

## A Europe of Values

Speech by Prof. Kim Lane Scheppele, Princeton University  
Opening academic year

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Dear Rector Magnificus, dear colleagues and students, and all who are present today.

The beginning of the academic year officially opens a season of new ideas. But we academics cannot deny it – what we feel most acutely at the start of the academic year is the end of summer. And this was not a good summer for Europe.

The Greek bailout exposed fundamental disagreement about the economic unity of Europe. In the end, an elected government of a Member State was forced to bow to the demands of its creditors in a deal that many said failed to recognize a legitimate pluralism of economic policies within the EU. Not that the creditor states were happy either. They would have walked away from the negotiating table if they could have, but they were invested too heavily to leave. Relations between Northern and Southern Europe are now tenser than at any point in memory, but North and South are also tied together in ways that they cannot escape.

As if the acrimony of Athens weren't enough, Europe has also been plunged into a sea of migrants, as hundreds of thousands of desperate asylum-seekers from places torn apart by civil war seek refuge here. Migrants are drowning in the Mediterranean or dying in smugglers' trucks by the side of the road or left to fend for themselves without assistance in Europe's border states. And once again, Europe has been more divided than united, with only a few Member States offering to share the humanitarian burden that both conscience and international law place on the shoulders of those who can offer safety. Under the EU's Dublin Regulation, the first EU state that migrants enter bears responsibility for ensuring their health and safety and becomes the designated state to process their asylum applications. But the poorer states on the edges of Europe that bear a disproportionate share of the pain for a common policy. Things are so bad along Europe's periphery that the European Court of Human Rights recently ruled that Greece was no longer a safe state to which migrants could be sent.

This summer, solidarity has been in short supply in the European Union. We even see it in BREXIT – which is the persistent threat of secession that the UK holds up to the rest of Europe whenever anyone advocates “ever closer union,” words that the UK now wants to excise from the Treaties.

Europe's multiple crises are linked. If Greece weren't engaged in such harsh austerity measures, it might be able to accommodate more of the desperate refugees. If the UK weren't poised with one foot out the door, other Member States might find it easier to discuss a banking union or increased fiscal coordination, which would go a long way toward coping with the euro-crisis. And pervading all of these crises is a sense that Europe is no longer a community that shares a commitment to common values.

Given all we have seen this summer, it may seem hopeless to talk now about a Europe of values. And yet, it is precisely at moments of acute stress that we need to remember the point of the European project.

The post-war plan to unite Europe was designed to prevent yet another catastrophic conflict from devouring the continent. The European project was a peace project – creating a united Europe by making its states so economically interdependent that war would simply not be thinkable. It was also a non-proliferation project: Euratom was designed to prevent each European state from getting its own nuclear weapon. At this moment when Europe's shortcomings are so obvious, we need to remember that these parts of the European project have succeeded spectacularly. However difficult the relationship became among Germany, the Netherlands and Greece this summer, no one was shooting or threatening to go nuclear. The EU won the Nobel Peace Prize just three years ago – and deserved it.

But the European project is not JUST a peace project. It is also a project to support and sustain a common commitment to deep political values, rejecting the devastating authoritarian and intolerant ideologies that gripped this continent in the 20<sup>th</sup> century. Europe is united in the belief that its Member States should be vibrant democracies that protect human rights and honor the rule of law. These values started as aspirations and were eventually built into the Treaties that ground the EU.

Article 2 of the Treaty of the European Union says this:

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

Article 2 announces that the EU is a Europe of values.

European Member States don't agree on everything. Europe's pluralism is in many ways its strength. The EU has room for governments of left and right, economic policies that are neoliberal or social democratic, forms of government that are constitutional monarchies or presidential republics or parliamentary democracies, states that have official religions and states that are officially secular.

But Europe's variety is not limitless. Member States of the European Union have pledged "never again." Never again to authoritarianism. Never again to the abuse of human rights. And never again to the use of law as a tool of political domination. Europe has learned the hard way why the values of Article 2 matter.

The European project was born when memories of Nazi atrocities were fresh. It was born again when the Soviet Empire crumbled and many former Soviet satellite states began the process of EU accession. At the start of a new academic year when we refresh our commitment to the life of the mind, we need to refresh our memories of how bad things can get when we fail to defend our core values.

So let's consider a hypothetical.

