



Impeachment as Constitutional Weapon: A Role for Individual Officeholder Responsibility in Upholding European Union Values in the Rule of Law Crisis?

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Abstract

For over a decade the EU has experienced a rule of law crisis characterised by, *inter alia*, attacks on judicial independence at national level by some Member State governments. This crisis represents an existential one for the EU owing to the Union's functioning as a multi-level, intertwined legal order being dependent on respect for the rule of law at national level. This article asks whether impeachment, as an accountability mechanism focussed on members of the European Commission (the institution tasked with ensuring compliance with the EU Treaties), could be used to assist in upholding values including the rule of law, where these have been breached at supranational level, whether by acts of commission or omission, i.e., failing to respond adequately to rule-of-law breaches at national level. After briefly describing the EU's rule of law crisis, the article identifies gaps in EU accountability as it pertains to breaches of EU values at supranational level, whether done by acts or omissions. Thereafter, the article considers how EU impeachment is conceptualised and whether it could be operationalised against individual members of the European Commission who commit breaches of EU values. The article concludes that EU impeachment is conceptualised as a blunt single-sided sword, designed to address criminal or corrupt individual officeholder conduct rather than policy actions/inactions or other behaviours that might harm or threaten EU values.

Keywords Impeachment · Rule of law · European Union · Accountability of European commission members · Normative conceptions of impeachment

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1 Introduction

While the role of impeachment, where it exists, is understood in varying ways in different constitutional cultures and systems [1], the idea of impeachment as a weapon has been a perennial association. The connection to weaponry was quite literal in earlier history; in England, where impeachment is often said to have originated [17–41, 2], an impeachment was on occasion a procedural preliminary to the executioner's axe [21–28, 3; 19–30, 4].¹ In England, impeachment was also connected with treason and the sovereign state [105–106, 5], and was—in theory, at least—a procedurally fairer alternative to a bill of attainder [27–30, 6].² While impeachment was at the beginning of its end in Britain when the Constitutional Convention met in Philadelphia in the summer of 1787, the framers of the United States Constitution elected to retain an adapted form of impeachment as a vestige of the English constitutional tradition [7]. The version of impeachment that would be inserted into the US Constitution in Article II, Sect. 4, however, would be informed by the colonial American experience with impeachment and be altered in significant ways: first, impeachment would be limited to specific officers; second, a supermajority of two-thirds of the Senate would be required for a finding of guilt; third, the head of state would be made subject to the procedure; and, fourth, the grounds for impeachment would be codified in the constitutional text [8]. This more enlightened approach would obviate the need for bills of attainder, revolution, and—it was hoped—the assassin [9]. However, at least some participants at the Convention would have been aware that the role that impeachment would play constitutionally would have to be worked out in practice by subsequent generations and that its inclusion in the Constitution and its design might bear risks [10]. The early, turbulent days of the US republic saw significant disagreement about the role of impeachment, as some sought to use it as a readily available weapon to remove political opponents, particularly in the federal judiciary [107–255, 8]. Debates around the normative role of impeachment have continued on each occasion in US history that impeachment has reared its head [11].

While the literal relevance of weaponry to impeachment has fallen away over the centuries, the symbolism of arms remains pertinent to how the normative role of impeachment may be conceptualised. In the US, impeachment has been described as a rusty cannon, although it is now possibly, to the extent it addresses Presidents, a decommissioned antique [12]. In their global survey of impeachment powers relating to executive presidents, Ginsburg, Landau, and Huq identified two main models of impeachment: a bad-actor model and a political re-set model [144–151, 13]. Hoffer and Hull, in their account of impeachment in the early US republic, highlighted three alternative doctrines of impeachment: impeachment for cause; dangerous tendencies; and, popular will [181–255, 8]. During the lengthy impeachment trial of Warren Hastings before the British House of Lords (1788–1795), the impeachment

¹Two notable cases would that those of Thomas Wentworth, Earl of Strafford, and Archbishop Laud. Strafford, a supporter of Charles I, was impeached by the House of Commons in 1640 and beheaded the next year after the passage of a bill of attainder (the impeachment had failed in the House of Lords). Archbishop Laud, another of Charles I's supporters, met a similar end in 1645, again a bill of attainder being necessitated by the failure of an impeachment in the Lords.

²A bill of attainder is a legislative act that declares an individual guilty of a crime without trial.

managers, led by Edmund Burke, and Hastings' defenders fought over the meaning and role of impeachment: Burke, as impeachment managers tend to do, pushed for a wider conception of impeachment, unburdened by the evidentiary requirements of the common law. In the end, Lord Thurlow, who as Lord Chancellor presided over the trial, emphasised the centrality of those legal requirements, significantly inhibiting Burke's efforts [64–87, 14].

In truth, impeachment will exist in constitutional systems on a spectrum. At one extreme, it will be so easily and routinely engaged against officeholders as to amount to a *de facto* vote of no-confidence, the political re-set or democratic will model. This model may be conceptualised as a sharp double-sided sword, capable of being wielded with ease in cases of criminal/corrupt behaviour by officeholders or in cases in which a change of regime or political direction is sought. Like such a weapon, it may have no inherent moral qualities: its constitutional morality may be judged according to who uses it, for what purpose, and in what context. On the other extreme end of the spectrum, an impeachment procedure may be so narrowly defined, so unwieldy to use, or so superseded by alternative procedures as to be no more than a mere anachronism or ornament, resembling a de-commissioned museum blunderbuss [15]. There will, of course, be impeachment procedures that reside between those two extreme ends of the spectrum, such as the aforementioned rusty cannon, a blunt, but still functional instrument to be wheeled out only in the most exceptional of circumstances, but the presence of which may play a silent role in regulating officeholder behaviour [16].

