Understanding solidarity in the European Union and its asylum policy: an analytical framework

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Introduction

In an apt characterisation of solidarity, Volkmann (1998: 1) has pointed out that the concept conveys both comfort and genericness, equipping it with an unfailing positive connotation as well as always leaving the door open for the individual to evade concrete calls to action. This observation might illuminate why Große Kracht (2017: 10, own translation) has portrayed solidarity as an 'irreplaceable word of hope and desire in the present'. At the same time, given that ever-recurring calls for solidarity often do not seem to result in any meaningful consequences, Böhr (2006: 54, own translation) has deemed it an 'empty incantation'. This is the field of tension in which solidarity meanders as an iridescent, blurry, seemingly ubiquitous concept. Its relational applications are very diverse: it illustrates behaviour in family or friendship ties, reflects cohesion within clubs, parties, or associations, calls upon assistance for individuals or groups in distress, tries to solicit support for political campaigns, describes the central idea of the welfare state or the nature of relations between certain nation-states. At the same time, solidarity can abstractly be described as the 'social glue' that holds societies together (Laitinen/Pessi 2015: 9). The concept of solidarity encompasses several relational dimensions and reaches over multiple areas of life and research disciplines. What's more, its meaning seems to vary considerably depending on the viewpoint taken. Strictly speaking, the plethora of applications of solidarity make it seem that there is not the slightest agreement over how it should be understood. This leads to solidarity coming across as an arbitrary and watered-down concept, making its usage so appealing due to its consistently positive attributions.

This holds true especially in the context of the European Union where solidarity has been introduced in the founding act of European integration as '*solidarité de fait*' (Schuman Declaration). Since then, the concept has markedly raised its European stature: in the Lisbon Treaty, it is mentioned sixteen times. In addition, it is constantly invoked in times of crisis, be it the euro crisis, the migration governance crisis, the Covid-19 crisis, or the Ukraine crisis. The desideratum to address the meaning of solidarity in the European Union is apparent. At the same time, this endeavour is challenging due to the concomitance of the elusive nature of the

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concept, on the one hand, and the outstanding significance for the European Union on the other. Hence, the impetus of this contribution is making the concept operationalisable and analysable for the study of the European Union in order to yield feasible and plausible results. Consequentially, the requirements of an empirically cogent, interdisciplinary, and methodologically sound theoretical approach will be met.

Although the concept of solidarity seems to be ubiquitous, theory building around it is rather rudimentary (Wilde 2017). It is notably peripheral considering the extensive theoretical and analytical literature on other prominent concepts like justice, liberty, or equality (Bayertz 1999). One reason might be its relatively recent ascent to relevance: the classics of political philosophy from Plato to Rawls do not or only negligibly mention the concept. It gains prominence outside of its purely legal context, mainly in France, not before the first half of 19th century. Against this backdrop, Große Kracht (2017: 12) has aptly observed that in terms of interdisciplinary grounding, systematic elaboration, and argumentative rigour contemporary discourses of social theory and political philosophy lack an adequate theory of solidarity, rarely even sufficiently noticing and distinctly bringing forward this desideratum.

Therefore, it is this piece's central aim to tackle the identified research gap by providing a systematic theoretic account that delivers sound empirical results. It will provide an analytical framework for solidarity based on a conceptual history approach largely influenced by the works of Reinhart Koselleck. It will proceed by examining the history of European integration, presenting the findings of an in-depth document and legal analysis, identifying the historical development of the EU's solidarity principle, its role and scope, including demonstrating the specific expression of solidarity in the Union's asylum policy. The article will conclude with showing how the findings amalgamate to a research framework to be applicable to all aspects of the European Union that focus on solidarity. We find that the concept of solidarity has four determinants: particularity, instrumentality, reciprocity, and responsibility. Furthermore, we show that the principle of solidarity is a necessary condition for the European Union and provide an explanation for the existence of a specific expression of the solidarity principle in the policy area of asylum, namely fair sharing of responsibility between the member states.

This contribution aims at clarifying the concept of solidarity in the context of the European Union, demonstrating what role the concept plays in the EU, what its fundamental characteristics as a principle of the European Union are, and what inherent problems there might be that accompany those findings. Ultimately, beyond stimulating the scientific debate on a theory of solidarity, we aim at providing European policymaking, legal decisions, and public perception with a more substantial understanding of solidarity in the EU to reduce arbitrariness around this crucial concept.

The research gap

When checking the pertinent lexicons and periodicals that have concepts and their histories as their focus, the finding that solidarity is often omitted is theoretical treatises is corroborated. Neither the *Stanford Encyclopaedia of Philosophy* nor *Contributions to the History of Concepts* carry articles on solidarity. Although the concept of solidarity plays a much more prominent role in the German (and French) speaking tradition, not even the seminal German language series *Geschichtliche Grundbegriffe*, the *Handbuch politisch-sozialer Grundbegriffe in Frankreich 1680-1820,* or *Archiv für Begriffsgeschichte* address solidarity. Generally, scholars from the English-speaking world have not embarked on a systematic study of the history of social and political concepts that could compare to the efforts in their German-speaking counterparts (Richter 1995). That applies to the concept of solidarity as well.

Another reason for the dearth of theorisation of solidarity is the concept's rather problematic relationship to the dominating line of thought in modern (Western) philosophy: deontological ethical theory. In this school of thought, the justification of universal norms that are directed both at the individual and humanity as a whole is one of its most important features (Bayertz 1999). Particular communities are typically not considered as legitimate sources of obligations that are morally justified. A second challenge deriving from this dominance is that solidarity demands the formulation of positive duties. For example, duties to assist would fall into that category. Since in modern philosophy liberty is the highest value and individuality the ideal, deontological ethics focus on duties to desist that safeguard the legitimate interests of individuals (Münkler 2004). Liberty, for example, demands subjective rights of individuals that are considered universal – like human rights. Demands or obligations that originate in groups or communities, like solidarity, are considered heteronomous. Thus, they contradict the idea of universal freedom and individual self-determination.

