Negotiating a balance between unity and diversity has been part of the DNA of the European Union since its founding. As the Union grew in terms of Member States and competences, it has been constantly recalibrating this balance, thus reflecting its quality as a constantly evolving project rather than a set structure. The commitment toward ‘an ever closer union,’ had been made in the Rome Treaties in 1957 and reaffirmed in a solemn declaration by heads of state and government in 1983, as well as in the Maastricht Treaty and finally in the Lisbon Treaty.¹

Over the past decade it is true that many Member State governments have implicitly or explicitly ruled out the idea of a closer union. Open objections to this commitment have been used as an argument by supporters of Brexit in the United Kingdom and have also fueled criticism and challenges in the light of the failure of the Constitution for Europe, which ironically did not contain such a promise. Irrespective of the merits of such a position, it would be an error to conceive the commitment as a description of a final condition to be reached. Treaty changes have not been on the agenda since the Lisbon Treaty, following nearly 25 years of intense

¹Preamble, Treaty establishing the European Economic Community, 25 March 1957, Solemn Declaration on European Union. European Council, Stuttgart 19 June 1983, Treaty on European Union, 7 February 1992, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Lisbon, 13 December 2007.
constitutional and institutional evolution from the Single European Act signed in 1986, to the Lisbon Treaty of 2009.

There is no definitive balance between the unity and diversity. It could also be argued that all states that seek to accommodate difference have to constantly recalibrate their approaches, in particular in decentralized and federal states, but the EU possesses a number of additional particularities that set it apart from other diverse polities. By allowing states to join and also Member States to leave, it is more flexible than most states. This brings about greater dynamism that extends to the balance of diversity and unity. In addition, it is continuously tested and advanced through crisis. The multiple crises at the European and global level, in particular since 2008, have required joint action but have also often underlined the lack of consensus among the Member States and the EU institutions. Yet the Union has been able to find tools and mechanisms of cooperation that have endured amid the crises. Thus, the EU appears to remain functional despite serious internal tensions and externally imposed crises. Majority decisions aside, the Union is a consensus-seeking structure that often succeeds in and through last minute compromises. As a result, it can also exist with significant ambiguity and internal tensions that most polities would struggle with. However, this ambiguity is not constructive in all cases. The decline of democracy in Hungary since 2010 and to a lesser degree in Poland since 2015 highlights the limited ability and willingness of the EU and its Member States to confront countries that are undermining the values of the Union for the sake of maintaining consensus (and other factors) and their tendency to paper over this.

The experience of negotiating diversity and unity in the European Union, with all the difficulties implied by this process, highlights the centrality of two concepts that are often neglected in the study of multinational states. The combination of responsibility and solidarity of the Member States and citizens represents a critical aspect of negotiating the balance between unity and diversity examined throughout the chapters of this book. Both have been evoked repeatedly during the crises of the past decade, be it in calling on the solidarity for Southern European countries in the Eurozone crisis, or assuming responsibility during the migration ‘crisis’ or solidarity during the COVID-19 pandemic. What is easily a simplistic slogan or appeal for one or the other, or both, is in fact a central feature of the European Union.
Responsibility is first of all an ethical notion. It can, however, be found in many normative contexts of national and international law. In the former, it refers to specific obligations of the State. In the latter, the notion comprises two different meanings. In its traditional (narrow) sense it refers to the liability (of States) for breach of an obligation under international law (Pellet 2010), while more recently it has acquired a meaning that refers to substantive obligations to act, for example to protect people (ICISS 2001).

At its core, responsibility consists in the behavior of an individual or an entity that takes into account the implications of that behavior not only for one (itself) but also for others. In its minimal form it seeks to avoid any damage, or even the threat of damage, to the existence of others. Responsibility establishes a limited amount of unity between different actors. Responsibility unfolds independently from any hierarchy between its bearers. It does not aim at absorption or domination. In the context of a common project undertaken by individuals or entities, which can only be achieved if a minimum amount of unity can be found, responsibility extends further to include consideration for the capacity of the others to reach the common goals. Yet both situations presuppose the continued existence of all the other actors, hence, diversity. In a social context, responsibility relates to ‘others.’ If this context consists of a common project, it relates to the capacity of all participants to achieve the common goals and to maintain and promote the agreed project.