Despite the European Union (EU) Treaties containing a plethora of idiosyncratic impeachment-type procedures relating to individual officeholders within the Union's institutions, there has been little systematic examination of the nature and role of these procedures constitutionally [17]. This is surprising given the wealth of scholarship on impeachment globally [1]. However, impeachment is generally associated with misconduct of public officeholders in the sovereign state, so it is perhaps not so surprising that similar processes relating to officeholders in international and supranational organisations have been neglected relatively. Moreover, only two impeachment-style processes have proceeded to completion in the EU's history and, even then, after the accused officials had left office [18].

The EU has been far from unaffected by the era of permacrisis, having had in recent years to navigate the Eurozone crisis, a migration crisis, Brexit, Covid-19, and the war in Ukraine. This article, however, focusses on another of the EU's ongoing, existential crises: the rule of law crisis, specifically, the crisis occurring at national level within the EU in states such as Hungary, Poland, and Romania. It seeks to build on the limited literature on EU impeachment by analysing the potential for impeachment of EU officials, specifically individual members of the European Commission, to play a role in responding to the EU's rule of law crisis. In doing so, it contributes to a greater understanding of the normative role and scope of impeachment in the EU. The article commences by introducing the EU's rule of law crisis. Thereafter, there is a specific focus on the European Commission in its role as the guardian of the Treaties and Union values. The article then moves to highlight an accountability gap in EU law that tends to undermine attempts to hold EU institutions and their officeholders accountable for breaches of the rule of law, whether by acts of commission

or omission. The central question is then addressed: how is EU impeachment to be characterised in terms of its potential utilisation against individual EU institutional officeholders as a means of defending the Union's values in the context of the rule of law crisis? In particular, it is asked whether impeachment may be conceptualised as a functional weapon (whether the sharpened sword or the rusty cannon) or a mere ornament or museum piece in that context. The article concludes that EU impeachments are a single-sided sword, and a rather blunt and cumbersome one at that, designed solely to respond to corrupt individual behaviour, rather than behaviours that might pose a threat to the EU's foundational values.

2 The EU's Rule of Law Crisis

The rule of law is one of the foundational values of the EU set out in Article 2 of the Treaty of European Union (TEU). It is, moreover, operationalised in a concrete manner by other provisions of primary Union law, such as the second paragraph of Article 19(1) TEU, which requires Member States to provide remedies sufficient to ensure effective legal protection in fields covered by EU law [19]. States wishing to accede to the EU are required under Article 49 TEU to respect Article 2 TEU values including the rule of law. Article 7 TEU provides for procedures to address breaches of these foundational values by Member States, including the possibility of the imposition of sanctions such as the suspension of a Member State's voting rights in the Council for serious and persistent breaches.³ Moreover, there are strong indications that Article 2 TEU values may be judicially enforceable in a freestanding manner, without reference to Treaty provisions which serve to concretise them.⁴ It has been acknowledged for some time that the EU faces a crisis due to rule-of-law backsliding at national level in some Member States, most notably Hungary, Poland, and Romania [20]. This crisis has been characterised by a number of common features such as government capture of previously independent courts, utilisation of disciplinary procedures as a means of intimidating or otherwise constraining judges, curtailment of media freedom, and changes to electoral rules [21]. It is difficult to overstate the threat of this rule of law crisis to the EU as a polity. Beyond the Treaties' explicit commitment to the rule of law as a foundational value, the practical functioning of the Union depends to a large degree on the uniform and effective interpretation and application of EU law at national level. Key to all of this are independent national courts that are free to engage in dialogue with the EU's Court of Justice and to apply EU law and the Luxembourg Court's rulings without fear of interference from national authorities. A lack

³ However, the suspension of voting rights in Article 7(3) TEU is dependent on a prior unanimous determination by the European Council (the heads of state or government of the Member States) under Article 7(2) TEU of the existence of a serious and persistent breach by a Member State of Article 2 TEU values. The requirement of unanimity, excepting of course the Member State standing accused (Article 354 TFEU), seriously inhibits the usefulness of the Article 7(3) TEU procedure.

⁴ The recent Opinion of Advocate General Ćapeta in Case C-769/22 *Commission v Hungary* ECLI:EU:C:2025:408 recommends that the Court of Justice should rule that Hungary's anti-LGBTI legislation represents a breach of Article 2 TEU as a free-standing provision. It is yet to be seen whether the Court will follow the Advocate General's Opinion.

of such independent courts may also have deleterious consequences economically, in that it may serve to erode the certainty which is a central purpose of the Union's rules-based internal market [22]. Moreover, it may have significant negative implications for the principle of mutual trust, upon which instruments such as the European Arrest Warrant depend [23].

While the primary blame for the development of rule-of-law backsliding lies with governments in the affected Member States, the inadequacy of the responses coming from EU institutions including the European Commission has been criticised [24]. In this context, institutional failings may be characterised as sins of omission, in particular a failure to utilise all the tools available to it to respond in a timely manner. With reference to its role in the constitutional architecture of the EU, the European Commission is understood to be the 'Guardian of the Treaties'.⁵ In this role, the Commission should also play an important part as a guardian of the EU's Article 2 values. This is manifested most significantly in the Commission's role in the infringement procedure under Article 258 of the Treaty on the Functioning of the EU (TFEU), which allows the Commission to commence legal proceedings against Member States for alleged infringements of the Treaties [25]. While other EU institutions, Member States, and private actors all play a role in ensuring the enforcement of Article 2 TEU values, it is undoubtedly the case that the Commission plays a central role that cannot be completely replaced by other actors picking up the slack for a timid Commission. Not only are EU institutions, especially the Commission, open to accusations that they have failed to respond adequately to threats to Union values emanating from the national level, those institutions have also been accused of sins of commission as regards Article 2 TEU [26]. While one must be careful in attempting to maintain a line between mere individual breaches of the law, which all public authorities will commit, and the kind of conduct of a sufficiently serious or systematic quality to constitute a rule of law problem, there are several policy areas within which EU institutions have been accused of acting in a lawless manner. The most notable of these is arguably the conduct of EU institutions in response to third-country migration in the Mediterranean region [26]. Whether or not the EU is experiencing a rule of law crisis at the supranational level, it is nevertheless a legitimate enquiry to ask whether EU institutional officials can be held accountable on an individual basis for breaches of the rule of law value, whether sins of commission or omission. There are undoubtedly accountability mechanisms built into the Treaties to deal with situations in which the European Commission or an individual Commissioner acts unlawfully, whether via legal proceedings or a European Parliament motion of censure (in the case of the former) or the organisational powers held by the Commission President over the Commission under Article 17(6) TEU (in the case of the latter). These accountability mechanisms and their adequacy in addressing breaches of the rule of law value are explored in the next section of this article.

