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Articles

Is Nationalism the Most Serious Challenge to Human Rights? Warnings from BREXIT and Lessons from History

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INTRODUCTION

The United Kingdom's decision to exit the European Union is arguably the most momentous event in the European Union's history, and the human rights implications of the exit will be staggering. This Article is part of the important discussion organized around these emerging human rights issues. The decision of the United Kingdom to leave the European Union reflects a pattern of regression of human rights protection that has been happening around the world in recent years. This decision has given rise to a wave of xenophobia and racism, including a sharp increase in hate crimes in the UK since the exit vote.[1] The decision to leave the EU is also causing a tremendous amount of anxiety for individuals and families who are uncertain about their fate post-Brexit.[2] Furthermore, the United Kingdom's exit may hasten the weakening or breakup of the EU, destabilizing not just the region, but the entire world. This Article does not discuss how Brexit changes the UK's internal framework of human rights protections or how it will impact the UK's relationship with the European Court of Human Rights; rather, the discussion in this Article focuses on the broader human rights implications of a radically altered or non-existent European Union.

This Article will begin with a brief overview of Brexit itself, as well as a deeper look at how Brexit is part of a larger spike in nationalism in Europe and the rest of the world. The article will then turn to the EU, beginning with a cursory discussion of the origins of the EU, recent problems the EU has been facing, and how Brexit might weaken or even destroy the EU. The article will then discuss the problems that are a byproduct of a weakened or completely broken EU, focusing on the possibility of violent conflict and examining the link between conflict and human rights violations. Finally, the Article will conclude with a discussion of what can be done by individual states and the EU to minimize the chances of the worst possible outcomes.

I.   BREXIT

A. Overview of Brexit

Brexit is the result of a popular non-binding referendum, which took place on June 23, 2016, to decide whether the UK should leave the EU.[3] 52% of British voters voted for UK independence.[4] The British government had agreed beforehand not to interfere with the will of the people as expressed though the referendum,[5] and the

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1.   *See generally* Adam Bienkov, *Hate Crimes Have Surged in the UK Since the Brexit Referendum*, BUS. INSIDER (Oct. 17, 2017, 6:36 AM), http://www.businessinsider.com/hate-crimes-uk-brexit-referendum-2017-10; Alan Travis, *Lasting Rise in Hate Crime After EU Referendum, Figures Show*, GUARDIAN (Sept. 7, 2016, 5:00 PM), https://www.theguardian.com/society/2016/sep/07/hate-surged-after-eu-referendum-police-figures-show; Helen F. Wilson, *Brexit: On the Rise of '(In)tolerance'*, SOC'Y & SPACE (2016), http://societyandspace.org/2016/11/21/brexit-on-the-rise-of-intolerance/.

2.   *See* HOUSE OF COMMONS AND HOUSE OF LORDS JOINT COMMITTEE ON HUMAN RIGHTS, THE HUMAN RIGHTS IMPLICATIONS OF BREXIT, 2016-7, HC 695, at 13 (UK) (discussing the Prime Minister's response to anxieties about residence rights).

3.   *See* Gareth Davies, *Legal and Constitutional Aspects of Brexit*, 8 TIJDSCHRIFT VOOR CONSTITUTIONEEL RECHT 137, 137 (2017) (discussing the non-binding nature of the Brexit referendum).

4.   Matthias Matthijs, *Europe after Brexit: A Less Perfect Union*, 96 FOREIGN AFF. 85, 85 (2017).

5.   Davies, *supra* note 3, at 137.

House of Commons strongly approved the decision.[6] On March 29, 2017, Prime Minister Theresa May invoked Article 50 of the Treaty on the European Union (TEU), which triggered the process of the British exit from the EU.[7] As the situation currently stands, it will be nearly impossible to stop the UK's exit.[8]

Though the campaign to leave the EU was rife with dishonesty and centered around greatly exaggerated, worst-case scenarios, it had been preceded by "a genuine and long-standing alienation [of the UK] from the European Union as an institution."[9] The primary driving forces behind the British referendum were fears of loss of sovereignty, due to the Schengen requirement that the UK open its borders to citizens of other EU member states, and fears that Eastern Europeans would deprive Britons of jobs by migrating from counties with lower wages.[10] For example, the UK minimum wage is double that of some EU member states,[11] leading some to the belief that EU membership is a drag on the UK in the areas of finance, immigration, regulation, and power on the global stage.[12] Citizens of the UK were particularly wary of migration by Turks, since Turkey has formally applied for EU membership.[13] Brexit was also a rejection of the technocrats in Brussels, who are professional lawmakers, not democratically elected ones.[14] Technocrats are ministers who are experts in the fields under their purviews instead of being career politicians. They are problematic for representative democracy because they come between the representative EU nation-state for which citizens vote and the minister in the leadership position.[15]

While it is clear that a slight majority of voters voted to leave the EU, it is increasingly unclear whether they understood the implications of doing so and whether people who

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6.   Angela Dewan & Simon Cullen, *House of Commons OKs Brexit Bill*, CNN, (Feb. 8, 2017, 4:27 PM), https://www.cnn.com/2017/02/08/europe/brexit-bill-parliament-vote-article-50/index.html.

7.   Anushka Asthana et al., *May Triggers Article 50 with Warning of Consequence for UK*, GUARDIAN (Mar. 29, 2017), https://www.theguardian.com/politics/2017/mar/29/theresa-may-triggers-article-50-with-warning-of-consequences-for-uk. See *id.* for a link to May's official letter to the EU.

8.   *See* Matthijs, *supra* note 4, at 85.(stating that the United Kingdom will "almost certainly" leave the EU) . RALPH H. FOLSOM, PRINCIPLES OF EUROPEAN UNION LAW 35 (5th ed. 2017) (explaining that twenty of twenty-seven remaining EU member states must approve any exit deal under Article 50 of the TEU, along with consent of both the EU and UK parliaments).

9.   Davies, *supra* note 3, at 138.

10. Harlan Green, *Why Brexit Could Break Up the EU*, HUFFINGTON POST (Sept. 29, 2016), https://www.huffingtonpost.com/harlan-green/why-brexit_b_12246496.html.

11. Minimum   Wage   Statistics,   EUROSTAT,   http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Minimum_wage_statistics (last visited April 24, 2018).

12. JAMES KIRCHICK, THE END OF EUROPE 167 (2017). Kirchick says this perception is likely to be false. *Id.*

13. Matthijs, *supra* note 4, at 93. It seems increasingly unlikely that Turkey will become a member of the EU in the near future as concerns about democracy, the rule of law, minority protection, and respect for human rights are growing under the regime of Turkey's President Erdogan. FOLSOM, *supra* note 8, at 32-33.

14. *See* Ntina Tzouvala, *Chronicle of a Death Foretold? Thinking About Sovereignty, Expertise and Neoliberalism in the Light of Brexit*, 17 GER. L. J. 117, 117 (2016) (discussing the causes of the Brexit referendum in the UK).

15. *See generally* Daniele Caramani, *Will vs. Reason: The Populist and Technocratic Forms of Political Representation and Their Critique to Party Government*, 111 AM. POL. SCI. REV. 54, 59–61 (2017). This is not altogether dissimilar from the U.S. electoral college.

voted to leave meant for the UK to leave the EU at any cost.[16] Major issues that have to be negotiated as part of Brexit include residency rights; business passport rights; investment; trade relations; the status of Northern Ireland, Scotland, and Gibraltar; the UK's debt to the EU (an astounding sum ranging from 25 to 75 billion Euros, which will likely be a shock to those whose motivation to vote to leave was based on economic concerns); and immigration.[17] The negotiation process will likely be concluded, and the UK exit final, in 2019.[18]

B. How Brexit Relates to Nationalism

Brexit is the result of a wave of nationalism sweeping around the world. Nationalism in the UK, as expressed through Brexit, can also be understood as *English* nationalism.[19] Support for Brexit in Northern Ireland and Scotland was low.[20] Part of this nationalism in the UK has manifested in the minds of some who voted to leave as a wistfulness for the past and for Victorian-era glory:[21]

> Much of this desire is driven by nostalgia for a past that never was. There is the right-wing nostalgia for a Britain that was not only powerful and prosperous but also, by and large, white. Some of this is nostalgia for Empire, a nostalgia both unrealistic and abhorrent.[22]

Indeed, myths and "memories" are central to nationalist ideology in the UK and almost everywhere else.[23]

Brexit has emboldened nationalists, inside and outside of the UK.[24] In a speech to the conservative U.S. Heritage Foundation, Nigel Farage (who some call the father of Brexit) predicted that Brexit will send ripples across the European continent, inspiring other nationalist movements, and even killing the whole EU project.[25] Some of these movements will be discussed below.

C. What is Nationalism?

There are many definitions of nationalism, but most center around the political idea that humanity naturally divides into nations that have ascertainable

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16. Davies, *supra* note 3, at 138.

17. FOLSOM, *supra* note 8, at 36–39.

18. *Id.* at 35 (stating that "[i]f no exit deal is reached and no additional time for negotiaton unanimously agreed, Britain will cease to be a member of the EU in March of 2019.").

19. Patrick Cockburn, *Brexit Unleashed an English Nationalism that Has Damaged the Union with Scotland for Good*, THE INDEPENDENT (Mar. 17, 2017), http://www.independent.co.uk/voices/brexit-scottish-referendum-english-nationalism-damaged-union-for-good-a7635796.html.

20. *Id.*

21. KIRCHICK, *supra* note 12, at 167.

22. Ralf Michaels, *Does Brexit Spell the Death of Transnational Law?*, 17 GER. L. J. 51, 54 (2016).

23. *See generally* ANTHONY SMITH, MYTHS AND MEMORIES OF THE NATION (1999).

24. *See, e.g.*, KIRCHICK, *supra* note 12, at 154 (describing how Brexit emboldened British nationalists, and citing a 50500 percent increase in hate crimes in Britain the first week after the' Brexit vote).