In practice, this requires mutual attention among all participants, a willingness to take stock of the situation, the essential conditions, and the capacity of the others to achieve the common goal. More generally, as the philosopher Jürgen Habermas called it, “the inclusion of the other” (Habermas 1998, p. 56). Inclusion in this sense entails an active interest in information about others and a willingness to act accordingly, including the prevention of danger and general support. At this point, responsibility condenses into solidarity. In his book The Imperative of Responsibility the philosopher Hans Jonas notes (Jonas 1984, 94):

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2 The subsequent section draws on Bieber (2020).
3 For example, German Basic Law of 1949, preamble (“Conscious of their responsibility before God and man”); Article 20a (“Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals …”); Art. 23 § 6 (“…responsibility of the Federation for the nation as a whole.”).
4 See also Wolfrum and Kojima (2010).
It is not entirely clear whether responsibility in the strict sense can exist between fully equal. Cain’s counterquestion to God’s query concerning Abel ‘Am I my brother’s keeper?’ rejects—not quite wrongly—the (pretended) imputation of responsibility for the independent equal. There certainly are what can be described as relations of mutual responsibility, such as in a dangerous team enterprise (like mountain climbing).

Mountain climbing is a metaphor for a social situation marked by a more intense relationship between the participants than mere ‘belonging’ to a group. It is characterized by a bond, resulting from a situation common to them all, and a joint endeavor where the behavior of one shapes the fate of others.

In this particular case, the responsibility of all participants relates to each member’s capacity to achieve the common goal. Responsibility between equals is therefore reciprocal. Yet, in any group, whether consisting of individuals or States, participants are equal in a formal sense only. States vary in size, in economic, technological, and military power, in natural resources, and in their climatic conditions. Therefore, the duties of responsibility that arise may vary between the actors according to their capacities.

The preamble to Regulation 2018/1475 on the European Solidarity Corps offers the following definition of solidarity and responsibility:

solidarity may be understood as a sense of responsibility on the part of everyone with regard to everyone to commit oneself to the common good, which is expressed through concrete actions without consideration of return service.

Whether such relations may exist among (formal) equals (like States) is not obvious. In fact, on an individual level, self-responsibility is an expression of liberty. At the level of States, it characterizes sovereignty. To this extent, conceptually, common responsibility represents the opposite to the principle of non-intervention in the domestic affairs of States in international law (Charter of the United Nations, 1945, art. 2[7]). Yet States do

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5 Other forms of responsibility, resulting from a specific relationship, for example of states with citizens, are not discussed in this context. See, however, infra, note 9.

6 European Parliament and Council Regulation 2018/1475 laying down the legal framework of the European Solidarity Corps. Official Journal 2018, L250, 4 October.
not operate in isolation. Their sheer existence entails effects on other States, in particular on their neighbors. Therefore, as in any social system, some form of structured co-existence, or cooperation, is required. If effective, in its minimal form such cooperation is grounded in respect for the continuing existence of other States, their people, and their borders. Over and beyond such minimal responsibility, modern international law doctrine acknowledges a requirement of further responsibility in specific situations, for example a threat to the physical existence of groups of people (the principle of a “responsibility to protect”) or a common responsibility for certain natural resources. Some authors note, in certain situations, a “duty to intrude” (Nicolaidis and Viehoff 2012, p. 40).

Referring to the European Union, in 2019 Advocate General Sharpston argued in the Court of Justice:

Sharing in the European ‘demos’ is not a matter of looking through the Treaties and the secondary legislation to see what one can claim. It also requires one to shoulder collective responsibilities and (yes) burdens to further the common good.