⁵The European Commission consists of twenty-seven members, including its President and Vice-Presidents. The Commission resembles somewhat the EU's executive or technocratic power, being responsible for, *inter alia*, proposing laws and enforcing them. Article 17 TEU sets out the role of the Commission and the rules relating to its appointment, etc. Each Commissioner, like a government minister in a national government, is assigned a portfolio. The Commission's role is to promote the general interest of the Union, rather than the Member States that suggested their names for appointment.

3 Chinks in the Armour: the EU's Accountability Gap

There are a number of legal means by which various EU actors may challenge infringements of EU law (including concretised Article 2 TEU values), whether committed by Member States or EU institutions. In the case of Member States, infringement proceedings may be instituted by the Commission pursuant to Article 258 TFEU or, more rarely, another Member State via Article 259 TFEU [27]. Citizens and other private actors may also rely directly on EU law to enforce it before national courts, which may in turn refer questions on the interpretation or validity of EU law to the Court of Justice of the EU (CJEU) via the Article 267 TFEU preliminary reference procedure. In particular, in certain circumstances, actions can be brought before national courts for damages where a Member State has committed a sufficiently serious breach of an EU law that conferred rights on the plaintiff, and the plaintiff has suffered harm as a result.⁶ Where EU institutions are the source of breaches of EU law, whether by commission or omission, there are also a number of legal proceedings open to other EU institutions, Member States, and other actors: annulment proceedings under Article 263 TFEU may be instituted against EU institutions, bodies, offices or agencies as a means to judicially review their acts, and Article 265 TFEU proceedings may be instigated to challenge a failure to act. Actions claiming damages for non-contractual liability of EU institutions may also be instituted under Article 268 TFEU in conjunction with Article 340(2) TFEU.

While EU law aims to create a complete system of remedies, and may do so in a formal sense, a number of gaps may exist in real terms to undermine this system [28]. The most obvious problems occur around standing for individuals seeking to challenge acts or omissions of EU institutions. This is a problem both at Union level and at national level. The standing requirements for private actors seeking to review EU acts or failures to act before the CJEU are notoriously stringent, especially in the context of public interest litigation [29]. Moreover, the resultant reliance on the preliminary reference procedure to ameliorate that problem by means of indirect review is contingent on the liberality of standing rules at national level, access to courts more generally, as well as the independence of the national judiciaries, none of which can be assumed. The nuclear option in terms of the accountability of the European Commission is the power of the European Parliament to pass a motion of censure under Article 17(8) TEU and Article 234 TFEU, which requires the Commission to retire as a body; however, such a motion is unwieldy, given that it must be carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the Parliament.

The above points, as they relate to the accountability of EU institutions, may be amplified in the case of the individual accountability of EU officeholders within those institutions, such as Commissioners. There are two conceivable situations in which individual responsibility of European Commissioners, specifically for breaches of

⁶The conditions for a successful action in state liability for infringement of EU law before a national court were set down by the Court of Justice in Case C-46/93 *Brasserie du Pêcheur v Bundesrepublik Deutschland* and *The Queen v Secretary of State for Transport, ex parte Factortame and Others* ECLI:EU:C:1996:79.

EU values, might come into play. The first situation might occur where a policy decision harmful to one or more such values, whether one involving action or inaction, is the de facto brainchild of an individual Commissioner and is merely rubber stamped by the College of Commissioners or a policy becomes associated with an individual Commissioner [30]. Such a situation could arise in concrete terms where the Commission, through the empowerment procedure, delegates a power to an individual Commissioner and that Commissioner then uses that power to breach EU values.⁷ Second, there is the possibility that individual Commissioners, including the High Representative, issue public statements or engage in behaviours that are at odds with EU values.

The first challenge to holding individual Commissioners accountable for breaches of EU values such as the rule of law is the plural, collegiate nature of EU institutions generally and the Commission specifically. In general, formal, reviewable acts in EU law tend to be the product of an institution, acting formally in a collegial manner, rather than of any single individual. This may mean that acts that have been authored in a de facto sense by an individual may not be attributable to that individual.⁸ This problem is evident in both the legal and political accountability mechanisms in EU law: legal proceedings such as judicial reviews or damages actions are addressed to institutions not individual officeholders, and the European Parliament is restricted to targeting the Commission as a whole in a motion of censure. While there are good constitutional reasons for this collegial approach, in particular the need to ensure the legitimacy and security of individual officials from targeted attacks, especially those connected with an officeholder's nationality, it may tend to shield individual Commissioners against accountability. One may question whether an adequate balance is being struck between these factors and the need to hold individual officeholders accountable. There is certainly an argument that the extent to which accountability mechanisms in EU law are focussed on the institution as a collective are a technocratic overcorrection. Moreover, it is arguable that EU law's focus on accountability mechanisms addressed at the institution as a whole rather than individual officeholders may be based on an idea that individual officeholders do not hold significant independent power, an assumption which may be in practice a fiction.

