




OBITUARY

Christian Joerges (1943–2025)

Alexander Somek 

Department of Legal Philosophy, University of Vienna, Vienna, Austria
Email: alexander.somek@univie.ac.at

(Received 31 October 2025; revised 31 October 2025; accepted 17 November 2025)

Christian Joerges passed away last July, aged 81. We have come to regard him as a ‘doyen’ of European Union law and of its economic law, in particular. As the thorough and informative interview, conducted by Agustín Menéndez and Harm Schepel and printed in this journal,¹ demonstrates, however, understanding and theorising the significance of European Union law was only part of a broader scholarly perspective. It had solidified gradually when Joerges completed his doctoral dissertation in 1971.² Even though his worldview had roots in progressive Roman Catholicism, the project is congenial to the type of scholarship pursued by social democrats in the interwar period. It is about the political nature of markets (‘markets as polities’ was the provocative title of one of his later projects)³ and the task to identify legal structures that permit peaceful resolutions of conflicts among competing social values, chief among them equity and efficiency. Much to his credit, Joerges was undogmatic enough to draw on a variety of sources in political and economic theory. Any source, short of Marx, seemed to be welcomed by him. From the outset, Jürgen Habermas’s theory of the public sphere undoubtedly left an imprint on his intellectual outlook,⁴ but likewise did Karl Polanyi’s *Great Transformation*,⁵ and the ordo-liberals to whom he sustained an ambivalent relation⁶ that I, for one, was never quite able to resolve.

Obviously, Joerges’s scholarship never fitted squarely in the mould of doctrinal lawyers. The institutions of the political economy and political science played a far too important role for it to pass as ‘*solide Rechtsdogmatik*’. Politically, his work was unmistakably committed to democracy and, subject to the condition of democratic legitimation, some form of socialism, broadly understood. At the same time, Joerges was liberal, but not so staunchly liberal that he could have joined forces with the likes of Ernst-Ulrich Petersmann.

The social and democratic core of Joerges’s jurisprudence merits emphasis, for it explains why he, who had begun as a scholar of private law and conflict of laws, developed an interest in

¹See H Schepel, A Menéndez, ‘An Interview with Christian Joerges’ 4 (1) (2025) *European Law Open* 134–155, in the same issue of this Journal that features a symposium on Joerges’s work.

²See C Joerges, *Zum Funktionswandel des Kollisionsrechts. Die ‘Governmental Interest Analysis’ und die ‘Krise des Internationalen Privatrechts’* (Duncker & Humblot 1971).

³See *The Economy as a Polity: The Political Constitution of Contemporary Capitalism* (Taylor & Francis 2020).

⁴See J Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (trans. T. Burger, MIT Press 1991).

⁵See K Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time* (1944, new ed., Beacon Press 2001).

⁶See C Joerges, ‘The Market without the State? The ‘Economic Constitution’ of the European Community and the Rebirth of Regulatory Politics’ 1 (1997) *European Integration online Papers* (EIoP) N° 019; but also, his ‘Europa Nach Dem Ordoliberalismus: Eine Philippika’ (2010) *Kritische Justiz* 394–406.

European Union law. After the social democrats lost power in Germany in the early 1980s (*die Wende* – ‘the turn’), a group of progressive legal scholars, most of them based in Bremen, decided to take their agenda to the higher level. Europe was expected to be the panacea of social ills. Back then, this group of hopeful progressives could not have known that they would have to engage in an uphill battle and, at the end of the day, witness a demolition of social democracy that was only to be followed by the recrudescence of presumably ‘authoritarian’ movements. Joerges and his like-minded friends, however, remained in the trenches even after the defeat had already become ostensibly unavertable.⁷

It is fascinating to see how Joerges’ basic social and democratic inclinations materialised in the projects that he pursued on European Union law.⁸

First, there is the emphasis on conflict of laws and, hence, on the need to make politically significant choices within legally regulated structures. It did not happen by accident, then, that Joerges also developed an interest in critical legal studies, for ‘it is all politics’ was the contention of last resort coagulating a ‘movement’ whose participants, falsely perhaps, regarded themselves as leftists.⁹ Choices are important in the context of conflicts of laws, which would also provide, Joerges claimed, the key to understanding the European constitution.¹⁰ The idea still merits further elaboration, building on the foundations laid in some of his occasional pieces.