Responsibility—or, more precisely, responsible behavior—is indeed instrumental within any given system for maintaining a balance between diversity and unity. This concept of responsibility is echoed in the “Sibiu Declaration,” adopted by the Heads of State and Government of the EU Member States meeting in the European Council on 9 May 2019, in commemoration of the Schuman Declaration of 1950:

We will stay united, through thick and thin. We will show each other solidarity in times of need and we will always stand together. We can and we will speak with one voice.

We will always look for joint solutions, listening to each other in a spirit of understanding and respect.

We will continue to protect our way of life, democracy and the rule of law. The unalienable rights and the fundamental freedoms of all Europeans were hard fought and will never be taken for granted. We will uphold our shared values and principles enshrined in the Treaties. (European Council, Sibiu Declaration, 2019).

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7 For details see the contributions of Crawford et al. (2010).
8 Opinion of Advocate General Sharpston, European Court of Justice (ECJ), Case C-715/17 (Commission/Poland), ECLI:EU:C:2019:917, paragraph 253, emphasis added.
This commitment refers simultaneously to elements of unity and diversity within the European Union. Responsibility is instrumental in establishing a balance between the two notions when accepted not only as an ethical principle, but also as a legal and political concept, from which rights and obligations follow. Mutual (or peer) responsibility within the meaning discussed here is encapsulated in the founding concept of the European Union, which is spelled out in the introductory “common provisions” of the EU Treaty, in Article 1 in particular: “By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called ‘the Union’, on which the Member States confer competences to attain objectives they have in common.” The Union was established to realize common objectives. All Member States are bound by an obligation to contribute to the achievement of those objectives. As Article 4(3) TEU states, this obligation also applies to relations between Member States: “... the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.”

This provision encapsulates at the same time diversity (“mutual respect”), a common goal, unity (“carrying out tasks which flow from the Treaties”), and responsibility (“assist each other”). A failure by one Member State to fulfill its duty to contribute may put the entire project at risk. This is true, in particular, when—as is the case with the EU—no Member State may be expelled from the Union. Therefore, all participants in the common project by definition have an interest in the capacity of all participants to contribute to the achievement of the common goals. That ‘interest’ is not restricted to the role of a benevolent observer; it requires acceptance of an active role in the protection of the functioning of the Union by way of an active interest in the other States’ conditions of existence. An example of the meaning of responsibility—an active mutual interest in the situation of other Member States—can be found in the Treaty establishing the European Stability Mechanism of 2012, which was created outside (yet closely connected to) the EU Treaty by certain EU Member States. It is aimed at “fostering fiscal responsibility and solidarity within the economic

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9 See Opinion AG Bot in ECJ, case C-364/10 (Hungary/Slovak Republic): “commitment to maintain good-neighbourly relations consubstantial with their decision to join the Union,” ECLI:EU:C:2012:124, paragraph 59. See also ECJ, case C-457/18 (Slovenia/Croatia), ECLI:EU:C:2020:65, paragraph 109.
and monetary union.” To this extent the term refers to the substantive behavior of Member States in fiscal matters with the aim of reaching a common goal, the Economic and Monetary Union.

In the European Union, peer responsibility therefore means the acceptance of Member States’ autonomy by Member States of the Union, who are at the same time responsible for the use made by each Member State of its autonomy, so that the general interest of the Union is promoted and the common aim achieved.

Thus, the responsibility of Member States in respect to the functioning of the European Union as well as in respect to the capacity of each to fulfill its obligations is a “general principle” of European law (Lenaerts and van Nuffel 2011, p. 851) that belongs to what the ECJ calls a structured network of principles, rules and mutually interdependent legal relations linking the EU and its Member States, and its Member States with each other, which are now engaged, as is recalled in the second paragraph of Article 1 TEU, in a ‘process of creating an ever closer union among the peoples of Europe.’

It is therefore possible to infer the existence of a general horizontal duty between EU Member States to behave responsibly, which may require action or abstention from adopting certain acts.

A specific case of transnational responsibility consists of the Member States’ obligations resulting from EU citizenship—for example, the obligation to afford diplomatic protection in third countries (TFEU, 2007, art. 23). This obligation is not, however, strictly between States as equals, since it results from an entitlement of citizens.