The second challenge to any attempt to hold individual officeholders in the EU to account is the diffusion of power between EU institutions. It is very often the case in the EU that not only are legal acts the formal responsibility of a collegiate institution rather than individuals within that institution, they are also the product of a number of institutions. This is most easily demonstrated in legislative processes. To take the EU's ordinary legislative procedure as an example, a binding legal act, whether a regulation, directive, or decision, will have been proposed by the Commission and adopted by a qualified majority of the Council (representing the Member States) and

⁷Article 13 of the Commission's Rules of Procedure allows the Commission to empower one or more of its Members "to take management or administrative measures on its behalf and subject to such restrictions and conditions as it shall impose". However, in all such cases, the principle of collective responsibility must be fully respected.

⁸Even when the Commission delegates a task to an individual member of the Commission using the empowerment procedure, the principle of collective responsibility remains in place (*ibid*).

a majority of the European Parliament (representing EU citizens).⁹ In some policy areas, it may be difficult in specific cases to know who to pin the blame on: for instance, when it comes to illegal pushbacks of migrants in the Mediterranean, to what extent (jointly or severally) are the Commission, or the Council, or the Member States, or the European Commission, or Frontex responsible?

The above paragraphs begin to demonstrate that the EU law's accountability mechanisms for infringements of EU law are not designed to target individual officeholders in positions of power, since power in the EU's constitutional design is generally not exercised formally in the name of any one individual. One notable exception to this feature, however, is the power of the President of the European Commission under Article 17(6) TEU to compel the resignation of a member of the Commission [31]. This is a wide-ranging power which can be used by the Commission President in circumstances in which they simply lose confidence in a Commissioner.¹⁰ There are good reasons to believe that it could also be utilised against a Commissioner who has infringed EU values, given the breadth of the power, which is analogous to that of a prime minister over cabinet ministers in a national government [paras 132–143, 32]. A second possible exception is the existence of impeachment-style powers pertaining to officeholders in EU institutional officeholders, including members of the European Commission, in the EU Treaties and their protocols. The extent to which, if at all, these procedures could be utilised against individual members of the Commission for breaches of EU values is explored in the next section of this article.

4 Sharp Sword, Rusty Cannon, or Mere Ornament: A Role for Impeachment in Defence of the Rule of Law?

As mentioned above, there are a number of idiosyncratic impeachment-style powers scattered throughout the EU Treaties and their Protocols [33]. They are idiosyncratic in the sense that there is no one impeachment provision, with common procedures, standards, and sanctions¹¹; rather, the procedures of initiation and trial, the standards of misconduct that may attract impeachment, and the sanctions applicable differ depending on the institution concerned [34]. While it may be argued whether these procedures should not be described as impeachment, since this is not a term of EU primary or secondary law, two Advocates General of the Court of Justice have described them as such and there are numerous arguments in favour of such a characterisation [35]. For the most part, the EU's impeachment procedures are instigated in-house by the institution within which the officeholder is situated and are gener-

⁹The ordinary legislative procedure is set out in Article 294 TFEU.

¹⁰The power has never been used although a dispute arose around the manner in which former Commissioner John Dalli left office in 2012: Mr Dalli claimed he had been compelled to resign by then Commission President Barroso, whereas Mr Barroso claimed that Mr Dalli had resigned voluntarily. This factual dispute was resolved in Mr Barroso's favour by the General Court and on appeal by the Court of Justice: Case T-562/12 *Dalli v Commission* ECLI:EU:T:2015:270; Case C-394/15 P *Dalli v Commission* ECLI:EU:C:2016:262.

¹¹In contrast, for instance, with the US Constitution which provides in Article II, Section 4 for one process applicable to the President, Vice President, and civil officers, including federal judges.

ally tried by the EU's highest court, the Court of Justice.¹² Despite the increasing importance granted to the European Parliament over the years in a series of Treaty reforms and the development of the concept of EU citizenship, neither the Parliament, with one exception,¹³ nor EU citizens are given a role in the instigation or trial of impeachments. Only two impeachment proceedings have been completed in the EU's entire history, against former Commissioner Edith Cresson in 2006 and against former member of the Court of Auditors, Karel Pinxten, in 2021 [18]. In both cases, the defendants in those proceedings had already left office by the time the proceedings were initiated, meaning the only sanction that was available was deprivation of pension entitlements or other benefits in their stead. Notably, in both cases, the proceedings were instigated by their own institutions.¹⁴

A number of factors would tend to support a view that EU impeachment is not intended to be a core constitutional feature of the EU's legal and political order, and that is designed to deal with unethical individual behaviours, rather than wider political conduct that might be constitutionally harmful. In particular, there seems little scope for an impeachment that would operate as a cleanse or political re-set or one that would be based on ideas of scapegoating or guilt by association.

Firstly, members of some of the EU's most powerful institutions may not be subjected to EU-level impeachments. Member State representatives in the Council and European Council are beyond the reach of EU impeachments, as are Members of the European Parliament (MEPs). This means that the only accountability mechanisms relating to national governmental representatives exist at national level and the means by which MEPs may be ousted are generally electoral.¹⁵

Secondly, to highlight again a point made in the previous section of this article, the Union's institutions are designed in a pluralistic or collegial manner in which all acts or decisions are undertaken by a collective. Institutional officeholders acting within the competences of their institution are generally not accountable as individuals, certainly externally. As has been demonstrated above, the EU constitutional system's main legal and political accountability mechanisms are also aimed at institutions,

¹²This is the case for Judges and Advocates General of the CJEU, Members of the Executive Board of the European Central Bank (ECB), and Members of the Court of Auditors. Proceedings against Commissioners may be instituted either by the Commission itself or by the Council acting by a simple majority, and are tried by the Court of Justice (Article 247 TFEU). Proceedings against the European Ombudsman are initiated by the European Parliament and, again, tried by the Court of Justice (Article 228(2) TFEU). An outlier is the President of the European Council; it is the European Council itself (acting by qualified majority) that judges whether the President is guilty of serious misconduct or whether there exists an impediment (Article 15(5) TEU).