25. *Id.* at 162; GUY VERHOFSTADT, EUROPE'S LAST CHANCE: WHY THE EUROPEAN STATES MUST FORM A MORE PERFECT UNION 73 (2017).

characteristics.[26] Such characteristics vary, but may include a shared language, culture, values, religion, race or ethnicity, and/or common land.[27] The nation should be self-governed, politically sovereign, and as independent as possible.[28] Nationalism also includes a state of mind, whereby supreme loyalty should be to the nation state and its cultures and values, and the nation should exist inside of some national borders.[29] Nationalist movements do not require a connection to an existing nation state; rather, they occasionally focus on the potential of becoming one.[30] The Catalan independence movement is one example.[31]

The idea of nationalism, as described above, is based on the concept of the nation-state. While there are many opinions on when nationalism began,[32] in the European context, nationalism likely emerged during the rising prominence of the nation state. The concept of the nation state comes from the 1648 Peace of Westphalia, a series of treaties that ended decades of religious wars between Roman Catholics and Protestants.[33] The treaties established the Westphalian order, instituted the nation state as the primary political unit, and necessitated that states recognize each other as mutually independent and sovereign.[34] States agreed to respect the territorial integrity of other states and agreed to abide by an emerging law of nations.[35]

Between the establishment of the nation state and modern times, nationalist movements have ebbed and flowed in Europe. A surge in nationalism occurred during the 19th century as a result of changing ideas about the authority for law.[36] Enlightenment ideas, the French and American revolutions that put these ideas into practice, and Napoleon's rise to power changed how people thought about the legitimacy of law.[37] Instead of thinking that law emanated from God's chosen monarch, law began to be seen as deriving from the people.[38] Thus, ideas about nationalism came to center around the idea of popular sovereignty instead of monarchs with absolute power, and smaller states came to oppose the unequal

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26. JOEP LEERSSEN, NATIONAL THOUGHT IN EUROPE: A CULTURAL HISTORY 14–15 (2006).

27. *Id.* at 16.

28. *See id.* at 14–15 (discussing how John Breuilly in 1993 identified that under nationalism, "[t]he nation must be as independent as possible[,] usually requir[ing] at least the attainment of political sovereignty.").

29. *See id.* at 14 (defining nationalism as "a state of mind, in which the supreme loyalty of the individual is felt to be due the nation-state")..")

30. *Id.* at 14–15.

31. *See generally* David Frum, *Catalan Nationalism Means More European Division*, ATLANTIC (Sep. 30, 2017) https://www.theatlantic.com/international/archive/2017/09/trump-spain-catalonia-referendum-independence/541572/.

32. *See generally* THE OXFORD HANDBOOK OF THE HISTORY OF NATIONALISM (John Breuilly ed., 2013).

33. The Protestant Reformation had challenged Roman Catholic power in Europe. *See* James Mayall, *International Society, State Sovereignty, and National Self-Determination, in* THE OXFORD HANDBOOK OF THE HISTORY OF NATIONALISM 537, 538 (John Breuilly ed., 2013).

34. *Id.*

35. *Id.*

36. *See Id.* at 539–40 (describing the ways that the nationalist wave following the American and French Revolutions challenged the traditional conception of international society and traditional authority).

37. *Id.*

38. *Id.*

influence the great powers wielded.[39] Emphasis was on the *volk*,[40] or "folk," and the cult of the fallen soldier was central to the romantic ideals of nationalism in that era.[41] Another factor shaping nationalism at that time was a rising middle class that created a group of bourgeoisie that demanded a new order.[42]

The time between the Napoleonic wars and the beginning of World War I was the golden age of nationalism, dominated by imperialism.[43] Some large nation states divided into small nation states, while some small nation states (or other political groupings including city states) merged into larger nation states. Germany and Italy are examples of nation states created by merging smaller political entities.[44] Groups of people also sought to create independent states, breaking away from larger states that they were forced to be part of, such as the Austria-Hungarian Empire, the Ottoman Empire, and Russia.[45] The push behind these dramatic changes in statehood was the desire for the state to be more reflective of and representative of a group of people with common characteristics.[46] This movement of people to liberate themselves gave rise to World War I, as the process of nationalization undermined the legitimacy of the Austria-Hungarian Empire.[47]

The next surge of European nationalism came during the period between World Wars. Fascism flourished, and nationalism was part of a resurgence of extreme, right-wing ideologies.[48] Nationalism at this time contained a strong ethnic component.[49] Pseudo-science ideas of racial purity thrived.[50] The Nazi party sprung from this ideological framework, and the "cult of *völkisch* identity was an important contributing factor in the Third Reich's policy of genocide as an instrument of national

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39. *Id.*

40. German intellectuals comprised the "heartland" of romantic nationalism. *See* John Huchinson, *Cultural Nationalism, in* THE OXFORD HANDBOOK OF THE HISTORY OF NATIONALISM 75, 78 (John Breuilly ed., 2013).

41. *Id.* at 84–85.

42. Charles C. Tansill, *Nationalism: Historical Prelude*, 4 INT'L L. & REL. 1, 13 (1935).*See generally* MIROSLAV HROCH, SOCIAL PRECONDITIONS IN NATIONAL REVIVAL IN EUROPE: A COMPARATIVE ANALYSIS OF THE SOCIAL COMPOSITION OF PATRIOTIC GROUPS AMONG THE SMALLER EUROPEAN NATIONS (1985).

43. *See generally* HROCH, *supra* note 42.

44. John Paul Newman, *Nationalism*, INT'L ENCYC. OF THE FIRST WORLD WAR, https://encyclopedia.1914-1918-online.net/article/nationalism.

45. *See* LEERSSEN, *supra* note 26, at 129–44 (discussing 19th century nationalism and separatist movements).

46. One definition of nationalism that seems to capture the zeitgeist of nationalism in this time frame was that of Professor Ramsay Muir, who defined nationalists as a group of people "who feel themselves to be naturally linked together by certain affinities which are so strong and real for them that they can live happily together, are dissatisfied when disunited, and cannot tolerate subjection to peoples who do not share these ties." Tansill, *supra* note 42, at 3, (citing RAMSAY MUIR, NATIONALISM AND INTERNATIONALISM 38 (1917)).

47. Newman, *supra* note 44.

48. LEERSSEN, *supra* note 26, at 234.

49. *See id.* (noting that "In [the National-Socialist] view, the history of the *Volk* [the *Nation*] is thoroughly determined, in its larger patterns, by its innate and cultivated temperament and by its purity and collective solidarity. . . .").

50. *Id.*

purity and total control."[51] A paper written in 1935 highlights rising nationalism in the years leading up to World War II:

> It is very apparent even to the most casual observer that the outstanding force in present-day world politics is <u>nationalism</u>. It has produced the national rivalries that lead to serious international discord, and it has rendered impotent every effort to create a world organization which can effectively preserve world peace. The only way to arrest this rising tide of nationalism is to find a formula of political faith which will transcend national boundaries, and which will have such power of attraction that habitudes of thought will become international rather than national. The stage has been set and the audience is anxiously awaiting the appearance of a political Messiah.[52]

Post-nationalism defined the period following World War II, in which there was a huge push for international cooperation and respect for human rights.[53] Though nationalism was relatively dormant in Europe, nationalism was alive and well elsewhere in the world, as the post-war period was a time of rapid decolonization and independence.[54] Militant separatists were also active in some areas of Europe, such as Northern Ireland and the Basque Country.[55]

We are now in a period of neo–nationalism, which began at the end of the Cold War.[56] This wave of nationalism centers around far–right "ethnonationalists" who advocate for the interests of a specific ethnic group.[57] Euroscepticism, an opposition to the EU, is growing as a pushback against globalization.[58] Across Europe, nationalism is now coalescing around hatred toward Muslim immigrants and other immigrant groups, such as Africans.[59] Specific examples of rising nationalism in Europe are set forth in the next section.

D. Rise in Nationalism

1. Nationalism in the EU Today

Brexit may be the most visible example of the rise of nationalism in Europe, but it is not the only one. As Udo Di Fabio, a former judge of the Federal Constitutional Court of Germany, has observed, the populist movement appears to have "reached a fervor in nearly all the Member States that has not been seen for decades."[60] Populists

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51. *Id.*
52. Tansill, *supra* note 42, at 1.
53. Leerssen, *supra* note 26, at 234–35.
54. *Id.* at 236–37.
55. *Id.* at 238.
56. *Id.* at 242.
57. *Id.*
58. *Id.* at 243.
59. *Id.* at 244––46.
60. Udo Di Fabio, *On the Continent Alone*, 17 GERMAN LAW JOURNAL 21, 21 (2016).

around Europe have made steady electoral gains.[61] These populists tend to be strongly nationalist, and sometimes anti-American, racist, and anti-Semitic.[62] Populist Nationalist Parties have a foothold in Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Latvia, the Netherlands, and Sweden.[63] According to Di Fabio, "the anti-European sentiment runs the range from a not-totally-irrelevant marginal phenomenon as in Germany, to a hidden veto-power in France, to a movement that is already on the way to a majority in Italy."[64] In 2017 elections, Austria made a sharp turn to the right with a coalition of the two right-most parties gaining a majority in Parliament.[65] Additionally, over 10% of voters in the Czech Republic voted for far right-wing candidates, and as will be discussed more fully below, Marine Le Pen, the far-right candidate for president in France lost the election, but received one-third of the votes.[66] Angela Merkel was reelected Chancellor of Germany, but what is almost as important is that the far-right AfD party got 12.6% of the vote, up from 4.7% in the 2013 elections, which is the first time a Right party has sat in the Bundestag since 1961.[67] In the Netherlands, the PVV candidate for Prime Minister, Geert Wilder, came in second, but his strong showing in pre-election polls caused Prime Minister Mark Rutte to increase his resistance to migration, showing how the far-right is effectively pressuring moderates to radicalize their stances on issues.[68] Meanwhile, the PVV has a strong position in Parliament.[69]

Hungary is in the midst of an authoritarian drift.[70] Hungary's prime minister, Viktor Orbán, for example, has been no friend to immigrants, building a wall to keep Syrian refugees out.[71] Orbán made a speech in July of 2014 declaring that Hungary is no longer a liberal state; rather, it is a work-based state emulating Russia, China, and Turkey.[72] Orbán's vision for his country is to become a one-party state built on "ethnonationalist foundations."[73] He has also been no friend to the media, severely impinging on civil and political rights in Hungary.[74] Hungary has been harassing

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61. KIRCHICK, *supra* note 12, at 4.