The various forms of solidarity in EU law are to be understood as resulting from the general principle of responsibility between Member States, comprising simultaneously solidarity and the duty of sincere cooperation. In fact, the treaties refer to solidarity in a number of places with differing substance. Solidarity is, for example, described as a criterion for decision-making within the EU (TFEU, 2007, art. 80, 194), as a criterion for positions to be taken by the Member States (TEU, 2007, art. 24[3]),

10 Treaty Establishing the European Stability Mechanism, 2012, preamble, rec. 5, emphasis added.
11 ECJ opinion 2/13, ECLI:EU:C:2014:2454, paragraph 167, emphasis added. See also ECJ, opinion 2/17, ECLI:EU:C:2019:341, paragraph 109.
12 See Chap. 7 and Haag (2019).
and as a description of certain social rights (Charter of Fundamental Rights of the European Union, 2000, art. 27–38). Therefore, solidarity, as it is understood in the EU Treaties, has different meanings, serves different purposes, and does not cover all the duties resulting from mutual responsibility between Member States.

The principle of sincere cooperation describes a legal obligation concerning the manner in which the Member States accomplish the tasks resulting from the Treaties. The obligation comprises a variety of activities or to abstain from them. According to the ECJ, for example, it implies “mutual trust” between Member States.¹³ Yet again, like solidarity, sincere cooperation (loyalty) has a narrower scope within the meaning of the Treaties than responsibility. Especially in “horizontal” relations involving Member States only—without any direct implication of the EU institutions—responsibility may extend beyond the “tasks which flow from the Treaties.” Such a situation could occur, for example, in regard to a member state’s activities, which, though located outside the field of application of Union law, might have an impact on the functioning of the Union.

Therefore, responsibility, loyalty, and solidarity form a hierarchically structured set of duties of the EU Member States that applies between the States. They also apply to relations between the EU institutions and the Member States.

Responsibility is the overarching principle that applies independently of a particular task or act of implementation and includes all situations where Member States’ acts or abstinence from acts may have direct or indirect implications for the fulfillment by other Member States of duties resulting from the EU Treaties. Loyalty (or sincere cooperation) describes a general duty as to the manner in which obligations spelled out in the Treaties are to be implemented. Solidarity requires, in the particular cases where it is mentioned, more intense attention—and ensuing action—that acknowledges the interests of other Member States. The European Union is composed of States which continue to exist as autonomous actors and whose identity has to be respected (TEU, 2007, art. 4[2–3]). At the same time, it was established in order to realize common goals and to bring about common values. This structure is built on the assumption of the simultaneous and permanent presence of unity and diversity, two opposing principles.

¹³ECJ, Case C-359/16 (Altun et al.), ECLI:EU:C:2018:63, paragraphs 40, 42, emphasis added. See also Case C-620/15 (A-Rosa), ECLI:EU:C:2017:309, paragraphs 39, 40. Earlier, in a similar vein, ECJ, Case C-178/97 (Barry Banks), ECLI:EU:C:2000:169, paragraph 39.
Responsible behavior aims to take into account the otherness by establishing bridges to the other. These ‘bridges’ presuppose the continuing existence (the ‘otherness’) of the bearers of responsibility. Moreover, they operate in both ways: responsibility is reciprocal. In the context of the European Union, responsibility between its Member States is of fundamental importance for maintaining its unique quality. Responsible behavior, which takes into account the other Member States’ identity, their existential needs, and specificities, is instrumental to achieving unity while respecting diversity. The core concepts of responsibility, loyalty, and solidarity take a less central role than diversity and unity in the European integration, but are their core features. In a polity based on the negotiation and re-negotiation of difference to build a joint political, legal, and economic project, these principles are central. The ability to exit the Union highlights that the shared project is based on the voluntary association and thus the shared understanding that the commitments undertaken are based on free commitment of the Member States and their citizens. With the commitment to democracy, the European Union is not just ensuring the democratic governments of its own institutions, it is also ensuring that the Member States are able to represent citizens and thus reflect the shared commitment of state and citizens to the principles of loyalty, solidarity, and responsibility. Thus, the EU does not offer a simple blueprint for complex states or how to build polities to confront and accommodate differences. It is not free of its own difficulties; while this book has argued that the EU has been able to balance diversity and unity, there have been numerous challenges. Furthermore, it does have a number of features that make it difficult to compare or emulate.

