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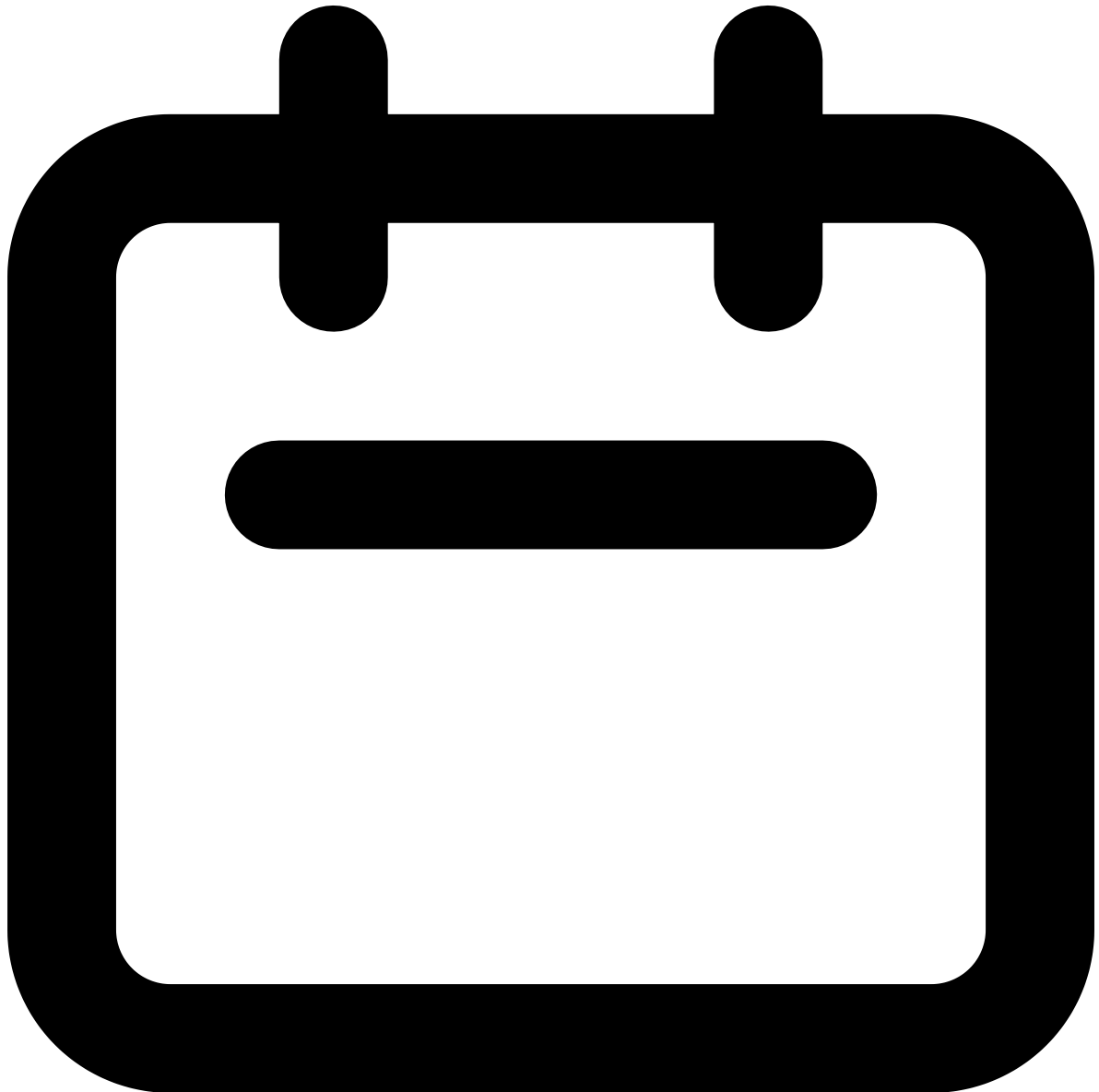
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Green v. the United Kingdom: absolute parliamentary immunity in Parliament, no matter the cost?

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May 02, 2025

by **dr. Mathieu Leloup**

Introduction

Parliamentary immunity is a staple of domestic constitutional law, designed to protect free speech in Parliament. It is present in some form or another in every country of the Council of Europe. Broadly [defined](#), it is a legal instrument which inhibits legal action, measures of investigation, or measures of law enforcement in criminal and civil matters against Members of Parliament. Clearly, since this immunity bars legal action against parliamentarians, it leaves those who consider themselves harmed by their expressions with little remedy. Unsurprisingly then, this type of cases regularly reaches the Strasbourg Court. On 8 April 2025, the Court ruled on the latest of this type of cases in [Green v. the United Kingdom](#).