¹³The European Parliament can initiate an impeachment proceeding against the European Ombudsman (Article 228(2) TFEU). It should also be mentioned, however, that the European Parliament's Rules of Procedure allow for the removal of elected officeholders within the Parliament (Rule 21), though these procedures do not result in a Member of the European Parliament (MEP) losing their seat in Parliament.

¹⁴Although the proceedings against former Commissioner Bangemann (C-290/99 *Council v Bangemann*), which were later abandoned, were brought by the Council.

¹⁵Although it should be noted that an MEP may be removed from office for an incompatibility under Article 7(1) of the Act concerning the election of the members of the European Parliament by direct universal suffrage (OJ L 278 8.10.1976, p. 5). Article 7(3) allows Member States to extend the circumstances that could result in an incompatibility.

rather than individual officeholders. This leaves EU impeachment, therefore, with a narrow residual role, a consideration that is reinforced by the next factor.

Thirdly, the definitions of behaviours sufficient to attract impeachment in the EU Treaties are drawn narrowly to address what appears to be individual unethical conduct, rather than ‘political’ offences.¹⁶ Grounds for impeachment such as ‘serious misconduct’ would appear to imply personal or individual behaviours that are contrary to codes of ethics or that might bring the institution into disrepute; in other words, behaviours that might be dishonest, corrupt, or even criminal. The limited case law of the Court of Justice would tend to support such an interpretation: both cases were brought in respect of what might be characterised as garden-variety corruption, and in *Cresson*, Advocate General Geelhoed insisted that impeachment proceedings could not be instigated in response to substantive policy decisions made by an institution in pursuit of its role [36]. The possibility of guilt by association also seems to be excluded by the manner in which the grounds are stated, as well the overwhelmingly judicial nature of the proceedings.

Fourthly, the procedures for instigation and trial of EU impeachments are indicative of a narrow conception of the role of impeachment: they are—as has already been noted—generally instigated in-house, within the institution involved, and they are mostly tried as a legal proceeding before the Court of Justice. Citizens, either directly or indirectly via their representatives in the European Parliament, are excluded from all stages. The juristic nature of the procedure is in fact a significant indicator of the fact that political or substantive value-based impeachments are not to be a constitutional feature of the EU [13–14, 17].

Finally, and again reiterating a previous point, not only is the formal power of individual officeholders diluted within institutions by their plural nature, but the power of each institution is also contained by the diffusion of executive power within the Union’s multilevel horizontal and vertical separation of powers. The extent of the constitutional damage that can be achieved by a single institution may be assumed to be limited. Impeachment, therefore, as included in the EU constitutional design is not intended as a response, whether institutional or popular, to substantive political choices or conduct, nor is it intended to achieve the kind of political-re-set often necessitated by legislative-executive gridlock in presidential systems. To borrow from the British constitutional context, the EU’s impeachment provisions would appear to be geared towards ensuring that the institutions are inhabited by ‘good chaps (or chappesses)’ in the narrow sense. Moreover, in the specific context of the Commission, consideration has to be given to the fact that the Commission President enjoys a power under Article 17(6) TEU to compel the resignation of individual members of the Commission and it might be argued that this mechanism is designed to cover the types of conduct that would not be covered by Article 245 and Article 247 TFEU’s narrower focus on unethical conduct [37].

¹⁶ Different standards are used in the various Treaty provisions, but ‘serious misconduct’ or that fact that an officeholder ‘no longer fulfils the conditions required for the performance of his duties’ (or a materially similar formulation) are the most common, applying in the case of the European Ombudsman, members of the Commission, members of the Executive Board of the ECB, and Members of the Court of Auditors.

As EU impeachment is currently designed or understood narrowly to address individual unethical behaviour, it would not appear well suited or suited at all to combat the complicity of EU officeholders in breaches of EU foundational values, certainly if those breaches result from policy choices, or actions or inactions. To an even greater extent, it is not designed to allow scapegoating of single officials for the purposes of a moral cleanse or to establish a deterrent effect against other officials. For it to play such a role, one of two things would have to happen: there would have to be amendments made to the EU Treaties or there would have to be a fundamental upheaval of an orthodox understanding of the current Treaty procedures [38]. The most obvious textual amendments to achieve this purpose would be: first, an extension to the grounds for impeachment to cover explicitly breaches of EU values; and second, an increased democratisation of the procedures of instigation and trial. In connection with procedural amendments, the power to instigate impeachments could be extended to the European Parliament, for instance, even if it were felt that affording citizens that power or allowing the Parliament to try impeachments would be steps too far. There may, however, be sufficient interpretative space left by the Treaties to develop impeachment into an instrument to target individual officeholder behaviour that constitutes a wider threat to EU values: grounds such as 'serious misconduct' might be malleable enough to capture individual officeholder behaviour which would offend against Article 2 TEU values such as the rule of law; there might even at a stretch be room for the CJEU to interpret into the Treaties a right for the European Parliament to initiate impeachment proceedings against individual members of the European Commission.¹⁷ A less radical approach might be to place greater responsibility on the Commission President in the use of their organisational powers under Article 17(6) TEU. As stated above, that provision allows the Commission President the power to compel the resignation of an individual Commissioner. If an individual Commissioner were to commit a breach of EU values (for instance, in the form of a racist, sexist, or homophobic speech, which could in itself be considered 'serious misconduct') and the President neglected to utilise their *de facto* dismissal power, there is an argument to be made that the President themselves could be subjected to an impeachment proceeding.¹⁸