62. *Id.*

63. Ashley Kirk, *How the Rise of the Populist Far-Right Has Swept Through Europe In 2017*, THE TELEGRAPH (Oct. 24, 2017, 12:01 PM), http://www.telegraph.co.uk/politics/2017/10/24/rise-populist-far-right-has-swept-europe-2017/. For the countries on this list, the far-right received greater than 10% vote share in recent European legislative elections. *Id.*

64. Di Fabio, *supra* note 60, at 21.

65. *See* KIRCHICK, *supra* note 12, at 121–22 (explaining that in Austria's most recent election, the far-right candidate from the Freedom Party (founded by former SS officers) was less than 1% away from election in the initial presidential runoff election). *See also* Kirk, *supra* note 63 (describing the rise of the People's Party and the Freedom Party).

66. Kirk, *supra* note 63. Support for elected leaders from Russia makes it no surprise that the Czechs did not protest Russia's invasion of Ukraine. KIRCHICK, *supra* note 12, at 225.

67. Kirk, *supra* note 63.

68. *Id.*

69. *Id.*

70. KIRCHICK, *supra* note 12, at 56.

71. *See* Michael Idov & Adam Weinstein, *The Trump Bump*, ESQUIRE, Feb. 2017, at 54, 57 (noting that Orbán "literally built a wall during the migrant crisis in 2015 to slow the stream of border crossers from Serbia").

72. KIRCHICK, *supra* note 12, at 59.

73. *Id.* at 60.

74. Idov & Weinstien, *supra* note 71, at 57; *see also* KIRCHICK, *supra* note 12, at 56–57 ("Since winning a landslide election in 2010, the Orbán government has rewritten the constitution centralized power in the

NGOs that support civil society projects.[75] As dismaying as Orbán's party is, its main political challenger is even further right.[76] Hungary's second-most popular party, Jobbik (the Movement for a Better Hungary) is on the extreme right of the political spectrum and friendly toward the Kremlin, with a history of extreme discrimination and harassment of the Roma.[77] Furthermore, Hungarian nationalist, revisionist historians have been actively trying to erase Hungary's responsibility for the murder of Hungarian Jews in the Holocaust in a program of "nationalist mythmaking."[78]

Since 2015, Poland has been ruled by President Andrzej Duda and the extremely conservative Law and Justice Party (PiS), and disharmony with the EU is growing.[79] Poland is strongly asserting claims to sovereignty, despite criticism and oversight from the EU about Poland's position on refugees, and its questionable infringements on the press and independent judiciary.[80] As a result, the EU triggered a mechanism for the first time in its history to strip Poland of its EU voting rights over concerns about the independence of the judiciary, a key component of EU membership.[81] The move by the EU sparked vocal criticism from right-wing leaders of other EU member states, including Marine Le Pen in France and Victor Orbán in Hungary.[82] A recent protest on Poland's independence day illustrates the virulence of Poland's particular brand of nationalism—"the figures who marched on . . . wore masks, flashed white-power insignia, and screamed 'Pure Poland, white Poland!' and 'Refugees get out!' One banner on display read *Pure blood, Clear mind*; another read *Europe will be white or uninhabited*." [83]

Nationalism is particularly strong and worrisome in France, where recent elections showed a strong backing for French nationalists. Marine Le Pen, from the far-right National Front party, made it to second place in the 2017 runoff election for

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executive, weakened checks and balances, empowered the oligarchic class, dispensed state awards and ceded cultural policy to extreme right-wing figures, rendered parliament a rubber stamp, overhauled public media institutions into partisan outlets, harassed civil society, and reoriented Hungary's traditionally Atlanticist and pro-European foreign policy toward Russia and other authoritarian regimes.").

75. KIRCHICK, *supra* note 12, at 57–58.

76. Dalibor   Rohac,   *Hungary's   Hard   Right   Turn*,   POLITICO   (July   27,   2015), https://www.politico.eu/article/hungarys-rising-right-wing/.

77. *Id.*

78. KIRCHICK, *supra* note 12, at 52–54.

79. *See* Natalie Nougayrède, *The EU isn't Punishing Poland. It's Protecting its Integrity as a Bloc*, GUARDIAN (Dec. 26, 2017), https://www.theguardian.com/commentisfree/2017/dec/26/brexiters-eu-poland-brussels-warsaw-trade-deals.https://www.theguardian.com/commentisfree/2017/dec/26/brexiters-eu-poland-brussels-warsaw-trade-deals (discussing increasing tesnsion between Poland and the EU). *But cf.* Paul Hockenos, *Poland and the Uncontrollable Fury of Europe's Far Right*, THE ATLANTIC (Nov. 15, 2017), https://www.theatlantic.com/international/archive/2017/11/europe-far-right-populist-nazi-poland/524559/ (noting that Poland's president is not a member of the ruling party and disavows the party's more extreme statements).

80. *See* Nougayrède, *supra* note 79 ("Brussels decided to move against Poland's democratic backsliding, namely the crushing of its independent judiciary – a process that had recently been accelerated by its populist government, elected in 2015.").

81. *Id.*

82. *Id.* Meanwhile, critics on the left argue that the EU is not going far enough in making sure member states are upholding the values they agreed to, such as Spain's treatment of Catalans in their vote for independence and Greece's imprisonment under miserable conditions of asylum seekers. *Id.*

83. Hockenos, *supra* note 79.

President. [84] While she lost to President Emmanuel Macron, she received one-third of the vote, which was approximately 11 million votes. [85] Nationalism in France is particularly disheartening, considering the strong and exemplary values that France has championed since the French Revolution. [86] More disturbing still is Le Pen's connection with Vladimir Putin. For instance, "[i]n 2014, a Russian bank loaned Le Pen's cash-strapped party 9 million euros. Le Pen, in turn, has amplified Putin's talking points, declaring Russia 'a natural ally of Europe.'" [87] Large numbers of Jews are leaving France because of the rising anti-Semitism, [88] which is tolerated in a way that other forms of racism are not. [89] In Paris, the population of Jews has decreased by half. [90] The outflow of Jews from France is at its highest point since World War II and is so extreme that Paris-area synagogues are closing. [91]

Nationalism is rising even in unexpected places. For example, in Sweden, which is normally pro-EU, and until recently, the European country with the most favorable record of refugee assistance, there is now a neo-Nazi backlash. [92] In addition, a Pew research study found that 88% of Swedes think the EU mishandled the migrant crisis. [93]

Not only are nationalist movements gaining influence in Europe, they are organizing. For example, far-right leaders met in Prague in December 2017 for a conference of the newly-formed Nationalist Europe and Freedom Coalition. [94] The agenda of the conference focused on harsh criticism of immigration of Muslims to Europe and shoring up cooperation between nationalist leaders. [95] In attendance were right-wing leaders Marine Le Pen, leader of the National Front in France; Geert Wilders, leader of the Dutch Party for Freedom, in the Netherlands; and Tomio

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84. *See* Angelique Chrisafis, *Marine Le Pen Defeated but France's Far Right is Far From Finished* THE GUARDIAN (May 7, 2017), https://www.theguardian.com/world/2017/may/07/marine-le-pen-defeated-front-national-far-from-finished (noting the strong support for Le Pen during the recent French election).

85. *See id.* (highlighting that La Pen was "projected to have won up to 11m votes" in the 2017 French runoff election).

86. VERHOFSTADT, *supra* note 25, at 78–79 (recalling the famous "liberty, equality, and fraternity").

87. Franklin Foer, *It's Putin's World: How the Russian President Became the Ideological Hero of Nationalists Everywhere*, ATLANTIC (Mar. 2017), https://www.theatlantic.com/magazine/archive/2017/03/its-putins-world/513848/.

88. *See* KIRCHICK, *supra* note 12, at 9 (noting "the exodus of Europe's largest Jewish community" from France)..

89. *See id.* at 137 (discussing recent anti-Semitism trends in France).

90. *Id.*

91. *See* Dale Herd, *French Synagogues Closing as Jews Flee Anti-Semitism*, CNBC<<CBN News>> (Dec. 15, 2017), https://www1.cbn.com/cbnnews/world/2017/december/paris-synagogues-closing-as-jews-flee-anti-semitism ("Agence France-Presse says more than 5,000 Jews left France last year on top of the record 7,900 who left in 2015 and 7,231 in 2014. At least 40-thousand have emigrated since 2006.").

92. KIRCHICK, *supra* note 12, at 121.

93. *Id.* at 122.

94. *See* Philip J. Heijmans & Hana de Goeij, *European Far-Right Leaders, Meeting to Condemn the E.U., Are Greeted With Boos*, N.Y. TIMES (Dec. 16, 2017), https://www.nytimes.com/2017/12/16/world/europe/prague-far-right-conference.html (discussing an early meeting of the Nationalist Europe and Freedom coalition, an EU political group that was launched on June 15, 2015). *See generally France's Le Pen Announces Far-Right Bloc of Anti-EU MEPs*, BBC NEWS (June 16, 2015), http://www.bbc.com/news/world-europe-33147247.

95. David W. Cerny, *Europe's Far-Right Leaders Vow to Create a Far-Right Europe Without the EU*, CBS NEWS (Dec. 16, 2017, 11:16 PM), https://www.cbsnews.com/news/europes-far-right-leaders-meet-in-prague/.