This might explain why authors mostly eschew appropriate systematisation when dealing with the concept of solidarity, either by choosing to adopt already existing, inadequate definitions, or by defining the concept intuitively (Gussone 2006; Löschke 2015; Wildt 1999). Thus, the concept of solidarity is chronically underdetermined and frequently employed in an incoherent, heterogenous, and hence improper way for scientific analysis. These unsystematic approaches to the study of solidarity sometimes bring about the phenomenon of conjecture: research subjects are being subsumed under the concept of solidarity without them being denoted as such in the sources. For example, the Aristotelian concept of friendship or Marxian elaborations cannot just be categorised as solidarity without the authors' explicit denomination as such (Küppers/Nothelle-Wildfeuer 2011; Stjernø 2005). The provision of sufficient systematic conceptualisation or theory of solidarity is needed to justify a plausible and adequate classification of other concepts as solidarity. All in all, how meaningful is it to employ

concepts to a time where they haven't been used? We might be imputing them to those authors. Modern semantics could, thus, be projected back in time and a congruence implied where there was in fact none. This piece avoids these pitfalls by employing rigorous methodology to close the identified research gap.

The study of the European Union and, more specifically, of its asylum policy is not excluded from these deficits. Research suggests that 'a considerable share of the migration and refugee literature applies the concept of solidarity in a rather blasé manner' (Bauder/Juffs 2020: 57). In this vein, some scholars might not offer sufficient theoretical groundwork (Hilpold 2015; Wellens 2005; Domurath 2013). Others might then be relying on such scant preliminary theoretical work when devising their analysis (Tsourdi 2017; de Witte 2015). Applying narrow analytical lenses like Durkheim's exploration of societal solidarity might lead to by and large ignoring other parts of the pertinent literature (Trein 2020). In other instances, picking out only individual strands of the concept of solidarity, like the social glue that binds societies together, might be used as the basis for analysis (Ferrara/Burelli 2019). Most pieces on the European solidarity principle are produced by legal scholars where the absence of sound theoretical groundwork might be a legitimate by-product of the predominant methods of their discipline (Moreno-Lax 2017; Kücük 2016). Other works just focus on specific dimensions of solidarity in the EU, like civic solidarity (Lahusen 2020), solidarity with refugees (Straehle 2020), solidarity between EU citizens focusing on citizenship (Bauböck 2018) or understand solidarity as an activist tool to foster societal and political change (Agustin, Jørgensen 2019). One of the central motivations for this research is an agreement with Shoemaker et al. (2004) who argue that there is an overemphasis on data collection without a clear sense of theoretical purpose that must be tackled by building theory to make sense of the empirical data.

It should be noted, however, that a more substantial theoretical debate about the concept of solidarity has recently gained momentum (Kneuer et al 2021; Kapeller/Wolkenstein 2013; Kolers 2016). This is not so much the case for the study of the European Union where the requirement to base the examination of solidarity on sound theoretical groundwork remains paramount. Positive exceptions remain few and far between (Bartenstein 2021; Saracino 2019).

Methodology

Some misunderstandings around the concept of solidarity could be removed by first clarifying the nature of concepts in general. Concepts are theories about the fundamental constitutive characteristics of a phenomenon, and these must be ascertained when analysing them (Goertz 2006). Concepts are significantly informed by their (social historical, cultural) environment and are constantly changing (Freeden 2017). A concept combines in itself an abundance of

meanings and must necessarily be ambiguous: 'It bundles together the richness of historical experience and the sum of theoretical and practical lessons drawn from it in such a way that their relationship can be established and properly understood only through a concept. […] the meaning of words can be defined exactly, but concepts can only be interpreted' (Koselleck 2011: 20). Concepts, hence, consist of aggregative meanings through time. The abundance of meanings of a concept cannot be captured by definitions (Konersmann 1995). Since concepts are always ambiguous there can never be an atemporal, univocal, uncontroversial determination. This is how conceptual history differentiates itself from the history of ideas which treats concepts as constant, timeless ideas (Bödeker 2011: 20). In applying the method of the history of ideas, one must presuppose the existence of a conceptual core that remains unchanged to begin with, which seems fallible or even biased. One objective of conceptual history, on the other hand, is to gain a normative benchmark or to demonstrate unbroken traditions of concepts (Müller/Schmieder 2020: 47). The fundamental shortcoming of the history of ideas approach is that ideas don't consider the link between idea and context. They have no inherent historicity. In concepts, however, semantic deviations affected by changes in context of their historical usage are accounted for and can become constitutive elements of their definitions (Palti 2011: 47). Dimensions of a concepts must be related to each other and establish temporal as well as spatial dimensions to being applicable (Pennings 2019: 55). In a similar vein, the method of intellectual history only focusses on investigations in a certain point in time (primarily via discourse analysis) that brings about fundamental problems since contemporary concepts can hardly be understood without their history (Müller/Schmieder 2020: 96).

The general notion that we cannot measure something if we have not specified its meaning is as applicable to the study of concepts. In scientific research, we must be able to tell by observation which value a concept has in a particular occurrence (Gay/Waever 2011). The meaning of a concept can largely be understood as being conveyed by its sense (connotations) hence this is where debates about concepts mainly focus (Munck et al. 2020: 333). Concepts may be understood as crystallisation nuclei or condensation of discourses (Bödeker 2011: 34). Ambiguity and vagueness can be removed with information and contextualisation. To make long-term comparisons possible, trying to capture the contemporary meaning of concepts can be helpful. However, it should be noted that concepts are a continuum and either have no or porous boundaries and thus overlap with others (Steinmetz/Freeden 2017). Hence, it is unnecessary to theorise concepts as being completely separated from others. The aim of a sound methodological approach is therefore to carve out patterns and don't focus on the unique. On the other hand, when building theoretical frameworks, they should not be missing any essential or important dimensions (Goertz 2020: 35).