Facts of the case

The case concerned Philip Green, a well-known businessman and chairman of a large multinational retail company. In 2018, the company was contacted by a journalist working for the Telegraph, who intended to report on details of serious allegations against Green of sexual harassment and bullying made by former employees. However, the company and the employees had previously settled employment proceedings with former employees, which included non-disclosure agreements (NDAs). Because of this, the company and Green sought an injunction to prevent the Telegraph from disclosing information they believed to be

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Green then lodged a case at the Strasbourg Court. He complained under Article 6 (1) ECHR and his right of access to a court that the parliamentary privilege barred him from bringing proceedings against Lord Hain. Further, he complained under Article 8 ECHR that he was harmed as a consequence of Hain's intervention, arguing in essence that the UK breached a positive obligation to have in place a legal framework that ensured that court injunctions were respected by Members of Parliament.

Judgment

The Court started its reasoning by repeating the general principles concerning Article 8 and Article 10, including the constitutional principles of parliamentary immunity and autonomy of Parliament that are central to a case like this.

The key question in this case, according to the Court, was whether the positive obligation arising from Article 8 to protect Green's right to respect for private life required the implementation of *ex ante* and *ex post* controls to prevent Members of Parliament from revealing information subject to privacy injunctions. The Court held that irrespective of the specific facts of the case at hand, the implications of this question were necessarily wider and implied the balance between the legislature and the judiciary. It pointed to some specific elements of parliamentary law in the UK to argue that the applicant had not been completely devoid of *ex ante* or *ex post* controls and held that it was not aware of any Contracting States that implemented more robust mechanisms. In fact, from a comparative survey that the Court carried out for this case, it appeared that in most States parliamentary privilege affords absolute protection to statements that were made in Parliament such as those in the case at hand.

As to the argument by the applicant that speech that violates terms of a court injunction is not the type of meaningful debate that parliamentary privilege was designed to protect, the Court referred to its older case law in which it focused on the existence of a clear connection between the statement by the Member of Parliament and the parliamentary activity. So far, it had never ruled that a statement made inside Parliament fell outside the scope of the parliamentary activity.

As things stood, and given the broad margin of appreciation in this field, the Court held that there were no sufficiently strong reasons to substitute its view for that of Parliament and to require the introduction of further *ex ante* or *ex post* controls. It therefore found no violation of Article 8.

As to the complaint concerning Article 6 (1), the Court repeated some of its earlier findings. By arguing that his right of access to a court had been violated, the applicant in essence called for a specific type of *ex post* control, namely a judicial review. Again, the Court stressed that such a remedy appeared to exist in very few, if any, Contracting States and found that requiring such a remedy would be incompatible with the wide margin of appreciation afforded in this field. It rejected the claim as manifestly ill-founded.

Analysis

As mentioned, it is not the first time that a case concerning the immunity of Members of Parliament is brought before the Court. It must be said that this strand of case law does not excel in conceptual clarity, likely due to the very factual, individual content of these cases, and the variety in constitutional framework governing the disputes on the domestic level. This type of case indeed has an almost inherently dual nature, with on the one hand a conflict of individual rights – freedom of expression vs. right to respect for private life –, and on the other a conflict between the constitutional branches of power – legislature vs. judiciary.

A confirmation of absolute freedom of expression in Parliament

As to the first, individual dimension, this judgment is fully in line with earlier case law. In older cases like [A v. UK](#) and [Zollmann v. UK](#), the Court had already accepted an absolute immunity for expressions uttered in Parliament, and ruled that such an immunity did not disproportionality limit the right of access to a court. The Green case does include some novel elements, like the fact that the case was built primarily around the positive obligation stemming from Article 8 ECHR, rather than the right of access to a court under Article 6 (1) ECHR, and the added complexity that with his speech, Lord Hain ignored a court injunction and violated the so-called *sub judice* principle. Yet, for the majority, these elements did not suffice to deviate from the principles established in earlier cases. In their concurring opinion, however, judges Rădulețu and Guerra Martins held that the latter element distinguished this case from the earlier judgments and would have preferred a more in-depth reasoning concerning Article 6 (1).