Second, as part of a highly fruitful co-operation with the gifted political scientist Jürgen Neyer, Joerges developed a perspective on the European Union that set sail under the somewhat perplexing banner of ‘deliberative supranationalism’.¹¹ The idea is twofold. The fundamental freedoms are a means of representing the interests of outsiders in a judicial context. In the course of the application of the requisite proportionality test, they need to be considered equitably. It is already by this means that a transnational form of democratic representation becomes effective in Europe. Beyond the protection of rights, the regulatory process (‘positive integration’) of the internal market prepared in the comitology system did, upon closer inspection, not merely amount to concatenations of occasional bargains, but rather to the deliberative and sound exchange of arguments among a transnational expert group. Again, the interests of Europeans were hence taken to have a fair chance of being represented accurately.

Aside from a much-debated application of Habermasian ideas concerning deliberative democracy to the comitology system, the whole idea was based on reversing the somewhat

⁷As is recounted by Joerges himself in the interview. See (n 1).

⁸See, for example, C Joerges, ‘European Economic Law, the Nation-State and the Maastricht Treaty’ in R Dehousse (ed), *Europe After Maastricht. An Ever Closer Union?* (Law Books in Europe 1994) 29–62.

⁹The interest gave rise to a joint conference held at Blumenthal near Bremen in 1986, which was attended by American and German scholars. The proceedings were published as C Joerges & D Trubek (eds), *Critical Legal Thought: An American-German Debate* (Nomos 1989), republished as a special issue in 12 (1) (2011) *German Law Journal* 1. Joerges published a quite comprehensive comparison of German political legal theory and critical legal studies. See ‘*Politische Rechtstheorie* and Critical Legal Studies: Points of Contact and Divergencies’ *Ibid.*, at 597–643. Some thirty years later, the group assembled again in Copenhagen, however, with a somewhat rejuvenated cast. The results were published again, this time with the title suggesting, misleadingly, a joint study of the political economy. See *The Law of Political Economy: Transformations of the Function of Law* (Cambridge University Press 2020). His contribution in this latter volume (*Ibid.*, 33–61), jointly authored with Michelle Everson, focusses on the economic constitution.

¹⁰His most important contributions on this topic are reprinted in chapter 6 of the German and English books mentioned below (n 21).

¹¹See C Joerges, J Neyer, ‘From Intergovernmental Bargaining to Deliberative Processes: The Constitutionalisation of Comitology’ 3 (1997) *European Law Journal* 273–99; C Joerges J Neyer, ‘Deliberative Supranationalism: Two Defences’ 8 (2002) *European Law Journal* 133–51; C Joerges J Neyer, ‘Deliberative Supranationalism Revisted’ (2006) *EUI Working Paper* 2006/20. Neyer subsequently expanded the idea into a theory of justice. See J Neyer, *The Justification of Europe: A Political Theory of Supranational Integration* (Oxford University Press 2012). It was at this point that I began kindly and cautiously to voice disagreement. See my ‘The Darling Dogma of Bourgeois Europeanists’ (2014) *European Law Journal* 688–712.

tiresome charge of Europe's democracy deficit.¹² While, concededly, many things were left to be desired about democracy in the European Union, the Union could, nevertheless, be credited for attenuating a deficit of legitimacy that is inherent in bounded democracies due to their systematic failure to have all participate who are affected by their decisions. Foreigners are not given a voice. At least within the Union, it is by virtue of the representation of the interests of outsiders in judicial proceedings and political processes that the democratic legitimacy of national democracies becomes enhanced. The overall approach turned out to be quite fruitful, and was taken to the next level by Miguel Maduro, who was Joerges's PhD student. He made it compatible with law and economics and comparative institutional analysis.¹³

Along with the work of Joseph Weiler, whose oeuvre is perhaps more scintillating,¹⁴ while decidedly not addressing questions of political economy, 'deliberative supranationalism' is one of the few grand theories of European Union law that were developed at the time when the Union was not only perceived as a major bulwark for the defence of 'values' against Eastern detractors.¹⁵

Third, aside from a whole host of spin-off projects orbiting like satellites of the former, one lasting achievement that reveals Joerges's progressive political sensibilities is the *Darker Legacies* project that ventured into the demoralising interwar period of European societies, thereby broadening the scope of coping with the past (*Vergangenheitsbewältigung*) beyond its traditional focus on Germany or Austria.¹⁶ It resulted in an anthology that rightly contributed to the editors' fame, not least owing to having received 27 reviews.¹⁷ Joerges reportedly had to pursue this project, which seems now more topical than ever, in the face of quite some resistance from some of his peers who appear to have complained of having the German attitude of repentance imposed in their national traditions. But as the volume amply revealed, interwar (or even postwar) fascism amounted to a joint European burden that had to be addressed by working through memories and by sharing national histories with one another.