Acknowledging that categorical and authoritative closure of concepts can never be achieved because they cannot be uttered with all their possible contents and interpretations means that one has a well-informed understanding of the intrinsic nature of concepts. Hence, Gallie's (1956) contention of 'essentially contested concepts', meaning that one concept can never be more theoretically justified than the other, is a relativist one that can result in the notion that measurement is futile. The fact that many concepts – if not all – are disputed does not mean those disputes cannot be resolved. Certainly, there can be understandings of concepts that are more coherent and cogent. Ambiguity and vagueness can be removed with information and contextualisation. This is why deducing that theorising concepts could be banished or is unnecessary is an illegitimate and self-defeating approach to sound analysis (Munck et al: 337).

Palonen (2002) has argued that in political science, contestation of concepts even is methodologically desirable since without debates on concepts there would be a deficient understanding of politics. Those disputes are a prerequisite for the interpretation of a concept's formation and transformation. Political analysis by means of conceptual history can draw cogent conclusions from the seemingly negligible: 'Conceptual history offers a chance to turn the contestability, contingency and historicity of the use of concepts into special instruments for conceptualizing politics' (Palonen 2002b: 92). It is hard to imagine any serious study of politics without the presence of an element of conceptual history (Palonen 2005). Study of past and present in politics (society, economics, culture) cannot be conducted in a meaningful way without taking into account the conceptualisations of the past and the present. This contribution maintains that just as little as other research objects can be adequately researched without a sufficient understanding of their history, employing concepts without a proper knowledge of their history results in methodologically and empirically unsound approaches.

Theory and methodology of conceptual history itself is not a clearly defined wherefore it is and methodologically open project (Müller/Schmieder 2016). Hence, the practice of conceptual history depends on epistemological interest of the researcher (Koselleck 2002: 45). Conceptual history analyses concepts as elements of semantic fields (Bödeker 2002: 91). Central to conceptual history according to Koselleck (2011: 17), often labelled as its German translation *Begriffsgeschichte*, is ascertaining past meanings of concepts to specifying what they mean for us today. In this methodological approach, concepts have a temporal structure (Koselleck 2002, 37). It is crucial for the study of concepts to examine which sediments are retrievable when the concept is used (Müller/Schmieder 2020: 99). The method sets out that the layers or sediments of meaning must be analysed through time: the 'method uncovers those concepts which can serve as the basis for theories, and then examines thematically how such concepts change over time' (Koselleck 2011: 21). In conceptual history as *Begriffsgeschichte*, concepts sediments of meaning are tracked through the times and then

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related to each other. It is paramount to write a transdisciplinary conceptual history because of the several synchronous and diachronous interconnections (Koselleck 1989). The interdisciplinary impetus of *Begriffsgeschichte* is very helpful to build bridges between disciplines.

In light of these findings, this contribution's approach will be to 'define' solidarity in the European Union through a theoretical framework based on a conceptual history approach that practices interdisciplinarity. Since concepts cannot be defined in their entirety, this piece aims at providing an interpretation based on all relevant prerequisites and presuppositions in the context of the European Union. The aim is not to determine but rather to identify and demarcate the problem (Palonen 1997: 52). This method is buttressed by an extensive document and legal analysis. This article proposes a framework for analysis that facilitates efficient development of the field and that is needed for applicability of solidarity in the European Union. The framework includes intension and extension of solidarity in the EU and employs an inductive model of theory building. It formulates a two-level theory as a 'conjuncture of necessary causes', necessary conditions that are jointly sufficient for solidarity in the EU where the variables constitute an ontological relation between the levels and where secondary level variables represent the defining features that constitute the basic-level variable (solidarity) (Goertz 2020: 275). The framework is confined to the study of the European Union, hence preventing 'conceptual stretching' of the concept of solidarity (Sartori 1970). It extracts systematic features of solidarity to ascertain what is relevant for research on solidarity in the EU, distinguishing systematic component from the non-systematic components (King et al. 2021: 62).

Conceptual history of solidarity

Counterintuitively, the concept of solidarity does not originate in the labour movement or in the classics of sociological or philosophical thought but has its source in Roman law. Its principle of *obligatio in solidum* means the debt or obligation that every debtor had vis-à-vis the joint debtors they are part of (Brunkhorst 2005). This creates a joint liability in which the debtors vouch for a common debt. Every single debtor is liable for every other debtor vis-à-vis the creditor in terms of the joint obligation. This principle has survived in several legal systems that are strongly influenced by the Roman law tradition, especially France. In this legal tradition, to this day, persons unknown to each other, different roles and heterogenous interests are being bound to each other even though they are not being connected to each other through a common identity or beyond the common objective.

This specific legal tradition might be an explanatory factor as to why the concept starts to gain additional variations in its meaning in France. In 1770, Voltaire uses solidarity with a

connotation outside of the legal tradition to describe the behaviour of Jesuits towards the French King as solidary (Zoll 2000). This burgeoning connotative change was perpetuated during the French Revolution. For example, Mirabeau and later Danton use solidarity unambiguously detached from its legal form and approximate it closer to a social-political issues, describing social interdependence (Röttgers 2011). A coexistence of both, old and new, contextual meanings emerged in this period. In terms of another prominent concept in the French Revolution, an at times occurring misunderstanding should be clarified: *solidarité* and *fraternité* have never been interchangeable or synonymous and always coexisted (Piazolo 2004). During the French Revolution, solidarity assumes the role as the political discharge of fraternity (Küppers/Nothelle-Wildfeuer 2011). In the course of the first part of the 19ᵗʰ century, solidarity replaces fraternity insofar as it seems to be more fitting for political contexts (Schieder 1972). The frequency of its usage increases significantly in the 1840s (Schmale 2017). All in all, solidarity emancipates from its legal application and gains a distinct socio-political profile by the 1840s.

In 1842, Hippolyte Renaud (1842) publishes a book that had 'solidarity' it its title probably for the first time – a summary of Charles Fourier's doctrines. Fourier's utilisation of solidarity meanders between legal, welfare state and socialist activism; descriptive as well as normative elements are clearly discernible. For the first time, the concept of solidarity becomes a central element of an intended societal reform.