Okamura, leader of the Freedom and Direct Democracy Party in the Czech Republic.[96] Representatives from far-right parties in Austria, Britain, and Italy were also in attendance.[97] "The conference was hosted by the anti-Islam and anti-immigrant Freedom and Direct Democracy party, known as the SPD."[98] "The party emerged as a major force in Czech parliamentary elections in October, winning nearly 11 percent of the vote."[99] The SPD's leader, Mr. Okamura, whose party is vocally anti-Islam, demanded a reformed EU "without any dictate from Brussels."[100] During the proceedings, the group publicly praised United States President Donald Trump's strong (anti-Muslim) immigration policy.[101]

The Nationalist Europe and Freedom Coalition had met previously in Koblenz, Germany to kick off their partnership.[102] The meeting, referred to as a "European counter-summit" was made up of far-right nationalists from around Europe.[103] Present were Marine Le Pen of France (National Front), Geert Wilders of the Netherlands (Dutch anti-Islam Freedom Party), Harald Vilimsky of Austria (Freedom Party of Austria), Matteo Salvini of Italy (Anti-EU Northern League), and Frauke Petry of Germany (Alternative for Germany [AfG], Germany's anti-immigration party),[104] along with a projected 1,000 more European nationalists.[105] The Koblenz meeting served to set the agenda of the Coalition, which included national decision-making, controlled migration, and elimination of the Euro.[106] The core theme of the meeting was protecting the distinct cultural identities of European countries.[107] The recent election of Donald Trump in the United States and the Brexit vote were cited

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96. Heijmans & Goeij, *supra* note 94.

97. Cerney, *supra* note 95. Marine Le Pen claimed at the gathering that the EU causes the degradation of traditional values and the suppression of patriotism, and described the EU as "a disastrous organization which is leading our continent to destruction through dilution by drowning it in migrants, by the negation of our respective countries, by the draining of our diversity." *Id.* Geert Wilders, in turn, stated that "In 30 or 50 years, the Czech Republic will be surrounded by countries with populations where 20 percent of people will be Muslimvs. . . . That is as if the Czech Republic became a Gaza Strip. We need to prevent mass migration even if we should build a wall." Heijmans & Goeij, *supra* note 94.

98. Heijmans & Goeij, *supra* note 94.

99. *Id.*

100. *Id.*

101. *See* Christina Pazzanese, *In Europe, Nationalism Rising*, HARV. GAZETTE (Feb. 27, 2017) https://news.harvard.edu/gazette/story/2017/02/in-europe-nationalisms-rising/ (discussing the similarities between the nationalist movements in the United States and Europe)).

102. Kate Brady, *EU's Right-Wing ENF Faction Unites to Fight for 'Patriotism, Sovereignty and Identity'*, DEUTSCHE WELLE (Jan. 21, 2017), http://www.dw.com/en/eus-right-wing-enf-faction-unites-to-fight-for-patriotism-sovereignty-and-identity/a-37224232.

103. *Id.*

104. *Id.* Another prominent leader of Germany's AfD, Björn Höcke, has recently made an inflammatory speech to a group of young people in Dresden. *Local AfD Leader's Holocaust Remarks Prompt Outrage*, DEUTSCHE WELLE (Jan. 18, 2017), http://www.dw.com/en/local-afd-leaders-holocaust-remarks-prompt-outrage/a-37173729 ("Jewish groups have reacted with anger and shock after a local leader of the right-wing populist party Alternative for Germany (AfD) attacked Germany's national Holocaust memorial and the country's devotion to teaching its citizens about Nazi genocide.").

105. *Leading European Right-Wing Populists Attend Koblenz Meeting*, DEUTSCHE WELLE (Jan. 21, 2017), http://www.dw.com/en/leading-european-right-wing-populists-attend-koblenz-meeting/a-37220481.

106. *See* Brady, *supra* note 102 (listing the policy goals of the coalition).

107. *Id.*

as giving momentum to the far right groups in Europe.[108] Marine Le Pen, in a speech at the meeting, made a statement to the effect that that "Britain's vote last year to leave the European Union would have a 'domino effect' across the bloc."[109]

It is not only nationalist leaders who are organizing. Other groups around Europe are also forming and activating around nationalist, particularly anti-immigrant, ideals. Far-right nationalism in Europe's youth is rising.[110] Many of these young people are vocal about their disenchantment with the EU.[111] What draws these young people to nationalism includes a desire to preserve national identity against outside influence, an opposition to multi-culturalism, and the view that these young people are a part of a collective identity that is against some "other" group, usually refugees, in today's political climate.[112]

For example, in 2017, a group of far-right millennials set to sea with the agenda of interfering with rescue ships assisting migrants who were attempting to come to Europe in life boats in a perilous journey across the Mediterranean.[113]

2.   Rise in Nationalism Around the World

Europe is not alone in the rise of nationalism—it is on the rise around the world. There has been a ten-year spike in nationalism, but Brexit and the election of U.S. President Donald Trump have raised awareness and conversation around the phenomenon.[114] Along with the rise of nationalism comes new tolerance for the racist, xenophobic speech that supports and undergirds these movements.[115]   One commentator interestingly observed that "[a]nti-immigration statements are the political fertilizer of the right."[116]

U.S. President Donald Trump, when speaking about Brexit, suggested that his campaign was about "the exact same thing."[117]   Furthermore, his actions and statements as president have been controversial, inflammatory, and possibly

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108. *Id* (citing Marine Le Pen, who proclaimed at the meeting that "2016 was the year the Anglo-Saxon world woke up.")

109. DEUTSCHE WELLE, *supra* note 105.

110. *See* Lili Bayer, *Why Central Europe's Youth Roll Right*, POLITICO (Oct. 24, 2016, 2:51 PM CET), https://www.politico.eu/article/why-central-europes-youth-roll-right-voting-politics-visegard/   ("[a]cross Central Europe, young voters are moving further right on the political spectrum. . . . .").

111. *Id.*

112. Madeliene Ingino, Europe's New Generation of Nationalists: Understanding the Appeal of Contemporary Radical Nationalism for European Youth 55–57 (Apr. 7, 2016) (unpublished B.A. honors thesis, University of Colorado Boulder) (on file with the University Libraries, University of Colorado Boulder, https://scholar.colorado.edu/honr_theses/1217).

113. Antonio Parrinello & Steve Scherer, *Far-Right Millennials Set Out to Sea to 'Defend EuropeEurope' From Migrants*, REUTERS (July 21, 2017, 7:49 AM), https://www.reuters.com/article/us-europe-migrants-farright-millennials/far-right-millennials-set-out-to-sea-to-defend-europe-from-migrants-idUSKBN1A61J6. Countless migrants have died in capsized lifeboats attempting to reach Europe's shores. *Id.*

114. Karoline Postel-Vinay, *How Neo-Nationalism Went Global*, U.S. NEWS (Mar. 15, 2017, 1:53 PM), https://www.usnews.com/news/best-countries/articles/2017-03-15/a-look-at-global-neo-nationalism-after-brexit-and-donald-trumps-election.

115. *Id.*

116. Alexander Somek, *Four Impious Points on Brexit*, 17 GER. L. J. 105, 105 (2016).

117. Michaels, *supra* note 22, at 51.

unconstitutional.[118]   Russia is another example. Vladimir Putin seems increasingly emboldened to disregard human rights at home and abroad. Recent examples of this behavior include Russia's 2017 law decriminalizing many acts of domestic violence and Putin's efforts to further criminalize homosexuality.[119]   Putin's actions abroad have become more menacing, threatening world peace. The most heinous examples include Russia's invasive, deadly action in the Ukraine annexation of Crimea, which left 10,000 dead and hundreds of thousands of people forced to flee their homes, and Russia's land grab in the disputed territory of South Ossetia.[120] Vladimir Putin's return to the presidency after a mandatory four-year hiatus was not without controversy in Russia.[121] To gain support, Putin catered to growing Russian populism and ideas about traditional values.[122] Putin seized the opportunity to become the "New World Leader of Conservatism."[123]

The United States and Russia are not alone. Nationalism is strong in Turkey under President Recep Tayyip Erdogan, in India under Prime Minister Narendra Modi, and in the Philippines under President Rodrgo Duterte.[124] While Japanese Prime Minister, Shinzo Abe, is not himself a virulent nationalist, the far-right movement is represented in his government by Defense Minister Tomomi Inada.[125] In Brazil, nationalism is quickly gaining ground.[126] The result of this rise in nationalism posits a terrifying erosion of human rights around the world.

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118. Recent examples include his stance on immigration from poor countries, calling for the U.S. to avoid accepting immigrants from El Salvador, Haiti, and Africa, calling them "shithole" countries. Danielle Campamor, *Trump's America is a Shithole Country*, NEWSWEEK (Jan. 15, 2018, 7:00 AM), http://www.newsweek.com/trump-america-shithole-country-78088815; Dylan Scott, *A Judge Just Ruled a Lawsuit Accusing Trump of Violating the Constitution Can go Forward*, VOX (Mar. 28, 2018), httpos://www.vox.com/policy-and-politica/2018/3/28/17173104/emoluments-clause-lawsuit-trump-international-hotel-maryland-de-standing.

119. *See Russia: Bill to Decriminalize Domestic Violence,* HUMAN RIGHTS WATCH (Jan. 23, 2017,), https://www.hrw.org/news/2017/01/23/russia-bill-decriminalize-domestic-violence (detailing efforts to weaken legal protections against domestic violence); Adam Maida, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, HUM. RTS. WATCH (July 18, 2017), https://www.hrw.org/report/2017/07/18/online-and-all-fronts/russias-assault-freedom-expression (describing new government restrictions on freedom of expression, including speech normalizing homosexuality).

120. David Frum, *Trump's Plan to End Europe*, ATLANTIC (May 2017), https://www.theatlantic.com/magazine/archive/2017/05/the-plan-to-end-europe/521445/. Russia's actions in Crimea are the first violent annexation in Europe since World War II. KIRCHICK, *supra* note 12, at 1.

121. Foer, *supra* note 87.

122. *Id.* "("A 2013 paper from the Center for Strategic Communications, a pro-Kremlin think tank, observed that large patches of the West despised feminism and the gay-rights movement and, more generally, the progressive direction in which elites had pushed their societies. With the traditionalist masses ripe for revolt, the Russian president had an opportunity. He could become, as the paper's title blared, '"The New World Leader of Conservatism.'"")

123. *Id.* "("He has achieved this prominence because he anticipated the global populist revolt and helped give it ideological shape. With his apocalyptic critique of the West—which also plays on anxieties about Christendom's supposedly limp response to Islamist terrorism—Putin has become a mascot of traditionalist resistance.".")