Many other projects would deserve mentioning here, for example, Joerges's engagement with the White Paper on Governance,¹⁸ his perambulations of the lure and dangers of 'delegalization',¹⁹ his analysis of the fiscal and financial crisis management,²⁰ his intermittent forays into political economy and his early contributions, written in German, on the theory of conflict of laws and the foundations of consumer protection legislation. Fortunately, a substantial collection of his writings is available in both German and English. The scope of his work, spanning private law, administrative law, and constitutional law is breathtaking. Joerges's legacy is now accessibly preserved and available for study by future generations.²¹

¹²I, for one, attempted a reconstruction of the argument in *The Argument from Transnational Effects: I: Representing Outsiders Through Freedom of Movement* 16 (2010) *European Law Journal* 315–44.

¹³See M Maduro, *We the Court: the European Court of Justice and the European Economic Constitution* (Hart Publishing 1998).

¹⁴See JHH Weiler, *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge University Press 1999).

¹⁵See, for the currently prominent perspective, A von Bogdandy, *The Emergence of European Society through Public Law: An Anti-Schmittian and Hegelian Perspective* (Oxford University Press 2024).

¹⁶See C Joerges and NS Ghaleigh (eds), *The Darker Legacies of Law in Europe. The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Hart Publishing 2003).

¹⁷See Joerges in the interview (n 1).

¹⁸See *Jean Monnet Working Paper* No.6/01, Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance.

¹⁹See Chapter 4 of the books cited below (n 21).

²⁰C Joerges, *Europe's Economic Constitution in Crisis and the Emergence of a New Constitutional Constellation in JE Fossum and AJ Menéndez (eds), The European Union in Crises or The European Union as Crises?* 279 (Arena Report 2014) 279–335.

²¹See C Joerges, *Conflict and Transformation: Essays on European Law and Policy* (Hart Publishing 2022); in German: *Konflikt und Transformation: Essays zur europäischen Rechtspolitik* (Nomos 2022).

Equally breathtaking, in fact, and in no manner a minor part of his achievements, is what he accomplished in bringing people together and in lending them his support. Lest we forget, universities are in a peculiar way locations of the performing arts. Events are put on stages on which people appear just in order to appear before others. Research is a spectacle. Tedium can only be dissipated if debates and conferences are attended by people who know how to present themselves in everyday life. Joerges was not only among the very best actors, he was also a very capable producer and director. The conferences that he put together always offered occasions to get to know new, brilliant people. Joerges had a good eye for spotting fresh talent, and it was rewarding to gather with his most recently selected cast at workshops or conferences. Last but not least, it should be mentioned that he was a founding member of the *European Law Journal*, which was, at any rate in its original format, the intellectual predecessor of this journal.

Christian Joerges was a warm person, endowed with a good sense of humour, much wit, and with that sufficient portion of self-irony which allowed him to elude the lure of pompousness. Nevertheless, I sensed, sadly, that at least throughout his (long) tenure at the EUI, he felt underappreciated in the German speaking academic world. This underappreciation had its root, of course, in a dissatisfaction, which he also clearly articulated, with the intellectual format (*Rechtsdogmatik*) and past failures (Nazi law) of his native legal tradition. Even though I never encountered any rejection of his work or his person, the established scholars 'at home' may indeed have abstained from reciprocating his critical attitude towards their ways and lineage with lavish gestures of admiration. Hence, Joerges may have misunderstood that living with the sense of being branded as one of those notorious progressives from Bremen was indeed an adequate reward paid by the parochial establishment for his remarkable intellectual independence. Such independence is rare in German circles, and it is another, indeed, perhaps *the* key factor explaining why it must have been difficult for him to fit in at home.

Joerges was the first German law professor who did not create the impression in me that there was something wrong with me – something sure to disqualify me forever from being a member in truly good standing in the lawyers' guild. I have never thanked him for that. Yet I still owe him an enormous debt of gratitude for many other things. He opened many doors for me. He let me in on the top level of European scholarship, even though I was coming from nowhere, that is, from the *Grundlagenfach* of an intellectually rather forsaken faculty. Joerges provided me, even though I have never been his disciple, with opportunities. Helping more junior people finding their paths amidst the trials and tribulations of academic life is not the least that an accomplished academic can do. I can imagine that for the same or similar reasons many others feel as grateful as I feel towards him and that they will also miss him, as I will, for as long as they live.