A first systematic use of solidarity as a central theoretical concept that is fully disconnected from legal context and deployed in purely philosophical-scientific terms is introduced by Pierre Leroux's 'De l'humanité' (1985 [1840]). In this work, Leroux fleshes out solidarity in contrast to Christian charity as an altruistic emotion that binds all humans together and with God. Leroux makes the case for replacing charity with solidarity. In his view, all humans are bound together as a species whereof he infers a mutual responsibility. By relinquishing the universalist claim of Christian charity, Leroux confines solidarity to particular (non-universal) societies where people only bear responsibility for each other when they are bound together by societal cohabitation. Therefore, it becomes the function of the respective political sphere to showcase this kind of connection and to organise as well as substantiate the reciprocal commitment.

Within the emerging labour movement solidarity becomes a reformist leitmotif that represents vouching for each other and cohesion in terms of the common interest, bearing decidedly political and socio-moral underpinnings. It is worth noting, however, that there is no remarkable theoretical debate on the concept in Marxist thought (Große Kracht 2017: 65). The Communist Manifest does not mention solidarity at all. The labour movement, and socialist thought in general, retained solidarity as an activist formula to fight institutions of oppressive power in solidarity as an expression of common interest. The emphasis of socialist thinkers like Lassalle

(1919 [1863]), Liebknecht (1976 [1871]), or Bernstein (1910) of the concept's importance for the labour movement notwithstanding, systematic conceptions are nowhere to be found it their writings. Exclusive class-solidarity as a means to forming a community to fight for the common interests remained at the forefront (Tenfelde 1998). Further emphasis is put on the non-universality of solidarity that is not bound to the nation-state. This motive continues to influence contemporary socialist thought or in neo-Gramscianism (Featherstone 2012; Weber 2007).

Auguste Comte (1839) has introduced the concept of solidarity into the academic discourse within the field that he is considered to be a co-founder of – sociology. Comte uses solidarity to describe social interdependencies that exist independently of individuals' emotions and perceptions. He was so convinced of his solely descriptive understanding of the phenomenon that he explicitly did not deem it necessary to provide evidence for it (Comte 1839: 307). Comte interprets the progressing division of labour in society as an expression of social solidarity. He posits solidarity as emerging naturally between individuals in a society, and not, as contractarians would contend, as an artificial result of an entered contract (Fiegle 2003).

In this vein, Comte's student Émile Durkheim (1893) puts social solidarity in the centre of his sociological theory in his work *The Division of Labour in Society*. Durkheim understands solidarity as the forces that bind a society together as a procedure of creating relations: a form of sociability that denotes the connection between society and its system of rules and values. He famously distinguishes two forms of solidarity: the predominating type in segmented 'traditional' societies he identifies as 'mechanical' solidarity (Durkheim 2013: 57-87). In those, a collective consciousness accrues from inherent similarities in how individuals think, feel, and act that leads to a coherent way of life and therefore to a collective feeling of togetherness. This feeling is the basis for social solidarity that is generated 'mechanically' – today we would perhaps rather say 'automatically'. The second form he identifies in 'modern' societies that are characterised by the division of labour: 'organic' solidarity predominates societies that function like an organism within which all parts must cooperate in tune (Durkheim 2013: 88-104). The key determinant here is difference: with increasing division of labour and individualisation the interdependence of individuals increases since they become increasingly dependent from the other individuals' production and roles. Again, solidarity creates a collective consciousness. In modern societies with organic solidarity social control and sanctions are necessary to ensure unavoidable compromise and concessions from its members (Tranow 2012). Hence, Durkheim adds a normative dimension to the descriptive ascertainment of solidarity as a social fact based on the work of Comte.

An entirely different approach to the concept of solidarity from that of Durkheim can be found contemporaneously in the work of the progenitor of French solidarism – Léon Bourgeois. Through him and other supporters of solidarism the concept of solidarity has been recognised

and accepted throughout French society, especially because the solidarist framework does not demand a revolution or class war but only societal reforms (Hayward 1959). In Bourgeois' (1896) work, he formulates solidarity as a social demand: it exists as a principle of societal cohabitation that results in mutual commitments. He works with two complementary concepts of solidarity: one is descriptive and based on natural aspects ('solidarité naturelle'); the other is normative, based on social aspects ('solidarité sociale'). By *solidarité naturelle* Bourgeois understands individuals as part of an organism who rely on each other and are mutually dependant (Bourgeois 1896: 37 et seq.). At same time, though, they are members of a social community: natural inequality emerging in a society must be remedied by *solidarité sociale* by creating justice (Bourgeois 1896: 73 et seq.). In Bourgeois' conception, *solidarité sociale* corrects *solidarite naturelle* because the inherent natural dependencies inevitably lead to inequalities and injustice. The function of norms is to create social equalisation between the members of society. It is worth noting that Bourgeois understands solidarity as a theory of social justice that replaces Christian charity and republican fraternity. Citizens are committed to each other because of mutual dependency that arises from societal cooperation, not because of abstract legal or moral norms. Solidarism continues the line of thought of solidarity as having both a descriptive dimension (as a social fact) and a normative dimension (social obligations being derived to achieve specific common objectives). The equalisation mechanism in solidarism is a quasi-contractual provision. This legal aspect is indicative of the practical political approach that solidarism takes. Not only does it have roots in the Roman legal tradition but is still reflected in contemporary adaptations (Wildt 1995).