It is not hard to see that such absolute immunity can lead to painful outcomes for the individual involved. The case of *A v. UK* (where a Member of Parliament had called the applicant by name, calling her and her family the 'neighbours from hell', which led to her receiving hateful mail, being spat at and abused by strangers, and ultimately having to move) remains a prime example of that. In the Green case as well, the applicant, who forever lost his anonymity in the proceedings, because Lord Hail mentioned him by name, knowing full well he violated a court injunction but doing so because he felt protected by parliamentary immunity, is left with little avail.

The Court does seem to be responsive to the argument by Green that the intervention by Lord Hail could not be seen as the type of meaningful debate that parliamentary immunity is intended to protect and called the events leading up to this case of considerable concern. At the same time the Court was not willing to override its earlier case law and the well-established principle of autonomy of Parliament. It stated that if it were to consider that a speech in Parliament, made by a Member of Parliament, would fall outside the scope of his parliamentary activity, this would be unprecedented and would run counter to the operation of parliamentary privilege in the majority of Member States. At the same time, it pointed out that the UK was aware of the problem of immunity being used to fracture injunctions and therefore felt that for the time being it could be left to the State to determine whether further controls might be necessary to prevent such things happening in the future. Yet, given the serious impact of the disclosure at hand for the applicant, not to mention the implications for the rule of law and the separation of powers within the UK of parliamentarians usurping the role of judges, it considered that the need for appropriate controls must be kept under regular review at the domestic level.

Whereas the Court thus somewhat shows its teeth at the end and leaves the door slightly ajar for possible future intervention, this all remains rather meek and leaves the applicant in this case with nothing. This may be perceived as a somewhat frustrating conclusion, particularly from a human rights court. Yet, such is the price to pay for the central principle of freedom of expression for Members of Parliament. To be clear, the Court does not oppose Contracting States from allowing for judicial review in such circumstances, it simply does not require it. In these circumstances, it is up to Parliament itself to regulate and sanction this type of interventions.

Parliamentary immunity and the balance between legislature and judiciary

Parallel to the individual dimension of this case, there is a more general, institutional dimension as well. Indeed, over any case concerning parliamentary immunity looms the spectre of separation of powers and the constitutional balance between the legislature and the judiciary. It is clear that the Court is

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then, almost inherently, amount to indirect control by the Court over the parliamentary speech itself. It then held that the response to a parliamentarian acting incompatibly with the principle of separation of powers should not further undermine the very principle it seeks to defend.

As noted by several scholars (e.g. [here](#) and [here](#)), including [myself](#), the principle of separation of powers has lately come to take a central role in the case law of the ECtHR, not in the least because of the sharply declining rule-of-law standards in some countries. This scholarship has generally called for the Court to be more aware of the sometimes grave impact that its judgments on individual rights can have on the domestic balance of powers. It is welcome to see that the Court is doing that so explicitly in this judgment. At the same time the approach of the Court in this case departs strongly from its earlier case law (e.g. [here](#) and [here](#)), where it says that ‘no provision of the Convention requires states to comply with any theoretical constitutional concepts regarding the permissible limits of the powers’ interaction. The question is always whether, in a given case, the requirements of the Convention are met.’ This is a striking difference with the Court’s approach in *Green*, where it was even considering the downstream effects of a potential finding of a violation being brought before the Court once more.

The reason for this difference is not immediately clear. If it were UK-exceptionalism this would clearly not be convincing. If the Court were of the opinion that parliamentary immunity is somehow different than other separation-of-powers related topics, this would also not convince. A judgment finding a violation of the right to an independent tribunal established by law just as well implies the country’s institutional architecture and may also fundamentally alter a careful balance between the branches of power in the Contracting States. Perhaps the Court is simply starting to grapple more with the separation-of-powers effects of its judgments? Time will tell in which direction the Court’s case law develops.

Finally, while generally consistent with and grounded on the Court’s earlier case law, the Court’s strong reliance on the principle of parliamentary autonomy is somewhat strange in light of the complete absence of any reference to the [Mugemangango](#) judgment, at the moment the most recent Grand Chamber judgment on the topic. In that judgment – which concerned post-election dispute resolution – the Court held that such disputes could not be dealt with solely by Parliament, but should be subject to a review by a (quasi)judicial body. While it is obviously not exactly the same topic, in *Mugemangango* the principle of parliamentary autonomy did not prevent the Court from imposing an external review on the functioning of Parliament, which makes the complete absence of any reference – even if just to distinguish – notable.