There are, however, obvious risks to expanding the ambit of EU impeachments whether by way of Treaty amendment or interpretative reimagination. Widening the substantive scope of impeachment in terms of the behaviours that might be caught or in terms of ease of instigation may run the risk that impeachment would be abused for purely political ends, thereby undermining the independence and security of EU

¹⁷ By way of analogy, in Case 294/83 *Les Verts v Parliament* ECLI:EU:C:1986:166, the Court of Justice ruled that the European Parliament could bring now Article 263 TFEU annulment proceedings against another EU institution despite not being one of the institutions listed at the time in that provision. In justifying its ruling, the Court leaned on the rule of law (para 23). One could perhaps at a stretch argue that the European Parliament should, for similar reasons, be allowed to instigate impeachment proceedings under Article 247 TFEU against Commissioners notwithstanding the fact that it is not mentioned explicitly alongside the Commission itself and the Council in that provision.

¹⁸ See Cotter and Butler [31]. It should be noted in this context that an inter-institutional agreement between the European Parliament and the Commission also allows the former to request that the Commission President utilise Article 17(6) TEU to compel a Commission Member's resignation, a request which the President may refuse, but in doing so must provide reasons for the refusal.

institutions and of individual officeholders, as well as the overall constitutional structure of the EU. More open-ended impeachments, reliant on more political than legal judgement, might also, ironically, undermine the rule of law and increase the risk of individuals being scapegoated. Moreover, if the Court of Justice is to remain the body that ultimately tries most EU impeachments, impeachments with a wider substantive scope, and/or which are more easily instigated, run the risk of politicising the EU's judiciary further. If the Commission President is to shoulder more responsibility for their organisation of the Commission, e.g., a failure to compel the resignation of a Commissioner, then such an approach would also result in a greater centralisation of the Commission President's power, which might in turn lead to more questions about the legitimacy of the President and increase the motivation of Member State governments to increase their control over the Commission and its President in particular.

5 Concluding Remarks

The foregoing analysis would suggest that as a means of holding individual EU institutional officeholders to account for active or passive breaches of EU values, including the rule of law, impeachment is largely unavailable. Several design features of the EU constitutional order make the likelihood of impeachment being invoked in such circumstances remote, including: the pluralistic, collegial design of EU institutions; the division and dilution of power and responsibility between the EU's institutions and the Member States; and the undemocratic, in-house, and judicialised nature of the procedures. The result is that impeachment appears to be envisaged as a response to individual instances of criminality or unethical conduct within the scope of the officeholder's official duties, garden-variety corruption being the most obvious circumstance. Impeachment is not intended as a response to substantive attacks on EU values or the Union itself by individual officeholders. In this respect only, EU impeachment is not a workable or readily available weapon. However, when it comes to addressing individual unethical conduct, it may be a sharper, though delayed, weapon, an observation borne out in the two instances of its utilisation to completion in the *Cresson* and *Pinxten* cases.

The above finding is significant because it reveals a potential accountability gap in the EU's constitutional arrangements: individual officeholder acts or omissions which do not relate to corrupt or unethical behaviour in office do not appear caught by EU impeachment. Moreover, it reveals that the existing accountability mechanisms have not evolved in line with constitutional changes that have occurred in the Union as it has moved from a primarily economic entity to a quasi-federal polity with citizenship and foundational values [15–17]. While individual officeholders have acquired greater *de jure* and *de facto* power and influence, accountability mechanisms have remained largely in-house in terms of instigation, addressed at institutional rather than individual breaches, and are heavily judicialised. This dynamic gives rise to a general problem with plural executives: a lack of individual accountability for those who comprise it. This problem is often mitigated in parliamentary systems by votes of no confidence or in presidential systems by impeachment. However, the European Commission and its members face heavily diluted versions of these mechanisms.

The closest equivalent of the parliamentary vote of no confidence in the EU is the Article 234 TFEU motion of censure, a far more unwieldy and blunt instrument, given that it requires two-thirds of the European Parliament's component members to effect and may only be used against the Commission as a body. Additionally, this article has demonstrated the narrow scope, inaccessibility, and judicialised nature of EU impeachment in general and in the context of EU Commissioners specifically. The fact that the EU Treaties do not replicate the full and direct effectiveness of the kinds of accountability mechanisms mentioned above against individual officeholders that exist in national constitutional systems should not be a surprise. There are understandable sensitivities around ensuring the independence of EU institutions and the security of their officeholders in a multinational and multi-level legal and political order in which attacks to the legitimacy of such officeholders based on nationality are easily conceived. Alterations to the EU's constitutional order that would allow for greater individual accountability of the Commission as an institution or individual Commissioners might also have the effect of conferring greater legitimacy on the Commission and its members at the expense of Member States and other EU institutions. There is, of course, also some irony to these tensions which are a product of the inevitable complexities of the EU's constitutional design: an organisation, which has as one of its core missions the protection of values such as democracy and the rule of law is to some extent stymied in that mission by the need to insulate its own institutions against illiberal attack. These are also tensions which are perhaps innate in any continent-wide supranational or quasi-federal system.