9.1 Final Considerations

Combined with the aforementioned qualities, three features characterize the EU: the democratic nature of the Member States, the possibility of a voluntary exit, and the absence of hegemon, all of which are interconnected. These set them apart from previous multinational polities, as discussed in Chap. 2.

First, democracy is a core principle of the EU and of its Treaty: the EU is defined as a representative democracy (TEU, 2007, art. 10[1]) and essentially also assumes that the institutions of the Member States are democratic (TEU, 2007, art. 10[2]). In order to join the EU, respecting the values of the EU, which include democracy (TEU, 2007, art. 2), is a requirement (TEU, 2007, art. 49). Democracy is thus understood as the political system that defines the Union and its Members. The very fact that
the Treaty offers no mechanisms for expelling Member States and only allows for suspension of voting rights if a Member State breaks the values of the EU (TEU, 2007, art. 7) suggests that the EU assumes (as it turns out wrongly) that democracy within the EU is consolidated.

This assumption has proven problematic, as some Member States—most notably Hungary under the government of Prime Minister Viktor Orbán (since 2010) and Poland under the rule of the Law and Justice Party (PiS) of Jarosław Kaczyński (since 2015)—have experienced a serious decline in democracy. Hungary is no longer considered a liberal democracy by various scholars and global and regional indices of democracies (Freedom House 2020; V-Dem Institute 2020). This decline of democracy in some Member States has repercussions for the EU itself. The institutional setup of the EU has become more democratic over the decades, but it is a consensus democracy, that is, based on the attempt to seek as broad an agreement as possible. Thus, the EU is not a majoritarian democracy by its institutional setup and practices. The consensus-seeking approach stands in stark contrast with the anti-democratic populism in some Member States, where checks and balances have been dismantled and the ruling majority present themselves as the will of the people against previous elites, foreign enemies (including the EU itself), and independent institutions. As such, populism, in particular when it dismantles liberal democratic institutions, is incompatible with the institutional and ideational logic of the EU that seeks compromise and consensus, and gives room to checks and balances. To draw on the terms used in this book, populists and their autocratic regimes reject diversity and instead claim to be the sole legitimate representatives of unity—a unity of a particular people, often defined in exclusively ethnic terms. Paradoxically, the EU as a consensus-seeking polity is largely immune to populism and majoritarianism, as the institutional setup, the diversity of its Member States, and other factors outlined in this book prevent it. However, it is also ill-prepared to confront such patterns among its Member States, as it is founded on the assumption that all its constituent units are committed to liberal democracy, as well as checks and balances.

Second, voluntary exit is a right few states afford their units. When such provisions exist, they are often declaratory, rather than substantive, as they were in several socialist federations. In other cases, such as the Scottish referendum on independence, the right to vote on exit was negotiated with the central government and was offered not as a permanent right to leave the Union, but as a special case. Elsewhere, central governments
reject the right of units to determine their own status and leave. The Catalan referendum in 2017 that was prohibited by the Spanish authorities and the numerous civil wars around the world based on the secessionist claims of a unit are examples of when governments reject exit. Even federal states that are based on the gradual and voluntary association of their units, such as Switzerland and the United States, have fought civil wars over secession. In this sense, the EU constitutes an exception in safeguarding the right of all Member States to leave the Union. Demonstrating that this provision was not just declaratory has been the departure of the United Kingdom from the EU in 2020, based on the 2016 referendum and the United Kingdom invoking Art. 50 of the TEU in March 2017, which triggered the formal process of exiting the EU. Whereas Brexit preoccupied the EU for several years and constituted a serious loss in terms of its size, economic might, and reputation, the EU survived the departure of its third largest Member State and the ability to leave was never contested.