124. *See* Postel-Vinay, *supra* note 114 (noting that Erdogan, Modi, and Duterte are often referenced in discussions about the "new nationalist landscape").

125. *Id.*

126. *Id.*

3. Why Nationalism?

Why are these movements gaining traction, and what is the problem with them? Nationalist movements are growing due to anger at a perceived loss of national sovereignty, increases in economic inequality, and changes in cultural and demographic composition.[127] These nationalist movements sharply contrast with the internationalization that has occurred as a consequence of globalization. Indeed, they are a reaction to it. Globalization and the internationalization of law have increased human rights protections for people around the world.[128] Constitutionalism is increasing in some states where it was previously lacking.[129]   However, rising nationalism can be described as a blowback from globalization and internationalization, and thus is why we are witnessing a regression in human rights in many parts of the world.[130]

The central question that states are currently facing is how to fulfill their obligations to protect their people from negative consequences of globalization. The consequences of globalization—such as economic, immigration/refugee, and security issues—are being weighed against the benefits to regional and world peace and stability that comes from cooperation on an international and regional level.[131] Where states find themselves on that scale delicate balancing sovereignty and cooperation seems to tilt back and forth. The Syrian refugee crisis has shifted the balance toward nationalism in many places,[132] and Brexit is major evidence of this shift.

II.   A BROKEN EU

A. Short intro to the EU

The ideal vision of the EU, as 25 years of statesmen have declared, is a Europe that is "whole, free, and at peace,"[133] a political and economic cooperation shaped by

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127. Michael J. Mazarr, *The Once and Future Order: What Comes after Hegemony*, 96 FOREIGN AFF. 25, 28 (2017).

128. *See id.* at 25–26 (recognizing the contribution of international structures in promoting ideals, including respect for human rights).

129. *See* Christine E. J. Schwöbel, *Situating the Debate on Global Constitutionalism*, 8 INT'L J. CONST. L. 611, 611 (2010) (noting the increase in international cooperation and focus on global constitutionalism by states, which is leading to more discussions about how such global constitutionalism should look).

130. *See* Mazarr, *supra* note 127. ("The postwar order has driven global integration and liberalization by encouraging free-trade agreements, developing international law, and fostering global communications networks. Such developments strengthened the order in turn by cementing public support for liberal values. But the populist rebellion against globalization now imperils that virtuous circle").

131. *See* Herman E. Daly, *Population, Migration, and Globalization*, WORLDWATCH INSTITUTE (October 2004) *available at* http://www.worldwatch.org/node/559 (commenting on the economic and migratory issues resulting from globalization); *See also* Lynn E. Davis, *Globalization's Security Implications*, RAND CORP. (2003) (discussing current and potential future security issues resulting from globalization).

132. Phillip Heijmans, *Central Europe's Hard Turn to the Right*, U.S. NEWS (Sept. 29, 2016, 2:10 PM), *https://www.usnews.com/news/best-countries/articles/2016-09-29/in-central-europe-a-nationalist-turn-to-the-right* (noting that nationalist movements are sweeping across central Europe due to security fears and the influx of refugees from countries like Syria).

133. *See generally* KIRCHICK, *supra* note 12, at 12.

law.[134] The rehabilitation of the European nation state, and not its destruction, was the original goal of the EEC.[135] Thus, the purpose of the EEC was to promote the very survival of the nation state. European cooperation required "some surrender of sovereignty" by the nation-state, but not its "wholesale replacement. . . [by] supranational governance."[136] While the European institutions that preceded the EU primarily focused on economic cooperation, the primary purpose of the EU is and always has been to prevent war,[137] and to avoid repeating the horrific human rights abuses that were perpetrated in World War II.[138]

1. History and Structure of the EU

Post-World War II European cooperation began in 1950 with the creation of the European Convention on Human Rights, which has been signed and ratified by every EU member state.[139] In 1951, the European Coal and Steel Community (ECSC) was created by treaty, instituting regulations and a partnership for the production of coal and steel.[140] These regulations made it more difficult for any one state to pursue war.[141] The ECSC established four institutions that continue to be fundamental to the organization of the EU to this day—the Council of Ministers, the Commission, the Court of Justice, and the Parliament.[142] The Treaty of Rome establishing the European Economic Community, which was the predecessor to the EU, was established in 1957.[143] "As amended and renamed, it remains the penultimate source of European Union law."[144] The word "Economic" was dropped from the name in 1993, in recognition that the reach of the union extends far past economic cooperation.[145] In the same year, the Maastricht Treaty on European Union, which created the EU, was superimposed over the EEC treaty.[146]

The UK did not originally join the EEC, and began to seek membership in the EU in 1961. UK membership, however, was blocked by France under Charles De Gaulle.[147] In January of 1973, after De Gaulle's resignation, the UK became part of

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134. Frank Schorkopf, *Three Nearly-Certain Conclusions We Can Draw from the Uncertainty*, 17 GERMAN L.J. 95, 95 (2016).

135. Matthijs, *supra* note 4, at 87 (crediting this idea to Alan Milward, THE EUROPEAN RESCUE OF THE NATION-STATE (1992)).

136. *Id.* at 87–88.

137. Pavel Seifter, *The Real Danger Isn't Brexit. It's EU Break-up*, THE GUARDIAN (May 26, 2016), https://www.theguardian.com/commentisfree/2016/may/26/danger-brexit-break-up-eu-europe-russia.

138. FOLSOM, *supra* note 8, Part A, preamble.

139. *Id.* (The European Convention and the jurisdiction of the European Court of Human Rights is broader than the EU, including Turkey and Russia as well).

140. *Id.,* Part A, sec. 1.1.

141. *Id.*

142. *Id.*

143. *Id.*

144. FOLSOM, *supra* note 8, Part A, sec. 1.2.

145. *Id.*

146. *Id.*

147. *Id.*, Part A, sec. 1.5 .

the EU.[148] Membership in the EU requires unanimous approval from all current member states and the applicant state's support for democratic government.[149] New members have to accept the entire, growing body of EU law.[150] The following membership criteria was set in 1993:[151]

> Stable democracies based upon a rule of law, human rights and protection of minorities;
>
> Market economies able to compete with the EU; and
>
> The ability to make full commitments to EU political, monetary and economic union[152]

2. Major Benefits of the EU

The EU reduces European border conflicts. It has always been difficult for Europeans (really, all people) to agree on where borders should be, and what territories should be recognized as states.[153] The EU's open border policy has promoted peace on this issue. One example is Alsace-Lorraine, an area of land over which Germany and France bitterly fought.[154] With the EU's open borders allowing for free movement, a German can easily live in the French-held Alsace-Lorraine with very little inconvenience.[155] The EU has also been a force for peace in places where certain groups of people wanted sovereignty, such as Scotland, Catalonia, Corsica, and the Flemish parts of Belgium.[156] Additionally, membership in the EU serves as an important check on hegemonic states, providing necessary balance in geopolitics. For example, the EU has counterbalanced Russian dominance by providing EU membership to post-communist countries, like Poland and the Baltic states.[157] The EU has always been a check on the dominance of the United States as well.[158]

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148. *Id.*

149. *Id.* This requirement for unanimity in the approval of new EU member states is how France, through De Gaulle's actions, was unilaterally able to block the UK's application. *Id.*, Part A, sec. 1.5.

150. *Id.* at 19.

151. *Id.*

152. *Id.*

153. Frum, *supra* note 120.

154. *See id.* (noting that the battle over Alsace-Lorraine, which spanned 75 years, resulted in much bloodshed for both France and Germany).

155. *Cf. Id.* (recounting how "a German government official . . . , noting the contemporary irrelevance of the Alsace-Lorraine dispute, . . . [once remarked to the author]: 'If a German wants a house in Alsace, he can buy one. Who cares which government delivers the mail?'").

156. *Id. See* Nougayrède, *supra* note 80 (criticizing how the EU turned a blind eye to Spain's civil rights violations during the recent Catalan vote for independence).

157. KIRCHICK, *supra* note 12, at 163.

158. *See generally id.* at 2. In fact, American conservatives view the end of the EU as advantageous for American hegemony. *Id.* at 228. This is shortsighted because the EU is an important ally in shouldering the defense of the world. Frum, *supra* note 120; *see also*, Jean-Pierre Cabestan, *European Union-China Relations and The United States*, 30 ASIAN PERSP. 11, 11 (2006) (discussing the counterbalance the EU promotes against the US).

One of the most important roles of the EU is to promote and protect human rights.[159] The laws of the EU have increasingly given a "central" place to human rights.[160] For example, when the Central and Eastern European states joined the EU post-Cold War, conditions were made to their accession in the Copenhagen Criteria.[161] These mandatory criteria consisted of "stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities."[162] To ensure continued compliance with human rights, all new member states must accept the jurisdiction of the European Court of Human Rights.[163] The result is that more Europeans are enjoying human rights protections under the European Union than before.[164]

B. Was Europe Broken Before Brexit?

The United Kingdom is not alone in its criticism of the European Union. There has been growing discontent with the EU among multiple EU member states for reasons that can be roughly grouped into the following categories: economic issues, migration, security issues related to migration, and democracy concerns centering around discontent over Brussel's elite being out-of-touch with the will of the people.[165] The combination of these crises, and the EU's seeming lack of tools for dealing with them, has fueled discontentment and has seemingly made the union fragile.

1.   Economic Issues

The economic roots of the current dissatisfaction with the EU come from the single market created in 1986 and the euro—a single currency—that was created through the Treaty of Maastricht in 1992.[166] The EU became a monetary union without becoming a fiscal, economic, or political union, but monetary unions require political

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159. Giuseppe Balducci, *The Study of the EU Promotion of Human Rights: The Importance of International and Internal Factors* 21 (GARNET, Working Paper No. 61/08, 2008) (noting that "EU human rights promotion has thus assumed a more definite nature in particular after the end of the Cold War.").

160. Samantha Besson, *The Reception Process in Ireland and the United Kingdom, in* A EUROPE OF RIGHTS: THE IMPACT OF THE ECHR ON NATIONAL LEGAL SYSTEMS 31, 40 (Helen Keller & Alec Stone Sweet eds., 2008).