A potential mitigation of this accountability gap, however, which would not require fundamental reform of the Treaties, would be to place higher expectations on the President of the Commission in terms of their use of their organisational powers under Article 17(6) TEU. That provision confers upon the Commission President significant powers, not least the power to unilaterally compel the resignation of any member of the Commission. This dismissal power is one which is close to absolute and there is an argument that a failure by the Commission President to utilise it against individual Commissioners who are guilty of misconduct or who pose a threat to the EU's values might in itself attract impeachment procedures against such a President. A refusal by the President to utilise this power, especially when called upon to do so by the European Parliament, might provide justification to initiate impeachment proceedings against the Commission President. However, the European Parliament would be hobbled by a lack of jurisdiction to instigate such proceedings, unless the Treaties are amended or creative arguments could be enlisted to support the existence of such a power of initiation. Unless such reforms are made or there is a change of interpretative approach, EU impeachment in the context of individual officeholder breaches of EU values such as the rule of law will be non-existent or, at best, ornamental, failing to function even as a Damoclean sword or rusty cannon. If EU impeachment is a weapon, then it may be a understood a single-sided sword, designed for a narrow and specific purpose, namely, addressing corrupt or unethical behaviour by officeholders. Even then, as has been demonstrated in this article, it is a heavy and cumbersome one.

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References

1. For an excellent overview of impeachment processes globally, see eds Monaghan, Chris, Matthew Flinders, and Aziz Z Huq. 2024. *Impeachment in a Global Context: Law, Politics, and Comparative Practice*. Oxford: Routledge.
2. See, for instance, Monaghan, Chris. 2024. Impeachment during the Fourteenth and Fifteenth Centuries and Its Abeyance in the Sixteenth Century. In *British Origins and American Practice of Impeachment*, eds Chris Monaghan and Matthew Flinders, 17–41. Oxford: Routledge.
3. Monaghan, Chris. 2024. *Accountability, impeachment and the constitution: the case for a modernised process in the United Kingdom*. Oxford: Routledge.
4. Bowman, Frank O.. 2024. *High crimes and misdemeanors: a history of impeachment for the age of Trump*. Cambridge: Cambridge University Press.
5. Gerhardt, Michael J. 2019. *The federal impeachment process: a constitutional and historical analysis*. Chicago: University of Chicago Press.
6. See Berger, Raoul. 1973. *Impeachment: The Constitutional Problems*. Cambridge, Massachusetts: Harvard University Press.
7. There are many excellent accounts of the origins of impeachment in the US Constitution including: Gerhardt [3–11, 5] and Bowman [73–107, 4]. For a highly assessable account, see Sunstein, Cass R. 2017. *Impeachment: A Citizen's Guide*. Cambridge, Massachusetts: Harvard University Press.
8. For an account of impeachment in the colonial era and in the early US republic, see Hoffer, Peter C. and NEH Hull, 1984. *Impeachment in America, 1635–1805*. New Haven: Yale University Press.
9. Benjamin Franklin pointed to impeachment having the advantage of sparing the accused's life and allowing them the opportunity to vindicate their character: Gerhardt [7–8, 5].
10. Alexander Hamilton in *The Federalist Papers* shows significant awareness of the risks of impeachment processes and the entrusting of them to political bodies. His defence of the US Constitutional provisions offers mitigations rather than guarantees against abuse: Madison, James, Alexander Hamilton, and John Jay. First published 1788, Penguin 1987. 'Nos LXV and LXVI', *The Federalist Papers* (first published 1788, Penguin: London. 380–389.
11. For a highly engaging cultural history of impeachment in more recent times in the US, see Kyvig, David A. 2008. *The Age of Impeachment: American Constitutional Culture since 1960*. Lawrence: University Press of Kansas.
12. For a reference to impeachment as a "rusty cannon", see Beloff, Max. 1975. America after Watergate. *The Round Table*. <https://doi.org/10.1080/00358537508453155>. 29. On the contemporary relevance of impeachment in the US, see Kalt, Brian C. Parallel Evolution: American Impeachment and the Two-Party System; Rakove, Jack N. Impeachment, Responsibility and Constitutional Failure: From Watergate to January 6; and, Harrington, Clodagh and Alex Waddan, The US Impeachment Process: Fit for Purpose in a Hyper-Partisan Era? In eds Monaghan and Flinders [180–205, 206–237, and 238–257, 2].
13. Ginsburg, Tom, Aziz Huq, and David Landau. 2021. The comparative constitutional law of presidential impeachment. *University of Chicago Law Review* 88:81–164.
14. Marshall, P. J. 1965. *The impeachment of Warren Hastings*. Oxford: Oxford University Press.
15. The last impeachment in the UK, for instance, was in 1806 and, though never formally abolished, the procedure is now often said to be obsolete. For a discussion of the current status of impeachment in the UK, see Monaghan [163–169, 3].
16. On this point, see Kalt [203–205, 12].

