermore, Eleftheriadis provides surprisingly little evidence for his categorical conclusions. He refers mainly to the German Federal Constitutional Court, the House of Lords and, in passing, to a number of other national apex courts. Only as a side note he claims, 'the argument applies equally to all other member states' (at 80). First of all, this is not quite true: in the Netherlands, the Constitution's monist posture towards international law is deemed legally irrelevant for the direct effect and primacy of EU law;[19] and the Estonian Supreme Court held that the Estonian Constitution as such must conform to the EU Treaties.[20] Admittedly, among apex courts, these are exceptions.

More importantly, however, the assertion that the position of a few national apex courts is shared by *all* other national courts seems methodologically indefensible. What about the hundreds of district courts and other lower courts applying EU law on

[12] Case 26/62, *Van Gend & Loos* (EU:C:1963:1).

[13] Case 6/64, *Costa/ENEL* (EU:C:1964:66).

[14] Case 106/77, *Simmenthal SpA* (EU:C:1978:49).

[15] Perhaps the CJEU *could* have reached the same outcome in *Van Gend & Loos* and *Costa/ENEL* on the basis of an 'internationalist' reading of the Treaty. The question here is whether the Treaty of Rome could be conceived as a self-executing treaty in the sense of the *Danzig* Advisory Opinion: PCIJ, Jurisdiction of the Courts of Danzig, Advisory Opinion, PCIJ Reports Series B No. 15 (1928). See to this end Weiler, 'Rewriting *Van Gend en Loos*: Towards a Normative Theory of ECJ Hermeneutics', in O. Wiklund (ed.), *Judicial Discretion in European Perspective* (2003) 150. This is, however, not to say that it is what the CJEU actually did.

[16] See, e.g., Case 106/77, *Simmenthal SpA* (EU:C:1978:49).

[17] For this term, see Lenaerts, 'Upholding the Rule of Law through Judicial Dialogue', 38 *Yearbook of European Law* (2019) 1, at 4.

[18] Toh, *supra* note 9.

[19] Hoge Raad (Netherlands Supreme Court), Judgment of 2 November 2004 (NL:HR:2004:AR1797), paras 3.5 and 3.6; Afdeling Bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State), Judgment of 7 July 1995 (NL:RVS:1995:AN5284).

[20] Riigikohus (Estonian Supreme Court), Judgment of 11 May 2006, 3-4-1-3-06, para. 16.

a daily basis? If one looks at judgments of principle, rendered in politically or legally exceptional circumstances, *of course* most apex courts will insist on the primacy of national law. This is what they are expected to do. But this does not mean that such judgments exhaust the empirical reality of the law. Depending on one's legal-philosophical commitments, in particular in regard to the social-facts thesis in legal philosophy, it does not even mean that it is the normative reality.[21]

7 Progressive Internationalism and Substantive EU Law

A significant portion of the second half of the book engages with various doctrines of substantive EU law to explain the principles of accountability, liberty and fairness. This discussion of substantive law, in my view, results in a somewhat mixed picture. Some chapters provide an illuminating perspective on EU substantive law, while in other parts the analysis is inaccurate or at least incomplete. Although *A Union of Peoples* does not purport to be a book about substantive EU law, its discussion of substantive law is often crucial to the main argument. Not infrequently, this analysis is somewhat crude and unconvincing. This corresponds to the fourth point of critique mentioned above: it sometimes seems as if Eleftheriadis is forced to manipulate the doctrine so as to make it conform to his theoretical assumptions.