161. Balducci, *supra* note 159, at 11.

162. *Id.*

163. VAUGHNE MILLER, THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE COURT OF HUMAN RIGHTS: ISSUES AND REFORMS, 2011, SN/IA/5963 at 3 (UK)..

164. KIRCHICK, *supra* note 12, at 226 (comparing the violence of Europe prior to the foundation of the EU with the current period of EU dominance).

165. *See generally* CHATHAM HOUSE, ATTITUDES TOWARDS THE EU – GENERAL PUBLIC (2017), https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2017-06-20-future-europe-attitudes-general-public-tables.pdf (providing evidence that citizens of multiple member states have grown dissatisfied with the EU, due to economic issues, migration, democracy concerns, and discontent with those in power).

166. Matthijs, *supra* note 4, at 86.

and economic unions to be successful—and without this foundation a monetary union is dangerous,[167] and potentially disastrous.[168]

"[N]o government, no treasury, no budget, and no bonds were ever created."[169] The result was that Italy, Greece, and other member states were left vulnerable in the Great Recession of 2008.[170] This issue was compounded by tensions between debtor and creditor states.[171] Further economic problems in the EU stem from the erosion of European industry.[172] Europe's industrial base is lagging, and jobs in this sector are shrinking, dropping 20% over the past 15 years, while industrial jobs in the United States remained stable,[173] leading to a relinquishment of market share in industrial production.[174] These factors taken together are part of the reason that the EU has been experiencing slow economic growth. [175]

2. Migration and Security Issues

Free movement began to be a problem when the EU expanded its membership in 2004, and people from the former Eastern Bloc countries began internally migrating within the EU.[176] For example, in 2004, Poland's GDP per capita was around $6,600 while the UK's GDP per capita was around $38,300.[177] It should come as no surprise that, between 2004 and 2014, two million Poles migrated to the UK and Germany.[178]

The issues created by internal migration pale in comparison with the Great Migration of 2015–2016, which is one of the largest crises that the EU has had to face. The migrants were mostly people fleeing the conflict in Syria,[179] along with migrants

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167. *See* VERHOFSTADT, *supra* note 25, at 69, 151 (noting that "[w]e pay scarcely any attention now to the actual cause of our difficulties: the fact that a monetary union cannot endure without a full-fledged economic and political union.".

168. *See id.* at 151 ("The economic integration of Europe in the absence of political unification has had tremendous negative consequences for us all: failure to keep us safe, failure to quell old nationalisms, failure to provide Europeans with tools to address the global problems of today.").

169. *Id.*

170. *See Id.* at 112 ("More than half of the young people in Greece and Spain are unemployed . . . Likewise, in other, mainly southern European countries, more than a third of young people [are] .] . . finding no work. Youth unemployment in the European Union averages around 25 percent.").

171. *See id.* at 143 ("Instead of a well-functioning whole, the eurozone has become the mere sum of irreconcilable national interests and camps, creditors and debtors, hard-liners and laxists, all strengthened by their ability and willingness to use their veto.").

172. VERHOFSTADT, *supra* note 25, at 97.

173. *Id.*

174. *Id.*

175. KIRCHICK, *supra* note 12, at 1. *See* Di Fabio, *supra* note 60, at 21 ("Growth is weak on the old continent and the ability to compete internationally varies significantly. Explicit fiscal specifications and the imminent pressure to improve competitiveness in the Monetary Union combine to form a kind of tightly-laced corset that both makes it hard to take a political breath but is also held responsible for maintaining an attractive figure.").

176. Matthijs, *supra* note 4, at 92.

177. *Id.* at 93.

178. *Id.*

179. *See* FRONTEX, RISK ANALYSIS FOR 2016, 40 (2016), http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf (discussing the conflicts in Iraq and Syria and their respective impacts on EU border crossings).

from Afghanistan, Iraq, and Africa.[180] The mass migration was first categorized as "demanding but manageable,"[181] and early support for the migrants can be explained by a post-imperialist, post-holocaust Europe conscious of making "historical restitution" by throwing open the floodgates to migrants.[182] However, it soon became clear that the migration was causing issues that were extremely hard to manage.[183] The sheer number of migrants was staggering. By the end of 2015, more than one million migrants had entered the EU.[184] Furthermore, the nature of the migration caused cultural problems.[185] In 2015, 73% of asylum seekers who came to Europe were male—even though the media portrayed the migrants as mostly women and children—nearly all of them were from Muslim majority countries, and many of the men were "young, low-skilled, [and] unattached."[186] Heavily male-dominated societies have been shown to be more prone to conflict, violence, and sexual assault, especially in countries where views on women, gender roles, and homosexuality are very different.[187] The inability to manage this rapid migration was made tragically clear in the mass sexual assaults in Cologne, Germany, and other German cities, on New Year's Eve 2015.[188] Terrorism is also on the rise in Europe, including numbers of fatal terrorist attacks.[189] In fact, a report from the Global Terrorism Database shows that:

> [T]here were 30 such attacks resulting in fatalities in western Europe in 2016 and 23 in 2015. This compares with two attacks across the region resulting in fatalities in 2014 and five in 2013. In addition, terrorist attacks have become more deadly, with 26.5 people on average being killed in 2015 and 2016, up from an average of four a year in the preceding three years. The deadliest incident recorded in western Europe was the series of coordinated attacks on Paris in November 2015 that resulted in the deaths of 130 people and was claimed by Islamic State.[190]

As sexual crimes and terrorism are rising, support for multiculturalism is dropping.[191]

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180. Matthijs, *supra* note 4, at 93.

181. KIRCHICK, *supra* note 12, at 120.

182. *Id.*

183. *Id.* at 110.

184. Matthijs, *supra* note 4, at 93.

185. KIRCHICK, *supra* note 12, at 111.

186. *Id.* at 111–12.

187. *Id.*

188. *See* Rick Noack, *Leaked Document Says 2,000 Men Allegedly Assaulted 1,200 German Women on New Year's Eve*, WASH. POST (July 11, 2016), https://www.washingtonpost.com/news/worldviews/wp/2016/07/10/leaked-document-says-2000-men-allegedly-assaulted-1200-german-women-on-new-years-eve/?utm_term=.4fb569825ada (among the 2,000 men allegedly involved, there were 120 suspects, of whom about half were foreign nationals who had recently arrived in Germany)..

189. Mark Hanrahan & Jessica Wang, *Number of Fatal Terrorist Attacks in Western Europe Increasing, Data Show*, REUTERS (July 12, 2017), https://www.reuters.com/article/us-europe-attacks/number-of-fatal-terrorist-attacks-in-western-europe-increasing-data-show-idUSKBN19X1QO.

190. *Id.* (citing a report from the Global Terrorism Database).

191. *See* KIRCHICK, *supra* note 12, at 3 (citing specific EU nations' aversion to taking on migrants).

In the face of increasing acts of fatal terrorism in Europe, there is not an adequate EU-wide solution for keeping people safe. Security in the EU is a problem because there is no coordinated anti-terrorism security mechanism for the effective sharing of information that could prevent attacks,[192] even after all the terrorist attacks in recent years.[193] There is also no central defense force capable of responding to threats to peace and security issues.[194]   Rather, there are 28 (and soon to be 27) individual militaries'.[195]   One has only to look at the horrific fallout from Europe's refusal to support secular opposition to Syria's Bashar al-Assad, and the manner in which ISIS filled that vacuum, to understand the necessity of having the ability to act in a concerted way.[196]

Even further, the growing threat from Russia poses serious security issues for Europe as it "forges on with a dizzying military buildup and casually talks about the use of battlefield nuclear weapons against NATO members."[197]

3.   Democratic Deficit Issues

Brexit brought visibility to how people perceive EU leaders to be out-of-touch technocrats. Governance by experts is controversial because it seems to be undemocratic.[198] This is a result of some legislative power being transferred from national legislatures to the EU Parliament, where ministers are not directly elected by the citizens of member states.[199] The floods of migrants from the Great Migration, and the quotas imposed by the EU, caused citizens to believe that their own states are powerless, and that the EU does not represent their interests.[200]   Interestingly, Hungary and Poland, member states whose citizens internally migrate in mass numbers, defend their citizen's rights to do so while refusing to meet their refugee quotas.[201] Despite much talk about the democratic deficit in the EU,

> [m]ost talk of such a deficit is wrong or exaggerated: EU lawmaking is in many ways more transparent than national lawmaking, and national governments usually have to approve EU laws in the Council of Ministers, although they may pretend otherwise. The place that may be suffering most from a democratic deficit is not the union as a whole but an increasingly integrated euro zone. As it penetrates more deeply into national fiscal and

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192. VERHOFSTADT, *supra* note 25, at 17–19.

193. *Id.*

194. *See Id.* at 22 ("A 'United States of Europe' will be better able to stop the net terrorist attack, to respond to the next economic downturn, to listen to the voices of the people before it's too late. Fragmented as it is, Europe today can barely tread water as it fails to respond to [current crises]").].

195. *Id.* at 7.

196. *Id.* at 20.

197. KIRCHICK, *supra* note 12, at 1.

198. Michaels, *supra* note 22, at 58. Michaels points out that David Kennedy's new book sets forth arguments for how leadership by experts promotes injustice. *Id.*

199. Kubra Dilek Azman, *The Problem of Democratic Deficit in the European Union*, 1 (5) INT'L J. HUMAN. & SOC. SCI. 242, 245 (2011).