Suppose a European Member State had rewritten its national constitution while refusing any role for the political opposition. Suppose that government then fired virtually all of the high officials of independent institutions – from judges to election commissioners to ombudsmen – and replaced them with loyalists of the governing party. Suppose further that this government stripped the legal status from hundreds of religious organizations, raided the offices of independent NGOs, and created a new secret police with broad surveillance powers. Suppose that this government whipped up anti-Semitism and anti-Roma sentiment, rewriting history to honor past leaders who supported the Holocaust. Suppose that this government then attacked universities, cancelling virtually all scholarships for fields like law and economics, inserting political officials into the highest positions and then firing individual faculty members who have been critical of the government. Suppose that, when that government’s popularity fell after doing all of these things, it rewrote the election rules so that the opposition couldn’t win.

Suppose that this state were not hypothetical. Unfortunately, this example is real – and its real name is Hungary.

Hungarian Prime Minister Viktor Orbán has bragged that he is creating an illiberal state in the middle of Europe, taking countries like Russia, China and Singapore as his models. He has said that Hungary is meant to be for Hungarians, by which he means only ethnic Hungarians – something that is also written into the new constitution. Mr. Orbán has reopened the closed question of the death penalty in Europe and launched a vicious campaign against migrants, erecting a razor wire fence along the edges of the EU and calling out the military to defend the border. A new law just passed in Hungary will enable it to turn down virtually all asylum applications no matter how meritorious.

When the European Commission for Democracy through Law (the Venice Commission) expresses serious concern about the independence of the Hungarian judiciary (and the International Bar Association agrees), when the European Parliament has repeatedly passed strong resolutions against Hungary for putting at risk the values of Article 2, when the Court of Human Rights and the Court of Justice have ruled against Hungary on virtually every aspect of this constitutional revolution that has come before them, when the election monitors at the Organization for Security and Cooperation in Europe say that the most recent election was unfair, and when the local diplomatic corps in Budapest – under Dutch leadership I might add – creates a “transparency committee” to model European values to the Hungarian government with the hope of persuading it to change course, the matter has gone beyond partisan politics and beyond the legitimate pluralism of the EU. When all these institutions and experts agree on the seriousness of what is happening in Hungary, it is fair to say that European values are in danger.

So what can be done? The EU must set aside its differences after this summer of strife and remember why it was created. Europe must stand up for its values.

While there is no way to expel a Member State from the EU, the European Treaties anticipated that a state might breach its Article 2 commitments. So they set up a process through which a Member State’s participation in European institutions may be suspended. Under Article 7 of the Treaty of the European Union, supermajorities of the European political institutions are necessary to trigger this sanction. Former Commission President José Manuel Barroso has called this the “nuclear option” and so far it has never been invoked. But it could be.

There are less drastic steps that the EU can take to indicate that systemic challenges to European values will not be tolerated. The European Council – in which the Netherlands will hold the rotating presidency in the first half of 2016 – has established a “peer review” process in which Member States will review and critique each other each year. It is crucial that this process be substantive and tough. Better to have your friends alert you to the dangers of your own course of action than to suffer more serious penalties later on.

The European Commission, as guardian of the European Treaties, also has a role to play here. The Commission regularly launches infringement procedures against Member States before the Court of Justice when those Member States have failed to follow EU law. The Commission could change the focus of these infringement procedures to allege *systemic* violations of EU *values*. It could bring the case either directly under Article 2 claiming a threat to European values, or under Article 4(3) which requires all Member States to “facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.” (That’s also called the “loyalty principle” in EU law.) Alternatively, the Commission could allege that, when the Member State was implementing EU law, it had violated rights protected in the European Charter of Fundamental Rights. The point would be to signal to the Court of Justice that a Member State didn’t just infringe some relatively technical point of EU law, but that the Member State had engaged in “general and persistent” violations of important values. If the Court of Justice agreed and found a systemic infringement of European values, the Commission could develop a plan to bring the Member State back into systemic compliance.

Europe should always retain its legitimate pluralism and should find strength in its different national traditions. But Europe also has a common history in which authoritarian and illiberal states lay waste to the continent within living memory and created suffering on a massive scale. When we see Member States of the European Union step outside the space of legitimate pluralism and engage in actions that recall that history that made Europe pledge “never again,” the other Member States must act.

At the opening of the academic year, we should focus on the important values that hold Europeans together, values that were not lost over the summer as Member States squabbled. As we re-commit ourselves to the life of the mind and the production of new knowledge, we should also commit ourselves again to safeguarding a Europe of values. Without increased European solidarity, the continued success of the European project cannot be taken for granted. Europe’s recent history teaches us that a divided Europe is a dangerous Europe, but also that a Europe united around common values can be a beacon of light for the world.