In Catholic social teaching (CST) solidarity is one of the three fundamental principles alongside human dignity and subsidiarity. Due to humans being created in the image and likeness of God there is a mutual relatedness of all humans to society creating a mutual commitment to respecting human dignity (Rauscher 1975). Solidarity expresses reciprocal reliance, mutual dependence, and the bidirectional connection of individuals and society. One of the most important systematisations of CST is provided in the seminal work of Heinrich Pesch. In the legacy of his French progenitors, he makes the case for a third way between socialism and liberalism, calling it solidarism (Pesch 1914). He deduces a compulsory moral principle from the descriptive ontological principle posited by CST. A crucial aspect is the connection of solidarity to the common good that all members of society have the moral obligation to work towards, and that CST understand as justice (Bohrmann 2006). It is the duty of the nation-state to ensure social justice as the common good. For Pesch, the duty to solidarity is a sacred duty (Pesch 1899). Some successors of CST thought have tried to eliminate the obvious naturalistic fallacy in its systematisation by adding the necessity to translate solidarity into legal principles (Baumgartner/Korff 1999). Its fundamental shortcoming in terms of being unable to universalise solidarity notwithstanding, it reveals that normative elements accompany

descriptive and moral elements in CST. Law must ensure the pursuit of the common good alias justice based on the facticity of humans as inherently solidary beings.

Jürgen Habermas first suggested that solidarity is the complementary aspect of justice in terms of equal treatment of individuals and connected the concept to the attainment of the common good (Habermas 1990). However, it is of utmost importance to acknowledge that Habermas later renounced this position because it would lead to 'moralization and depoliticization of the concept of solidarity' (Habermas 2015: 23). Instead, in sharp contrast to sociologists, he posits that behaviour based on solidarity presupposes legally organised, artificial contexts, not organically evolved ones. The distinctive character of solidary behaviour, he suggests, is an 'offensive character' of striving to honour the promise of the legitimacy claim invested in any political order (Habermas 2013: 10). Solidarity, here, relies on political associations and shared political interests. Actors within contexts of solidarity must accept short- and medium-term negative effects for the attainment of the overall long-term objectives. Habermas also addressed the question of solidarity in the EU, but only on the interpersonal level in terms of European citizenship (Habermas 2012). The overstretching and lack of systematic theorisation of the concept in Habermas' work have been widely criticised (Löschke 2015; Wildt 1999; Große Kracht 2017).

Axel Honneth adopts the aspect of recognition in his social theory from his academic teacher Jürgen Habermas. Honneth (1992) suggests three spheres of recognition: emotional (love), cognitive (law), and social (solidarity). Solidarity expresses social appreciation in terms of the individual capabilities and characteristics of individuals. The individual is being recognised as indispensable by the community. Individuals realise that others can help them achieving their goals and thus act in mutual solidarity (Honneth 2000). Essentially, Honneth suggests, like Habermas, that solidarity is needed in communities to achieve their common good. In addition, both highlight that community members act in enlightened self-interest in order to attain their objectives.

Through the lens of the employed conceptual history approach, the contours of the concept of solidarity become apparent. To recap, solidarity entails both a descriptive and normative dimension. The former is characterised by a restriction to particular, non-universal reference groups, within which actors[i] commit to each other to achieve common objectives, thus developing interdependencies. Attempts to determine solidarity as a universal principle remain implausible and unconvincing. A confounding factor in this regard is the inherent temporary nature of solidarity. Universal principles, however, are inherently permanent. Human rights shall not only be inviolable, but also time- and limitless. Solidarities, on the other hand, can legitimately be ended since individual interests and objectives can and are allowed to change, and thus the corresponding memberships in reference groups can be revoked. Not to mention

the notion that connections of solidarity are conditional upon historical circumstance (Rorty 1989). In addition, solidarity with the entirety of potential others constitutes an overburdening of actors. Hence, some scholars have tried to solve this problem by suggesting solidarity as a division of labour (Angehrn 2001; Löschke 2015). In these conceptions, solidarity serves as a kind of relief mechanism of overburdening through its constitutive element of particularity since duties to assist can only be honoured to a limited extent. Concomitantly, solidarity possesses an exclusionary character. However, actors can always hold several solidarities.

What has also been shown is that solidarity is not an end in itself but orientated towards a common objective that the reference group seeks to achieve. More often than not this objective is connected to the common good (Rehg 2007). Solidarity, hence, is itself not a value. It can be referred to values that the reference group seeks to honour. Generally, however, it is suggested that solidarity must abide to universal values in order to prevent a false attribution of the concept to actors like terrorist organisations, organised crime or dictators (Derpmann 2013; Schieder 2009). In those cases, a different semantic field would arguably be better suited, like that of loyalty.

The normative dimension of solidarity entails the necessity of reciprocal commitment stemming from the connectedness between the actors of a reference group (Derpmann 2009; Hondrich/Koch-Arzberger 1992; Zürcher 1998). It is important to note that the expectation of reciprocity is key: actors expect the necessary assistance from the reference group in case they need it; but they do not expect direct returns when they themselves have provided necessary assistance. It would be acceptable when an actor is not able to provide assistance. It is not acceptable, however, in case they potentially would be able to provide assistance but choose not to. At the same time, actors accept the possibility of never receiving assistance when they simply do not need it. Hence, the normative dimension of solidarity implies that the mutual commitment entered is expressed by concrete provision of assistance and help to secure the pursuit and attainment of the common objectives (Bedorf 2011; Mau 2005; Röttgers 2011). That shields the concept of solidarity from a purely appellative understanding that it clearly transcends. We contend that supererogatory attachments to solidarity should be discarded since concepts without the expectance of reciprocity, without resulting mutual commitment and duties to support and assist, are not subsumable under solidarity. The voluntary act of solidarising that goes beyond the expected extent rather leads to acts of love, friendship, charity, mercy, or compassion. Not every instance of congruence of interests, readiness to or discharge of support, or calls for aid and assistance result in real solidarity. Those are just individual elements of an informed understanding of the concept. Employing words can be acts but they are not equivalent to the acts they cause (Searle 1989). The announcement of hitting someone is not the act of hitting. The announcement of or call for solidarity is not solidarity.

We find the analytical framework with four necessary conditions as follows:

(1) *[particularity]* Solidarity is characterised by its particular (non-universal) nature and is, hence, only applicable to specific reference groups.