To give an example, one of the general principles which, for Eleftheriadis, is central to the relationship between EU law and national law is that of 'institutional tolerance'. Institutional tolerance refers to the fact that if an act of EU legislation is unlawful, but the CJEU failed to spot the error, national courts will nonetheless not be inclined to invalidate EU law out of institutional tolerance and respect for the EU legal order and the CJEU (at 99–103). Legally speaking, however, this has little to do with 'tolerance' on the part of the national courts. The obligation to refer all cases involving doubt as to the validity of EU legislation to the CJEU is unequivocally mentioned in Article 267 of the Treaty on the Functioning of the European Union (TFEU).[22] Thus, there is a well-established prohibition for national courts to declare EU legislation invalid.[23] *A Union of Peoples* ignores this black-letter law, only to reach the same conclusion on the basis of a somewhat convoluted, progressive internationalist argument. Obviously, Eleftheriadis *needs* this argument because he would want to deny that a treaty provision creates direct obligations for national courts within their own legal orders. No evidence is provided, however, for the proposition that courts act on the basis of an idea of institutional tolerance. The more straightforward inference is that they simply consider themselves directly bound by Article 267 TFEU, notwithstanding the fact that according to *A Union of Peoples* they would probably be mistaken in believing so.

[21] See also Toh, 'An Argument against the Social Fact Thesis (And Some Additional Preliminary Steps towards a New Conception of Legal Positivism)', 27 *Law and Philosophy* (2008) 445.

[22] Consolidated Version of the Treaty on the Functioning of the European Union, 26 October 2012, Official Journal (2012) C 326/47 (hereinafter TFEU).

[23] Case 314/85, *Foto-Frost* (EU:C:1987:452).

Another example of inaccuracy is the claim that the EU Charter of Fundamental Rights applies 'in a much less rigorous way vis-à-vis the member states [than it applies to the EU law-making bodies]' (at 185). This claim aims to reinforce the argument that EU citizenship is not a constitutional citizenship premised on the formal equality of all EU citizens. To this end, Eleftheriadis refers to Article 53 of the EU Charter, which, at face value, appears to allow for higher standards of fundamental rights protection by member states. However, it is a commonplace in EU law that the CJEU adopted almost a reverse interpretation in its *Melloni* judgment, where it held that Article 53 of the EU Charter prohibits national higher standards of protection if they threaten the primacy, uniformity and effectiveness of EU law.[24] Similarly, as a result of the CJEU's interpretation of Article 51 of the EU Charter, the scope of the Charter vis-à-vis the member states has been broadened tremendously to all situations within the scope of the fundamental freedoms of the internal market.[25] While Eleftheriadis cites no recent case law on the scope of the Charter, it is precisely such case law that undermines his argument at this point.

Other parts of the book do, however, offer interesting and illuminating analyses of EU law doctrine. Chapter 6, for example, elaborates in detail the system of accountability mechanisms in EU law – both at the national and EU level – and how it is infused with the principle of the equality of the member states. I also particularly enjoyed the book's analysis of EU citizenship. The troubled equality ideal of EU citizenship is the subject of fruitful debate.[26] The Kantian perspective adds to this discussion by pointing out that EU citizenship – rather than a genuine citizenship – is best conceived as a principle of transnational liberty, which creates cosmopolitan rights for foreign nationals from other member states.

Chapters 8 and 9 likewise offer an instructive argument about the principle of fairness or solidarity. These chapters persuasively argue how the inherent flaws of the Eurozone design entailed an ethical obligation for member states to provide financial assistance to other member states which were most harmed by the euro crisis. In this regard, *A Union of Peoples* seems to take a somewhat similar approach to the salience of solidarity in EU law as recent scholarship on the transformation of the EMU.[27]

While Eleftheriadis claims distributive justice is not relevant to the EU legal order at all, the idea of establishing a single market without internal borders reflects, in itself, a conception of distributive justice. Distributive justice is equated with the economic distribution created by the market system and the allocative efficiency it aims to bring about. It would have been interesting to read more on how the distributive effects of the EU internal market fits within the book's theory of international justice. More generally, I also would have been interested to read a more extensive discussion on the role

[24] Case C-399/11, *Melloni v Ministerio Fiscal* (EU:C:2013:107).

[25] See, e.g., Case C-201/15, *AGET Iraklis* (EU:C:2016:972).

[26] See, e.g., Kochenov, 'Citizenship without Respect: The EU's Troubled Equality Ideal' (Jean Monnet Working Paper No. 08/10, 2010); Spaventa, 'Earned Citizenship: Understanding Union Citizenship Through its Scope', in D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (2017) 204.