17. Cotter, John. 2025. Impeachment as an EU law concept. *Cambridge Yearbook of European Legal Studies*. <https://doi.org/10.1017/cel.2025.2>.
18. The first was against former Commissioner Edith Cresson (Case C-432/04 *Commission v Cresson* ECLI:EU:C:2006:455) and second against former member of the Court of Auditors, Karel Pinxten (Case C-130/10 *Court of Auditors v Pinxten* ECLI:EU:C:2021:782).
19. Bonelli, Matteo, and Monica Claes. 2018. Judicial serendipity: How Portuguese judges came to the rescue of the Polish judiciary. *European Constitutional Law Review*. <https://doi.org/10.1017/S1574019618000330>.
20. There is a large body of literature on this phenomenon. See, for instance: eds von Bogdandy, Armin and Pál Sonnevend. 2015. *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*. Oxford: Hart; eds Closa, Carlos and Dimitry Kochenov. 2016. *Reinforcing the Rule of Law: Oversight in the European Union*. Cambridge: Cambridge University Press; Pech, Laurent. 2021. The Rule of Law. In *The Evolution of EU Law*, eds Paul Craig and Gráinne de Búrca, 307–338. Oxford: Oxford University Press.
21. For an account of the case of Hungary, see Halmai, Gábor. 2024. The Fall of the Rule of Law and Democracy in Hungary and the Complicity of the EU. In *The Rule of Law Under Threat: Eroding Institutions and European Remedies*, eds Robert Böttner and Hermann-Josef Blanke, 53–75. Cheltenham: Elgar. For the best account of the mechanics of rule of law backsliding, see Scheppele, Kim Lane. 2018. Autocratic Legalism. *University of Chicago Law Review* 85: 545–583.
22. See European Economic and Social Committee. 2025. The economic dimension of the rule of law (INT/1076). <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/economic-dimension-rule-law>. Accessed 23 June 2025.
23. Mancano, Leandro. 2021. You'll never work alone: A systemic assessment of the European Arrest Warrant and judicial independence. *Common Market Law Review*. <https://doi.org/10.54648/cola2021047>.
24. Kelemen, R. Daniel and Tomasso Pavone. 2023. Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union. *World Politics*. <https://doi.org/10.1353/wp.2023.a908775>
25. Scheppele, Kim Lane. 2023. The Treaties without a Guardian: The European Commission and the Rule of Law. *Columbia Journal of European Law* 29: 93–183; Kochenov, Dimitry and Laurent Pech. 2015. Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality. *European Constitutional Law Review*. <https://doi.org/10.1017/S1574019615000358>.
26. See Bogdanowicz, Piotr and Matthias Schmidt. 2018. The infringement procedure in the rule of law crisis: How to make effective use of Article 258 TFEU. *Common Market Law Review*. <https://doi.org/10.54648/cola2018093>
27. Bard, Petra and Anna Sledzinska-Simon. 2019. The Teleos and the Anatomy of the Rule of Law in EU Infringement Procedures. *Hague Journal on the Rule of Law*. <https://doi.org/10.1007/s40803-019-00108-z>.
28. Ganty, Sarah, and Dimitry Kochenov. 2024. EU lawlessness law. *Columbia Journal of European Law* 30: 78–156.
29. For an overview of these procedures and the other procedures mentioned in this paragraph, see Lenaerts, Koen, Kathleen Gutman, and Janek Tomasz Nowak. 2023. *EU Procedural Law*. Oxford: Oxford University Press.
30. See generally, Costa, Marios. 2017. *The Accountability Gap in EU Law*. London: Routledge. In the context of fundamental rights, see de Coninck, Joyce. 2024. *The EU's Human Rights Responsibility Gap: Deconstructing Human Rights Impunity of International Organisations*. Oxford: Hart.
31. In the context of environmental challenges, see Eliantonio, Mariolina. 2011. Towards an Ever-Dirtier Europe? The Restrictive Standing of Environmental NGOs before the European Courts and the Aarhus Convention. *Croatian Yearbook of European Law and Policy* 7: 69–86. In the rule of law context, see Boeckestein, Tom. Plaumann and the Rule of Law: The importance of judicial independence for the system of preliminary references. *Verfassungsblog*. <https://verfassungsblog.de/plaumann-and-the-rule-of-law/>. Accessed 23 June 2025.

32. Some members of the European Commission have been perceived as pursuing personal political brands in their role in the Commission. A notable example would include Thierry Breton, the former Commissioner for Internal Market of the European Union from 2019 to 2024, who seemed to become the face of EU technological regulation and a conflict with US tech billionaires, although it eventually led him into conflict with the Commission. See, for example, Hancock Alice. 2024. Brussels slaps down Thierry Breton over 'harmful content' letter to Elon Musk. *Financial Times*. <https://www.ft.com/content/09cf4713-7199-4e47-a373-ed5de61c2afa>. Accessed 23 June 2025.
33. Cotter, John, and Graham Butler. 2024. The president of the European Commission and the power to request a Commissioner's resignation. *Common Market Law Review*. <https://doi.org/10.54648/cola2024044>.
34. Case T-562/12 *Dalli v Commission* ECLI:EU:T:2015:270.
35. Article 228(2) TFEU as relates to the European Ombudsman; Article 15(5) TEU for the President of the European Council; Articles 245 and 247 TFEU; Article 6 of Protocol (No 3) for Judges of the CJEU (in conjunction with Article 8 for Advocates General); Article 11(4) of Protocol (No 4) for a Member of the Executive Board of the ECB; Article 286(6) TFEU for a member of the Court of Auditors.
36. Space prevents a full account of these differences here; see Cotter [3–4, 17].
37. *Per* AG Geelhoed in Case C-432/04 *Commission v Cresson* ECLI:EU:C:2006:140, para. 94 and AG Hogan in Case C-130/10 *Court of Auditors v Pinxten* ECLI:EU:C:2020:1052, para. 68.
38. AG Geelhoed in Case C-432/04 *Commission v Cresson* ECLI:EU:C:2006:140, para. 67: "What the Commission and these institutions and bodies have in common is that, with the obvious exception of the European Ombudsman, they act as collegiate bodies and that the individual members cannot be removed for reasons relating to the exercise of the functions of these bodies."
39. Kuijper has argued that the Commission President's power under Article 17(6) TEU to compel the resignation of Commissioners should not be used for cases that would fall within the remit of Article 247 TFEU impeachment proceedings: Kuijper, Pieter Jan. 2019. Missteps by Commissioners: Legal or political sanctions. In *The Internal Market and the Future of European Integration: Essays in Honour of Laurence W Gormley*, eds Fabian Amtenbrink, Gareth Davies, Dimitry Kochenov, and Justin Lindeboom, 470–492. Cambridge: Cambridge University Press. 490–491. However, Cotter and Butler take the opposite view, arguing that Article 17(6) TEU does not circumscribe the scope of the Commission President's substantive decision-making power in such a manner: Cotter and Butler [602–604, 31].
40. For a brief discussion on potential reforms to EU impeachments, see Cotter [15–18, 17].

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