(2) *[instrumentality]* Solidarity is aimed at a common objective whose legitimacy is accepted by the reference group. Solidarity is a means to the end of achieving that objective.

(3) *[reciprocity]* Solidarity creates a mutual connectedness and demands a reciprocal commitment.

(4) *[responsibility]* Solidarity manifests itself in vouching for each other in terms of the common objective. This mutual responsibility is expressed by support and assistance.

All four determinants are inextricably linked, are mutually dependent and establish reciprocal references to one another.

Solidarity forms in enlightened self-interest of actors: the actors recognise that they can attain certain goals only in conjunction with others. On that voluntary basis, the outcome of this is a reference group that generates reciprocal commitment in the form of assistance and help to ensure the achievement of the common objectives. The reference group creates a mutual connectedness, vouching for each other in terms of the common objective. Solidarity is the means to the end of achieving common objectives of actors in non-universal reference groups.

Solidarity in the European Union and its asylum policy

In European integration, the products of the political process are cast into law. The effectiveness and uniform application of Union law is a prerequisite for the functioning of the European Union under the rule of law (Zuleeg 2011). Law shall both work as an insurance of the joint pursuance of the common objectives and a check on individual interests of actors that may violate the common law (Bieber 2002). Political liabilities due to national egoisms can thus be contained. The rule of law is of paramount importance for the EU since it lacks other integrative factors nation-states have access to (von Bogdandy 2011). The EU is a voluntary community, wherefore the member states must be made liable for the consequences of their actions (Sangiovanni 2012). A sustained breach of the rule of law by an actor means it positions itself outside of its purview since a right to non-compliance is not envisaged on EU primary law. Since the Union, unlike nation-states, does not have means to coerce compliance, ignoring the rule of law is tantamount to leaving its purview. Against this backdrop, EU law is not merely the product of its policymaking process, not even just the means to the end of European integration: it is the content and expression of European integration itself (Grimmel/Jakobeit 2014). Hence, politics and the law in the EU are inextricably linked. In the

same vein, solidarity must be cast into law to be effective in the European Union. Since a definition of solidarity in nowhere to be found in the EU acquis, we assume a predetermined understanding of solidarity that is embedded in the specific historical context at hand (Müller 2010). These historical underpinnings of the concept in question were demonstrated in the foregoing part.

In forming and joining the EU, nation-states have voluntarily decided to cooperate in order to pursue a common good that is comprised by their common objectives. As a concept, the common good aims at common objectives and actions to maintain the respective community and the reproduction of its prerequisites (Münkler/Bluhm 2001). It is anchored in the realisation that actors can only achieve certain objectives in cooperation with others. The nation-state's primary goal is to achieve the common good as it is its normative ideal, programmatic tenet and legitimacy principle (Anzenbacher 2011). The premisses for negotiating the common good in liberal democracies based on the rule of law, as well as the products of this process, are cast into law to ensure effectiveness and legitimacy (Härtel 2012). Typically, states' common good can be located in their constitutions where they are specified as national objectives. Since in an increasingly globalised world individual nation-states cannot always sufficiently fulfil their citizen's expectations related to the common good, they choose to cooperate with other states or international organisations in enlightened self-interest. Regionalised as well as global legal regimes emerge (Wolfrum 2006). The EU is such a regime where member states confer the legitimacy of common good pursuance to the European level when they deem it more conducive to their policy goals, hence making the European level a joint sphere for solidarity.

The common European objectives are inscribed in EU primary law, namely Art. 3 TEU of the Lisbon Treaty as operational goals, set into the framework of values and principles in Art. 2 TEU. These elements comprise the idea of the EU's common good (Hatje/Müller-Graff 2014). They are specified in the individual policy areas. This setup can be considered the *raison d'être* of the European Union (Sangiovanni 2013). The role of solidarity in the EU reveals itself through its connection to the European common good. The readiness to act in solidarity must necessarily exist as a prerequisite between the involved actors, especially between the member states. On the one hand, solidarity is expressed in a descriptive dimension where the community members enter a mutual dependence by voluntarily agreeing to a duty to pursue the common interests or goals. Achieving individual goals is incumbent upon realising community goals – the common good. In order to be able to safeguard the pursuit of common interests, actors must be ready to temporarily accept disadvantages or to renouncing benefits when it serves the common good (Tomuschat 1987). A connectedness between the community members emerges that demands the commitment of every individual member towards the community as a whole in terms of the common objectives. This connectedness results, on the other hand, in concrete duties to solidarity that make up the normative

dimensions of solidarity. The community members participate and contribute to the realisation of the common good, providing assistance and help for the other community members if needed, resulting in general and specific expressions of duties on how to act and desist. These obligations shall ensure the effectiveness and reliability of the common good realisation by all community members. This answers the question as to *why* solidarity is necessary in the European Union. The rule of law is pivotal since it ensures the transition from solidarity as a prerequisite to concrete duties to act and desist aimed at realising the common good.

The European Court of Justice (1969) has recognised the existence of a solidarity principle in the EU quite early in the integration process. In a seminal judgement, the Court (1973) ascertained that member states accept the duty to solidarity when entering the European edifice and that European integration is jeopardised when the solidarity principle is violated. The ECJ has confirmed the existence of the duty to solidarity multiple times and even developed it further, e.g. by determining that member states must subordinate their individual interests to the Union interests (Marias 1994). Recently, the ECJ (2019) stipulated a general principle of solidarity binding both the EU and its member states with regard to the common interest of the European Union, entailing a general obligation for all addressees to take into account the interests of the other stakeholders. The principle of solidarity obliges member states to take all measures necessary to guarantee the application and effectiveness of EU law and imposes mutual duties on EU institutions to cooperate in good faith with the member states (ECJ 2021). It should be noted, however, that although the Court judges frequently on solidarity, it has never comprehensively clarified its understanding of it (Schiek 2020).