Third, the absence of a hegemon in the EU set it apart from most other polities that are structured around diversity. That hegemon might be a dominant ethno-national or linguistic group, like in most nation-states, or a dominant territorial unit in a federal or decentralized state. As discussed in Chap. 2, most polities that have sought to balance diversity and unity have often had a center, dominant group or unit, such as the German speakers in the Habsburg Monarchy, Serbs in Yugoslavia, or the initial English and protestant majority in the United States. Even in polities where one group might not dominate politically, such as Belgium or Bosnia and Herzegovina, there are clear majorities, and the anxiety of being outvoted, marginalized, or becoming a minority is central to political competition and polarization. The EU lacks such a dominant actor. While Germany is often described as the most important or dominant Member State, its population accounts for less than 20% of the EU total, and the German share of the EU GDP is just below a quarter. Beyond the numbers, in terms of decision-making, Germany can be outvoted, and other Member States cannot be ignored by Germany. It has been argued that the economic and political weight of Germany makes it a “reluctant hegemon” in the EU (Bulmer Paterson 2018). While this might apply to some policy areas, such as the Eurozone, it is less clear in others, such as foreign policy. Overall, despite its size and weight, Germany is unable (and unwilling) to dominate the EU. As a result, the EU, despite having a great variety of Member States ranging from Malta (with 0.01% of the EU population) to Germany, is a non-hegemonic polity. This reduces the
majoritarian temptation that a dominant unit could seek to outvote the interest of others.

9.2 Implications for Multinational Polities

What does the EU tell us about balancing diversity and unity? The starting point of this book is that the experience of the EU in balancing diversity and unity is specific, but not unique. Multinational federations, power-sharing systems, and other political systems that seek to accommodate diversity—often divisive and at times antagonistic—all pursue these two core principles of the EU. In this sense, the EU has been developing responses to these demands as other polities have. The EU does not offer an easy institutional blueprint. Beyond the observation of scholars of institutional design that (generally speaking) there are no one-size-fits-all blueprints, there are a series of specific reasons that make it a difficult model to emulate. The EU has grown over the decades in terms of population and Member States, nearly tripling in terms of inhabitants from 167 million in 1957 to 446 million in 2020, and growing nearly five-fold in terms of membership. Few polities have grown so rapidly in peace time. The United States, which has also grown substantially since its founding, did so through conquest and immigration rather than solely through voluntary association (and conquest). The EU has also been undergoing substantial institutional and legal evolution that is structurally engrained in the Union. The EU thus never just is, but is always becoming. Of course, all states change—the gradual shift of competences from the states and cantons of the United States and Switzerland attest to that—but the shifts in the EU have occurred voluntarily, in peaceful times and to a much greater extent over a shorter period of time.

It is beyond doubt that negotiating diversity and unity is fragile, reversible, and subject to exogenous and indigenous shocks. The tempting answer to the challenges the EU has had to face over the past 15 years was to call for either its abandonment (as supporters of Brexit and all its counterparts in other Member States have argued) or, at the other end, a European Republic. This book has sought to show that negotiating diversity and unity is one of the strengths of the Union, even if it is making it a more ‘difficult’ polity than conventional states. The intricate tension of

14While scholars of power-sharing propose different models, these are not set blueprints, but principles on how to arrange the institutional structure of a given polity. McCulloch (2020); Jakala et al. (2018); Schneckener (2002).
the Union makes its ‘incomplete’ nature a virtue—a need for citizens and Member States to recast, develop, and reimagine the Union. This evolutionary nature of the Union is its greatest asset that has allowed it to evolve and respond to new challenges. Of course, it also highlights its own unfinished nature, opens it up to criticism, and makes it harder to identify with. The argument is not that the status quo or European integration can adequately respond to all the difficulties the Union is facing, ranging from democratic decline in some Member States to the lack of solidarity and the contestation of the European institutions by national institutions. Instead, it suggests that a patient, gradual process can best accommodate difference.

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