200. Matthijs, *supra* note 4, at 93.

201. *Id.*

other domestic policies, the case for a democratically elected chamber to keep it in check is becoming stronger.[202]

C. Will Brexit Lead to a Weakened or Non-Existent EU?

Brexit is the worst political crisis in the EU's history,[203] and its unraveling would be a foreign policy disaster for the United States.[204] Brexit has the potential to severely weaken the European Union and, in the worst-case scenario, could bring about its end. A weakened EU is likely an inevitable consequence of Brexit. As discussed above, the EU is already fragile, and distrust in the Union is high. Economic issues include low wages, high unemployment, and tensions between creditor and debtor states, especially concerning the government debts of Greece, Italy, Spain, Portugal, and Ireland.[205] The refugee crisis stems from a mass migration that poses the greatest threat to Europe's security since the Cold War, maybe even WWII, and which has caused a de facto suspension of the Schengen Agreement.[206] Serious attacks in Brussels and Paris, as well as in other places, have killed and injured hundreds of people, highlighting the seriousness of the security threat.[207] The situation in Greece illustrates the enormity of the problems. Greece is facing severe and long-standing financial crisis, and the country is unable to pay its debts.[208] The IMF is most likely unwilling to step in, passing on more of the burden to the EU.[209] Exacerbating this grave situation is the fact that Greece is the main gate for refugees pouring into the European Union from Syria.[210] The Greek situation is so dire that opinion is growing that Greece is in danger of becoming a failed state.[211]

Without the UK, the EU will lose its largest military power, one of its two nuclear states, one of its two member states with P5 UN Security Council veto power, its second-largest economy, and its most important global financial center.[212]

A weakened EU is dangerous because the EU promotes stability, and stability makes peace far more likely. Instability can easily blaze into violence, as the history

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202. *How to Address the EU's Democratic Deficit*, THE ECONOMIST (May 23, 2017), https://www.economist.com/news/special-report/21719196-institutions-need-reform-how-address-eus-democratic-deficit.

203. Matthijs, *supra* note 4, at 85.

204. KIRCHICK, *supra* note 12, at 10.

205. Matthijs, *supra* note 4, at 86(discussing economic crises leading to Brexit).

206. KRISTIN ARCHICK, CONG. RESEARCH SERV., R44249, THE EUROPEAN UNION: CURRENT CHALLENGES AND FUTURE PROSPECTS 10–12 (2017).

207. Hanrahan, *supra* note 189, at 2.

208. Doug Bandow, *Greece Heads Into Another Economic Crisis: Time to Finally Exit the European Union?*, FORBES (Jan 5, 2017), https://www.forbes.com/sites/dougbandow/2017/01/05/greece-heads-into-another-economic-crisis-time-to-finally-exit-the-european-union/#73843d04607b.

209. *Id.*

210. Steve Peers, *The Refugee Crisis: What Should the EU Do Next?*, EU LAW ANALYSIS (Sep 8, 2015), http://eulawanalysis.blogspot.be/2015/09/the-refugee-crisis-what-should-eu-do.html.

211. Paul Mason, *The Choice for Europe: Rescue Greece or Create a Failed State*, THE GUARDIAN (May 9, 2016), https://www.theguardian.com/commentisfree/2016/may/09/the-choice-for-europe-rescue-greece-or-create-a-failed-state.

212. Matthijs, *supra* note 4, at 85.

of Europe has taught us. The European identity is compromised.[213] This identity has centered around solidarity and community and is based on principles of democracy, rule of law, social justice, and the respect and promotion of human rights.[214] This regional identity is an enabling condition, serving as a platform for strengthening and ensuring human rights.[215] What will fill the gap that the loss of a European identity leaves? If there is less of a European identity, nationalist identities will grow, which are often a platform for xenophobia, racism, and actions that will severely impact 'human rights. Rhetoric begets action. The UN Committee on the Elimination of Racial Discrimination issued a periodic report in 2016 that noted its deep concern that the Brexit referendum campaign was marked by anti-immigrant rhetoric, which has emboldened individuals to carry out acts of intimidation and hate toward ethnic or ethno-religious minorities.[216]

A weakened European Union also has a negative impact on the effectiveness of regional human rights protection. Regional human rights protection is an important component of human rights protection worldwide. While domestic courts are still the primary site of human rights protection, and the UN overlay provides important guarantees and accountability,[217] the regional systems have an indispensable role to play. The European system of human rights is in some ways very similar and in some ways different from UN overlay, filling gaps and creating law that is sensitive to the culture and history of the region.[218] In addition, regional systems, particularly the European system help "harden international law."[219]

The breakup of the European Union is also a possibility.[220] Brexit has raised the question of whether there will be a domino effect, inspiring other members of the EU to seriously question leaving the European Union.[221] Examples include Sweden, where polls in the immediate aftermath of Brexit showed a majority of Swedes want to stay in the EU, but at least one poll shows a change if UK is out; France, where recent elections reflected a strong showing by the nationalist movement; Italy, where the populist Five Star Movement has demanded a referendum; and the Netherlands, where far right politicians called for a referendum.[222]

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213. *See generally*, Andrew Hammond, *Brexit Will Change the EU's Whole Identity – And We Need to Start Paying* Attention, NEWSWEEK (April 29, 2017, 2:30 AM), http://www.newsweek.com/brexit-identity-negotiations-summit-592054..

214. *See* Balducci, *supra* note 159, at 15 (identifying that the EU and its member states have developed a collective identity based on commonalities and distinctive characteristics vis-à-vis the international human rights regime).

215. *Id.* at 21–22.

216. UN Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the United Kingdom of Great Britain and Northern Ireland, CERD/C/GBR/CO/21-23 (Oct. 3, 2016).

217. *See generally* Balducci, *supra* note 159.

218. *Id.*

219. *Id.* at 14 (internal quotations omitted).

220. *See* Matthijs, *supra* note 4, at 86, 92 (citing the EU's fragile economy and the menace of a rising Russia, as well as the migration crisis).

221. Jake Wallis Simons, *Europe Will Fall Very Soon: Now Even MEPS Say EU Will Crumble Within Five Years After Shock Brexit Result*, DAILY MAIL (June 24, 2016 3:24 EST), http://www.dailymail.co.uk/news/article-3656634/Europe-fall-soon-MEPs-say-EU-CRUMBLE-five-years-shock-Brexit-result.html.

222. *Id.*

The end of the EU might also precipitate further financial crisis. Dissolving the RUO might usher in a grave set of problems. "Almost no modern monetary unions, built around fiat currencies, have broken up without the rise of some form of authoritarian or military government, not to mention the breakout of civil war or its equivalent along the way . . . At the very least escalating social unrest seems inevitable."[223]

The political might of the EU is essential for peace and stability in the world. Brexit "fractures the Western alliance and weakens NATO solidarity and resolve."[224] The politics of scale and multilateralism foster peace and human rights with regard to third countries.[225] This can be seen in the work that the EU currently doing, albeit imperfectly, in trying to de-escalate the tension between Iran and Saudi Arabia, a source of the conflict brewing in Yemen.[226] The clearest example of these politics of scale is the essential role of the EU in aiding the peaceful transition of former Eastern Bloc states into largely democratic and open societies upon the end of the Cold War.[227] The entry requirements into the EU reflected this European identity, including democracy, the rule of law, human rights, and respect for minorities.[228] However, the transition to democracy is not finished: "[I]t still could (with the enthusiastic support from Moscow) go into reverse."[229] Putin's Russia has a vital interest in the breakup of the EU,[230] and we see that the threat of nuclear war is not far behind us.[231] Further, current destabilization in parts of the Balkans is reminiscent of past patterns that preceded violence in the region.[232]

The end of the European Union could return Europe to, as one writer describes, the "dark days of poisonous tribal hatreds" in which destructive forces could unleash the undoing of 70 years of statesmanship.[233] Indeed, the last seven decades, the

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223. DK Matai, *What Would be the Consequences of a Eurozone Break-up?*, BUSINESS INSIDER (Nov. 21, 2011 3:27 PM), http://www.businessinsider.com/what-are-the-consequences-of-a-eurozone-break-up-2011-11.

224. KIRCHICK, *supra* note 12, at 164.

225. Balducci, *supra* note 159, at 23.

226. Andrew Rettman, *EU in Telephone Diplomacy on Saudi-Iran Crisis*, EUOBSERVER (Jan. 4, 2016), https://euobserver.com/foreign/131700.

227. John Lichfield, *EU Referendum: Would Brexit Destroy the European Union?*, INDEPENDENT (June 21, 2016), http://www.independent.co.uk/news/world/europe/brexit-eu-referendum-britain-leaves-effect-what-will-happen-to-europe-a7094111.html; *see generally* Ronald D. Asmus, *Europe's Eastern Promise - Rethinking NATO and EU Enlargement*, 87 Foreign AFFAIRS. 95 (2008).

228. EUROPEAN COMMISSION, *European Neighbourhood Policy and Enlargement Negotiations— Conditions for Membership*, https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en.

229. Lichfield, *supra* note 227.

230. Seifter, *supra* note 137.

231. *See* Green, *supra* note 10 (recognizing Russia's use of the threat of nuclear war to act against European unity).

232. *See* Matthew Brunwasser, *Serbia's Brand of Reconciliation: Embracing Old War Criminals,* N.Y. TIMES (Nov. 23, 2017), https://www.nytimes.com/2017/11/23/world/europe/serbia-war-crimes-russia.html (pointing out the similarities between the current nationalist trend in Serbia and the nationalist sentiment felt in the lead up to the "1990's Balkan Wars");) Enver Hoxhaj, *Kosovo Feels Russia's Heavy Hand, via Serbia*, N.Y. TIMES (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/opinion/kosovo-feels-russias-heavy-hand-via-serbia.html (detailing Russia's role in stirring up tensions between Serbia and Kosovo).