This jurisprudential shortcoming notwithstanding, we have demonstrated why solidarity is the foundation without which the European Union cannot stand or function effectively. After joining the Union on a voluntary basis and in full acceptance of the prevailing duty to solidarity, the involved actors agree to legal norms that are supposed to ensure the realisation of their common objectives. Solidarity becomes a necessary condition to ensure the effectiveness of the policymaking process. We understand the solidarity principle, hence, as a *conditio sine qua non* of the European Union that encompasses its whole regulatory scope. Without solidarity, the EU cannot maintain its *raison d'être*.

Seeking an answer to the question as to *how* the solidarity principle is operationalised in the EU, we find the procedural expression in the form of the principle of sincere cooperation that can be traced back to the very beginning of the European project. A thorough account of the development of the solidarity principle during the course of European integration has been provided elsewhere (Saracino 2019). In short, in what is considered the founding act of European integration, Robert Schuman's declared that 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a

de facto solidarity' (Schuman Declaration). This 'de facto solidarity' found its way into the preamble of the Treaty of Paris in 1951 that created to European Coal and Steel Community (Treaty of Paris 1951). That cornerstone implemented the aim of continuously and incrementally developing solidarity between the member states. A progressing integration process led to an ever closer and extended cooperation in an increasing number of areas by an increasing number of member states, accompanied by a deepened appreciation of solidarity both in qualitative and quantitative terms. This development cumulated in the Treaty of Lisbon where it is mentioned 16 times and has gained an all-encompassing status of fundamental principle.

In Art. 2 TEU, solidarity is not mentioned as one of the values which is consistent given the foregoing findings.[ii] Accordingly, solidarity is being mentioned as one of the principles that characterise the commonalities of the member states and are the prerequisites of the common values. Solidarity is described as a de facto solidarity underlining a normative dependence. Art. 3 TEU sets out the primary objectives of the European Union, one of which is to 'promote […] solidarity among Member States' (para. 3). This passage anchors the solidarity principle as a general clause and structural principle of Union law (Petrus/Rosenau 2018). Furthermore, the article substantiates solidarity objectives in other policy areas (Saracino 2017). All Member States and Union organs must adhere to the solidarity principle in policymaking and legislation, as well as implementation and application of all Union provisions. By equipping the ECJ with the competence to review all measures pertaining to the overall objectives in Art. 3 TEU with the entry into force of the Lisbon Treaty, the solidarity principle could now be potentially tested as regards its justiciability and interpretation (Ross 2010).

The answer to the question as to *how* the solidarity principle is operationalised in EU law can be found in Art. 4(3) TEU which establishes the principle of sincere cooperation. It permeates all policy areas of the Union, regulates the relationship between the Member States as well as between the Union and the Member States, and, in conjunction with Art. 13(2) TEU, among the institutions (Blanke 2013). This loyalty principle binds all addressees to the mandatory adherence to the common objectives (Bieber 2013). The principle of sincere cooperation entails the duty to coherent, unrestricted and uniform application and implementation as well the primacy of Union law, obliges the Member States to actively promote and Union activity, and prohibits the addressees to undermine or even disable the effectiveness of Union provisions (Klamert 2019). It is the necessary procedural specification of the independent, overarching, and all-encompassing solidarity principle (ECJ 1969). Given its fundamental significance and attachment to the solidarity principle, it is only consequential that similar forms of the loyalty principle recur in all Community and Union Treaties since the ECSC. In light of constant changes of governments in member states, this clause aims at safeguarding the

results of EU law-making to ensure continuity, without entrenching an eternity clause. Furthermore, the loyalty principle also demands consensual conflict resolution (Klamert 2014).

In a nutshell, solidarity is a necessary condition for the European Union because it is the means to maintain its *raison d'etre*. It manifests itself as an overarching and all-encompassing principle, operationalised in the EU legal order. Every violation of commonly adopted law that prevents the achievement of the common objectives must be regarded as a violation of the solidarity principle. Sustained refusal to adhere to Union law and honour the jointly determined policy goals deprives the integration project of its effectiveness and *raison d'être* since the EU can only function on the basis of the rule of law.

Solidarity in the EU's Asylum Policy

Since the Treaty of Lisbon, asylum policy, traditionally part of justice and home affairs (JHA) policy, has been subsumed under the Area of Freedom, Security, and Justice (AFSJ), whose policy objectives are inscribed in Art. 3(2) TEU, under the shared competence of EU and member states. Art. 67 TFEU establishes the principles of the AFSJ and emphasises the prevalence of the solidarity principle with specific mention of the member state component and under implicit exclusion of third country nationals in paragraph 2. It underlines a notion that solidarity between the member states seems to be of salient importance in the corresponding policy areas. This nation is corroborated by the fact that the contracting parties have opted in include an extraordinary solidarity clause in Art. 80 TFEU:

> The policies of the Union set out in this Chapter [asylum, border controls, immigration; D.S.] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

This clause accounts for the joint underlying acknowledgement of an outstanding necessity for solidarity in these policy areas due to a lack of fair sharing of responsibility, precipitated by the unfair responsibility allocation mechanism found in the Dublin system (Saracino 2018). Southern and Eastern peripheral member states bear the brunt of migratory movements of displaced people to Europe from the global South, irrespective of root causes. Accordingly, this solidarity clause has been inserted, substantiating the duty to solidarity between the member states and connecting it to fair sharing of responsibilities. For the area of asylum policy, provisions of assistance and support fall into this category to give effect to the solidarity principle. Although only financial aspects are explicitly named, information exchange, technical support, and training can also be subsumed under Art. 80 TFEU measures (Kotzur 2015).