[27] V. Borger, *The Currency of Solidarity: Constitutional Transformation during the Euro Crisis* (2020).

of EU internal market law within Eleftheriadis's theoretical framework. Perhaps less pressing and topical than the constitutional dimensions of the euro crisis, I believe EU internal market law contains several normative puzzles regarding the idea of the EU as a progressive internationalist 'Union of Peoples'.

For example, Eleftheriadis emphasizes the imperative to respect the self-governance of legitimate states. However, the result of one the most famous cases in EU free movement law, the CJEU's *Cassis de Dijon* judgment, was that the more liberal French rules on the marketing of fruit liquors were effectively forced upon Germany, as the latter was unable to justify the necessity of a rule requiring a minimum alcohol content of 25% for fruit liquors.[28] This logic of 'mutual recognition' of product standards entails substantial interference with the regulatory policies and risk assessments of member states. Obviously, any substantive doctrine of EU law could be justified on the basis that a member state – as a sovereign state – can always withdraw from the Union.[29] But this would not deny the *practical, day-to-day* effect of EU law, which is difficult to square with Eleftheriadis's somewhat idealistic framing of the division of work between the national 'jurisdiction' and the EU legal order. *Cassis de Dijon* is only one of many cases in which the CJEU's interpretation of EU law de facto left no interpretive leeway for the referring national court, and the CJEU ruled on the compatibility of national law with EU law in all but name.[30]

8 Conclusion

Notwithstanding the abovementioned points of critique, *A Union of Peoples* is a fascinating, wide-ranging and thought-provoking theory of the EU legal order. It provides an important and original contribution to the debate on the nature of EU law and its relationship to national and international law. The book aims to take international law seriously as law, while also emphasizing important – and for Eleftheriadis, categorical – substantive differences with national law. For that reason, it is worth reading for those who are interested in the intersection between legal theory and international law.

In its fundamentals, *A Union of Peoples* vehemently opposes any middle ground between the state – unitary or federal – and international law. In discussing several theories of federalism, again and again Eleftheriadis resorts to the same argument: either the European Union is a federal state, or the EU is a construct of international law. Since it is not the former, it must be the latter. This is a well-known position, which nonetheless finds a challenging opponent in, for example, Robert Schütze's analysis of the EU as a 'federation of states' not dissimilar to the creation of a federation of states

[28] Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* (EU:C:1979:42).

[29] TFEU, *supra* note 22, Art. 50.

[30] For an empirical analysis, see J. Zglinski, *Europe's Passive Virtues: Deference to National Authorities in EU Free Movement Law* (2020).

by the US Constitution, in which Schütze discusses – and laments – the inability of European scholarship to imagine a federation that is not a federal state.[31]

When discussing theories of '*demoi*cracy' and the question of whether the resulting image of the EU is that of a 'federation' or a 'confederation', Eleftheriadis is keen to dismiss scholasticism: 'But what is the point of these distinctions? […] our question is not one of classification' (at 117–118). Less than half a page later, however, he claims that '[f]rom a practical or legal doctrinal standpoint, we need to make up our minds whether the principles of the constitutional *state*, federal or otherwise, apply to the European Union or not. This is not a question of degree, but a question of yes or no' (at 118). This sounds a lot like classification, and it is not clear why the label of a 'state' is more relevant to debates about the nature of the EU than that of a (non-state) federal union, especially as no serious legal scholar would maintain that the EU is a state.

Perhaps the main issue of *A Union of Peoples* is precisely this categorical commitment to the view that something that is not a state, can be neither a constitutional order nor a jurisdiction. This view forces Eleftheriadis to paint a picture of international law that many others may find conceptually outworn and empirically outdated. It also results in an analysis of EU law doctrine that is often thought-provoking and creative, but at times also quite inaccurate. The idiosyncrasies of EU law and the manner in which it speaks – or claims to speak – directly to individuals and national courts cannot easily be interpreted away. This is why, in the end, I remain unconvinced by the book's key argument about the nature of the EU legal order and the rigid dichotomy between state law and international law underlying it.

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[31] See, e.g., Schütze, 'On "Federal" Ground: The European Union as an (Inter)national Phenomenon', 46 *Common Market Law Review* (2009) 1069.