

## Law and Politics in a Polarized World

### Editorial

In 2024, more than half of the world's population lived in countries where nationwide elections were held, making it the biggest global election year in history.<sup>1</sup> Lines of social conflict came to light with particular clarity around these electoral processes.<sup>2</sup> The public narrative paints a picture of an irreconcilable and fractious society, in which communication between increasingly fragmented sub-publics comes to a standstill and some groups abandon the common democratic project altogether. The latest sociological research offers a contrasting perspective by suggesting a trend towards greater unity, with only isolated “trigger points” (i.e., specific issues where emotions run high, such as migration and climate policy).<sup>3</sup> Nevertheless, questions still arise as to the relationship between law and politics in a conflict-ridden world: To what extent is the legal system dependent on social consensus? Is the law itself a driving factor of social polarization? Can – or should – law mediate between conflicting interests and counteract polarizing tendencies?

During the second *Ars Iuris Legal Potentials Conference 2024*, a diverse group of young Austrian and international legal scholars came together to address these questions. This intra-disciplinary and cross-border collaboration highlighted the universal relevance of the challenges arising from the tensions between law and politics in a polarized world. The papers presented at the conference, now published in this special edition of the *University of Vienna Law Review*, reflect the depth of these discussions.

Opening this collection, **Barbara Zeller** explores the fundamental tension between law and politics from a legal-theoretical perspective. Drawing on Robert Alexy's work, she argues that conflicts between legal and political institutions can be understood as questions of legal competence. Zeller proposes that formal principles which guide the allocation of authority offer a rational and legally grounded method for resolving

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<sup>1</sup> Sorkin, ‘The biggest election year in history’ (*The New Yorker*, 7 January 2024) <<https://www.newyorker.com/magazine/2024/01/15/the-biggest-election-year-in-history>> accessed 22 July 2025.

<sup>2</sup> Hernández, Anduiza and Rico, ‘Affective polarization and the salience of elections’ (2021) *Electoral Studies* 1 (8).

<sup>3</sup> Mau, Lux and Westheuser, *Triggerpunkte. Konsens und Konflikt in der Gegenwartsgesellschaft* (Berlin, 2023).

such conflicts. Her analysis illustrates how the distinct logics of law and politics can be meaningfully reconciled through principled legal reasoning.

Building on the discussion of legal-political asymmetries, **Daniel R. Quiroga-Villamarín** turns to the international stage. Tracing the evolution of global governance from the Council within the League of Nations to the United Nations Security Council, he reveals how international institutions have replicated the elitist structures of domestic “upper” chambers. Despite rhetorical commitments to equality and democracy, real decision-making power remains concentrated in the hands of a few “Great Powers.” Quiroga-Villamarín critiques this imbalance and makes the case for stronger democratic representation at the global level.

Continuing this exploration of global dynamics, the following three texts adopt an international perspective to reflect on trends towards polarization in the EU political landscape, as well as European and Sino-Russian legal philosophies. **Sophie Bohnert** analyses the European Union’s increasing reliance on unilateral trade-related measures – such as the Carbon Border Adjustment Mechanism and the Anti-Coercion Instrument – and their role in driving the polarization of the international economic order. She argues that this shift away from multilateralism heightens geoeconomic tensions and concludes by advocating for stronger, more effective multilateralism to address global challenges inclusively and sustainably.

Following this, **Ksenia Radchenkova** examines the elusive concept of sovereignty through a comparative lens, analyzing its development and interpretations across Europe, Russia, and China. While the contemporary European concept emphasizes popular internal and limited external sovereignty, Russia and China favor authoritarian models rooted in Schmittianism, prioritizing autocracy and state unity. These divergent approaches reflect geopolitical shifts and highlight the conflict between Western and non-Western notions of statehood and international order.

**Miriam Soldan** provides a comprehensive analysis of the Digital Services Act (DSA), critically examining the regulatory ambiguities surrounding the definition of misinformation. These ambiguities highlight the tension between disinformation regulation and the protection of freedom of expression. Framed within the context of the European Convention on Human Rights and the extensive case law of the European Court of Human Rights on freedom of expression, the article offers a detailed critique of the EU’s regulatory approach to online disinformation, with a particular emphasis on Articles 34 and 35 of the DSA. Soldan concludes with an appeal for greater clarity to ensure that the framework aligns with human rights standards.

Concluding the series of articles, **Lisa Chi** and **Christian Demmelbauer** offer a philosophical defense of identity politics against prominent critiques by Francis Fukuyama and Patrick Deneen. They argue that calls for recognition of personal identity are rooted in a legitimate concern for autonomy, self-respect, and justice. Drawing on theories of personal identity and relational autonomy, the authors propose that identity provides the framework through which individuals interpret themselves and their social world. They conclude that emancipatory legal approaches should acknowledge this dimension, recognizing identity as a valid political and legal concern. In the context of growing social tensions, they suggest that legal recognition of identity claims can play a constructive role in addressing underlying conflicts. In doing so, they highlight how law might respond to social fragmentation not by suppressing difference, but by engaging with it in a meaningful way.

**Hanna Palmanshofer** and **Martin Bernard** provide a fitting conclusion to this special issue with their conference report, which perfectly captures the papers' key ideas and the engaging discussions that took place during the event. Readers will be left eagerly anticipating the third Ars Iuris Legal Potentials Conference, which is scheduled for November 2025.

We want to express our gratitude to those who laid the foundation for this exciting project and generously shared their knowledge with us. Above all, we are deeply grateful for the successful and smooth collaboration with the Ars Iuris Team and want to thank the Director and Speaker of Ars Iuris, Professor Franz-Stefan Meissel, for his unwavering support in creating opportunities for young scholars.

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