Art. 80 TFEU has gained prominence since the asylum governance crisis of 2015/2016. In an effort to mitigate the pressure on the member states of main entry, the Commission (2015) proposed a temporary relocation mechanism. It envisioned the mandatory relocation of asylum seekers from Greece and Italy to all other member states based on quotas. Both the Commission's proposal and the Council decision (2015/1601) bore direct reference to give effect to Art. 80 TFEU. Shortly after, Hungary and Slovakia brought legal action against the decision before the ECJ (Case C-643/15; Case C-647/15). In its 2017 decision, the European Court of Justice (2017a) dismissed the case on all accounts. The judges determined that all measures within asylum policy must adhere to Art. 80 TFEU (ECJ 2017b). According to the judgement, neither the financial nor the operative assistance, nor the implemented border management measures had been sufficient to relieve the burden on the respective member states, substantiating the necessity of the relocation scheme. The judges interpreted the Council decision as a necessary expression of Art. 80 TFEU.

After sustained refusal by Hungary, Poland and the Czech Republic to implement the provision, the Commission (2017) embarked on the path to an infringement procedure which eventually led to legal action brought before the ECJ in December of 2017. In its following judgment, the Court (2020a) found that the defending member states had infringed Union law by not complying with the relocation mechanism. The judges confirmed that all asylum measures must adhere to Art. 80 TFEU and that all Member States must abide by the principle of solidarity and fair sharing of responsibility (ECJ 2020b). Member States may not, moreover, avoid obligations emanating from Union acts, since this would go against the overall objective of solidarity. In a later ruling on energy solidarity, the Court (2021) referred to this judgment, hinting at a dogmatic development in terms of the solidarity principle in the EU through this seminal 2020 ruling. It brought to the fore an understanding of the solidarity principle as 'serving as the thread that brings them [the overall EU objectives and the specific objectives within the policy areas, D.S.] together and gives them coherence' (ECJ 2021: 43). These trends substantiate the understanding of solidarity contended in this paper by underlining the indispensable nature of the solidarity principle for the EU and contouring the specific expression in the area of asylum as the fair sharing of responsibility between the member states.

All asylum policy measures, their formulation, implementation and realisation must be compatible with the solidarity principle specified by Art. 80 TFEU. It demands a collective responsibility and concerted effort to achieve asylum policy goals (Moreno-Lax 2017). In the CEAS, solidarity is expressed not only through correct implementation of measures but also in supporting each other to develop asylum systems that work for the good of the whole Union (Boswell et al 2011).

In case a member state is unable to honour its commitments, the solidarity principle demands support measures to safeguard joint goal attainment. If such measures would not be successful, the provision causing the breach must be scrutinised for a potential breach of the solidarity principle. If the issue is, however, a member state's unwillingness to honour its obligations, this could qualify as a clear-cut breach of the solidarity principle. Such a case of violating EU solidarity should lead to some sort of negative consequences, for example potentially disqualifying the delinquent from support measures.

Conclusion: An analytical framework of solidarity for the European Union

European integration has borne the legal commitment to jointly legitimised objectives making up a European common good as well as an all-encompassing solidarity principle as a means to achieve these objectives. The rule of law prevents solidarity from being a mere political postulate by equipping it with legal effect. The solidarity principle in the European Union is a *sine qua non* of the European Union. It has its procedural expression in the principle of sincere cooperation to safeguard the EU's function, effectiveness, and *raison d'être*. Regarding the area of asylum policy, the solidarity principle has been connected to the fair sharing of responsibility between the member states by means of Art. 80 TFEU and subsequent ECJ case law.

Amalgamating the conceptual history approach with the findings from our document, legal and content analysis, we can identify an analytical framework able to render researching solidarity in the European Union more precise.

(1) [*particularity*] Solidarity is characterised by its particular (non-universal) nature and is, hence, only applicable to specific reference groups.

The European Union is such a particular reference group.

(2) [*instrumentality*] Solidarity is aimed at a common objective whose legitimacy is accepted by the reference group. Solidarity is a means to the end of achieving that objective.

The European Union's common objectives is the jointly legitimised and voluntarily agreed common good. In order to achieve these objectives solidarity is needed both as a precondition upon accession and as a vehicle to operationalise the common good pursuance. The actors of the reference group act in enlightened self-interest.

(3) [*reciprocity*] Solidarity creates a mutual connectedness and demands a reciprocal commitment.

Being part of the EU connects all Union actors to each other and commits them to the commonly agreed objectives through the rule of law. The solidarity principle, on the one hand, ensures that all actors honour their obligations in terms of the common objective; on the other hand, it determines how achieving the goals is operationalised through the principle of sincere cooperation.

> (4)   [*responsibility*] Solidarity manifests itself in vouching for each other in terms of the common objective. This mutual responsibility is expressed by support and assistance.

The solidarity principle in the EU requires all actors to vouch for each other in terms of the common objectives even if it means temporary disadvantages of individual actors. Achieving the European common good trumps volatile national interests. Solidarity is expressed on concrete measures of support and assistance that can differ across policy areas.

For the solidarity principle in the European Union to be effective, all four determinants must be met. What has been shown in this piece is that there is a general, all-encompassing solidarity principle in the EU. We have broken it down into an analytical framework by using a conceptual history lens and corroborating the findings with extensive document, legal and content analysis. Solidarity is inherent to the system of the EU, evidenced by determinants (1), (2), and (3). In conjunction with determinant (4), solidarity has been shown to be a necessary condition for the European Union and its member states to attain their common objectives. The *responsibility* determinant can vary across policy fields, hence the provisions for support and assistance should enjoy special focus when applying the framework.

In case of the European Union's asylum policy, actors are bound by Art. 80 TFEU to honour a fair sharing of responsibility between the member states as a specific expression of the overall solidarity principle. Solidarity in the asylum policy of the European Union demands every asylum provision to be in line with Art. 80 TFEU. Furthermore, it posits concrete measures of support of assistance to achieve the common objectives. Those are indeed realised in the Union sphere by specific financial instruments, like the Asylum, Migration and Integration Fund (AMIF), and operative agencies like European Union Agency for Asylum (EUAA), further buttressing the validity of the elaborated analytical framework.

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[i] Solidarity is not limited to interpersonal relationships. See also Rippe (1998).
[ii] Rizcallah (2019) has wondered why solidarity is not being listed as a value, still arguing that the concept is an EU founding value being in crisis.

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