233. Lichfield, *supra* note 227.

European Union has largely been a "place of peace, stability, prosperity, cooperation, democracy, and social harmony."[234] However, "[we would] be wrong to assume the permanence of European political and economic stability . . . . Across the grand sweep of European history, countries and empires disintegrating into smaller governing units or being violently subsumed into larger empires is the norm."[235]

The EU is not just an international economic organization; it is an organization created from the destruction brought about by two World Wwwars and designed to promote peace and prevent conflict.[236] European integration is doubtless problematic but "the alternative is so much worse."[237] The history of Europe is fraught with violent conflict: "War, twice in the Twentieth Century and for ages previously, has plagued the European continent."[238] Conflict stretches back across the entire history of Europe. There has been an almost unbroken chain of war from the fifteenth century to World War II fought over family rivalries, religion, deep hatreds, and territorial expansion. In the fifteenth century, the War of the Roses was fought over a dispute over title to the English throne.[239] In the sixteenth century, there were religious wars in Austria, Germany, France, and Spain over Catholicism and Protestantism.[240] The seventeenth century included the Thirty Years' War—a war that started over religion, but expanded to include territorial acquisition—the English Civil War, France's Dutch wars that were fought over frontiers, and the War of the League of Augsburg, which was possibly the first war over the Alsace-Lorraine.[241] In the eighteenth century, European countries fought to block the coalition of France and Spain in the War of Spanish Succession; and, also fought in the War of Austrian Succession, the Seven Years' War, and the French Revolution.[242] In the nineteenth century, there were the Napoleonic Wars to build an Empire, the second and third French Revolutions, the Wars for Italian Unification, the Crimean War—which was the first modern war, with massive casualty rates, mechanized warfare, and modern weapons—and the wars for German unification.[243] Finally, in the twentieth century, there was the Russian Revolution, the First and Second Balkan Wars, World War I, and World War II.[244]

Since WWII and the formation of the European Union, there have been 70 years of peace within its member states. Contrast this with what happened in the 1990s to the former Yugoslavia, which is not a member of the EU, where competing

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234. KIRCHICK, *supra* note 12, at 1.

235. *Id.* at 227.

236. FOLSOM, *supra* note 8, at 4.

237. KIRCHICK, *supra* note 12, at 226.

238. FOLSOM, *supra* note 8, at 4.

239. *See generally* Peter Brecke, *Conflict Catalog (Violent Conflicts 1400 A.D. to the Present in Different Regions of the World)*, Centre for Global Economic History, http://www.cgeh.nl/data#conflict (containing an excel spreadsheet listing 3708 conflicts, with data on parties, fatalities, date, and duration) [hereinafter Conflict Catalog]; *see generally* R.B. MOWAT, THE WARS OF THE ROSES 1377-1471 (1914).

240. Conflict Catalog, *supra* note 239. *See generally* RICHARD S. DUNN, THE AGE OF RELIGIOUS WARS, 1559-1715 (2d ed. 1979).

241. Conflict Catalog, *supra* note 239. *See generally* DUNN, *supra* note 240.

242. Conflict Catalog, *supra* note 239.

243. *Id.*

244. *See generally* THE OXFORD HANDBOOK OF THE HISTORY OF NATIONALISM, *supra* note 32 (providing a comprehensive chronology of important events in European history, including conflicts). *See alsogenerally* Conflict Catalog, *supra* note 239.

nationalisms ripped the country apart, resulting in the second genocide of the twentieth century.[245]

D. Link Between Conflict and Human Rights Violations

War has a huge impact on human rights. Human rights can predicate, intensify, and emanate from conflict; therefore, violation of human rights is both a cause and consequence of war. One cannot dispute that violent conflict causes human rights abuses. This reality was reflected in the Preamble to the UN Charter:

> We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm our faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. . . .[246]

Recent examples of places where violent conflict caused human rights violations include El Salvador and Argentina, where torture, arbitrary arrest, and disappearances are common.[247] Conflicts over access to resources in Sierra Leone (diamonds), Liberia, (timber), Democratic Republic of The Congo (coltan), and Sudan (oil) have all created massive human rights violations, including, in some cases, war crimes, crimes against humanity, and genocide.[248] In the recent conflicts in Liberia, Guatemala, and Sri Lanka, combatants and non-combatants were tortured, raped, mutilated, and summarily executed.[249] Civilians are suffering under new types of warfare: "The changing nature of conflict have brought about strategies and tactics that have made vulnerable groups in society the specific target of attack . . . [therefore] the protection of human rights faces unprecedented challenges and poses essential dilemmas."[250] Human rights violations against civilians are both a byproduct and an intentional strategy in violent conflicts.[251]

In the context of conflict resolution, peace is good for the protection of human rights:

245. Frum, *supra note* 120. *See* Brunwasser, *supra* note 232 (expressing that nationalism is rising in Serbia and raising concerns that political sentiment is eerily like the early 1990s). *See also* Hoxhaj, *supra* note 232 (describing Serbia's current expansionist policy and its efforts to push for regional hegemony).

246. U.N. Charter Preamble.

247. *See generally* AMNESTY INTERNATIONAL, EL SALVADOR 2016/2017, ANNUAL REPORT,,https://www.amnesty.org/en/countries/americas/el-salvador/report-el-salvador/; ARGENTINA 2016/2017, ANNUAL REPORT, https://www.amnesty.org/en/countries/americas/argentina/report-argentina/.

248. CHANDRA LEKHA SRIRAM ET AL.,, WAR, CONFLICT AND HUMAN RIGHTS: THEORY AND PRACTICE 4–6 (2d ed. 2009). *See also* Maria Márquez Carrasco et al.,, *Human Rights Violations in Conflict Settings*, FOSTERING HUMAN RIGHTS AMONG EUROPEAN POLICIES, 102 (2014) (explaining that "[i]n exceptional circumstances, such of those of armed conflict, 'extreme' violations of all categories of human rights are committed by all those that take part in the hostilities. The whole catalogue of human rights may be significantly affected during armed conflict").

249. Carrasco et al., *supra* note 248, at 63.

250. *Id.* at 1.

251. JULIE MERTUA & JEFFREY HELSING, HUMAN RIGHTS AND CONFLICT 13 (2006).

> [V]iolent conflict invariably leads to severe violations of human rights – death, torture, imprisonment, destruction of livelihoods, deterioration of health, to name a few. Similarly violations of human rights, when people are imprisoned, tortured, discriminated against on the basis of class, ethnicity, or religion by the state, and excluded from political participation, can lead people to oppose the state, generating conflict. So protecting human rights is generally good for making peace and making peace is generally good for protecting human rights.[252]

> Sometimes human rights violations are a more indirect consequence of violent conflict, such as when the environment is damaged or people cannot work.[253] "Cease-fires and peace agreements that ignore human rights often perpetuate inequities and denial of human rights, leading to greater suffering and violence. Sustainable peace depends on the assurance of human rights."[254]

CONCLUSION

Brexit is emblematic of the rising tide of nationalism in the world and should be heeded as a warning to the EU. Some EU reforms are badly needed, and Brexit presents the opportunity to undertake a "fundamental redesign" of the organization.[255] One of the founding principles of the EU was to shore up the nation state, and that idea should continue to be a primary mission. [256] Fulfilling that principle entails more deference to member states in some areas, while deepening cooperation in others. The EU should focus on the areas in which member states cannot be as effective on their own and must act as a powerful bloc, such as in the areas of trade, financial regulation, security, foreign policy, defense, and protection of the environment.[257] In particular, the EU should focus should be on issues that have the potential to make the EU fall apart, such as economic issues and terror attacks,.[258] Resolving these issues may necessitate "more union not less."[259] A single European intelligence and security force must be developed to operate in tandem with national security departments.[260] A coordinated EU defense force must be developed to allow Europe to hold its ground against authoritarian leaders who do not believe in freedom and human rights protection.[261] However, in all areas on which the EU acts, it must ensure that the

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252. Ram Manikkalingam, *Is There a Tension Between Human Rights and Conflict Resolution? A Conflict Resolution Perspective* 1 (Univ. of Calgary Latin Am. Research Ctr., Working Paper No. 7, 2006), https://reliefweb.int/sites/reliefweb.int/files/resources/6B68B8DC96B4DFFDC12574A600328FFB-agp_Jun2006.pdf.

253. Carrasco et al.,, *supra* note 248, at 63.

254. *See id.* (citing the examples Sierra Leone (1991–2002), Israel-Palestine (1998–1999), and Kosovo (1998–1999)).

255. VERHOFSTADT, *supra* note 25, at 200.

256. Matthijs, *supra* note 4, at 87–88, 95.

257. *Id.* at 95.

258. Simons, *supra* note 221.

259. VERHOFSTADT, *supra* note 25, at 22.

260. *Id.* at 18–19.

261. *Id.* at 176.

proper foundation is in place before acting.[262] In recognition of the concern that the EU is too far removed from the people and out of touch with their needs, the EU must become more people-focused,[263] and the EU citizens should continue to cultivate a European identity. Forging a strong European identity does not mean forsaking national identity; rather, it means supplementing it by focusingfocusin on shared European values. [264]

Perhaps even more important than considering the changes that need to be made in the EU is the necessity of recognizing how dangerous nationalism is. There is too much hateful, racist, xenophobic speech happening in the world today. This speech, especially when it comes from the mouths of leaders, condones emotionally charged and violent actions, from hate crimes to acts of terrorism. Nationalist movements are a threat to a liberal world order because "if even a quarter or third of citizens turn decisively against liberal values in a critical mass of nations, it can destabilize the entire system."[265] The inward focus of nationalism also tragically keeps people from being outward-focused, empathetic, and responsive to the multitude of tragedies playing out in the world.[266]

With the future of the EU at stake, states and individuals must be even more vigilant about holding the line on human rights protections. In times of uncertainty and threat, in times of fear, it is easy to compromise on the protection of rights. Surely, it is these times that are the measure of how effective these protections are. We must not underestimate the importance of all levels of protection of human rights—domestic, international, and regional. In pursuit of these goals, we must shake off the tendency to look for and exploit superficial differences.[267] In 1935, nationalism was rising, and there was a call for faith in something that transcended nationalist divisions.[268] Certainly the world would have been a better place had these warnings been heeded. Reading these words today seems like déjà vu. The lesson of history is how easy it is for isolation and fragmentation to turn into instability, conflict, and mass human rights violation of the most serious degree.

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262. Lichfield, *supra* note 227 (quoting former Conservative leader, William Hague and former Irish Taoiseach, John Bruton).

263. Schorkopf, *supra* note 134, at 96.

264. VERHOFSTADT, *supra* note 25, at 23–24.

265. Mazarr, *supra* note 127, at 28–29.

266. Graça Machel, *The Global Rise Of Nationalism Is a Threat to Nelson Mandela's Achievements*, GUARDIAN (July 21, 2017, 11:48 AM), https://www.theguardian.com/commentisfree/2017/jul/21/nationalism-threat-nelson-mandela-achievements-graca-machel.

267. VERHOFSTADT, *supra* note 25, at 178.

268. Tansill, *supra* note 42, at 1.