Conclusion

The *Green* judgment fits in a string of earlier cases in which the Court accepts that speeches made by Members of Parliament in Parliament are covered by absolute immunity, no matter the cost, even when binding judicial decisions may be frustrated. While this is a harsh reasoning for individuals’ rights, it is inspired by a concern not to upset the institutional balance between the legislature and the judiciary.

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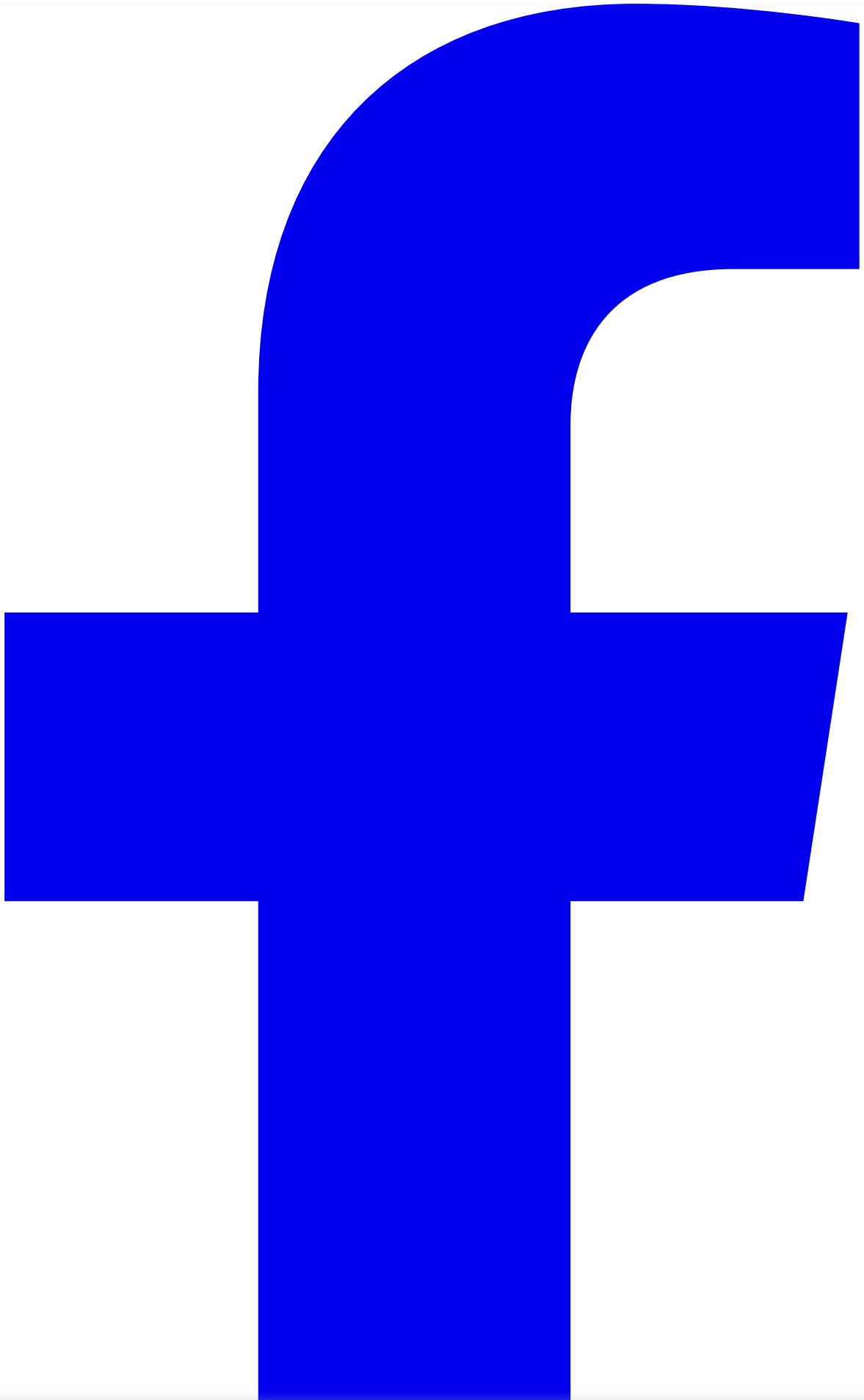
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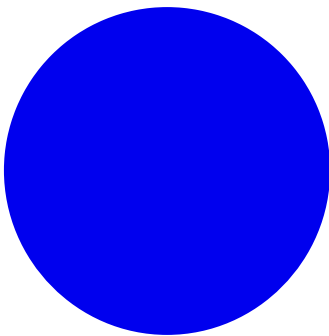
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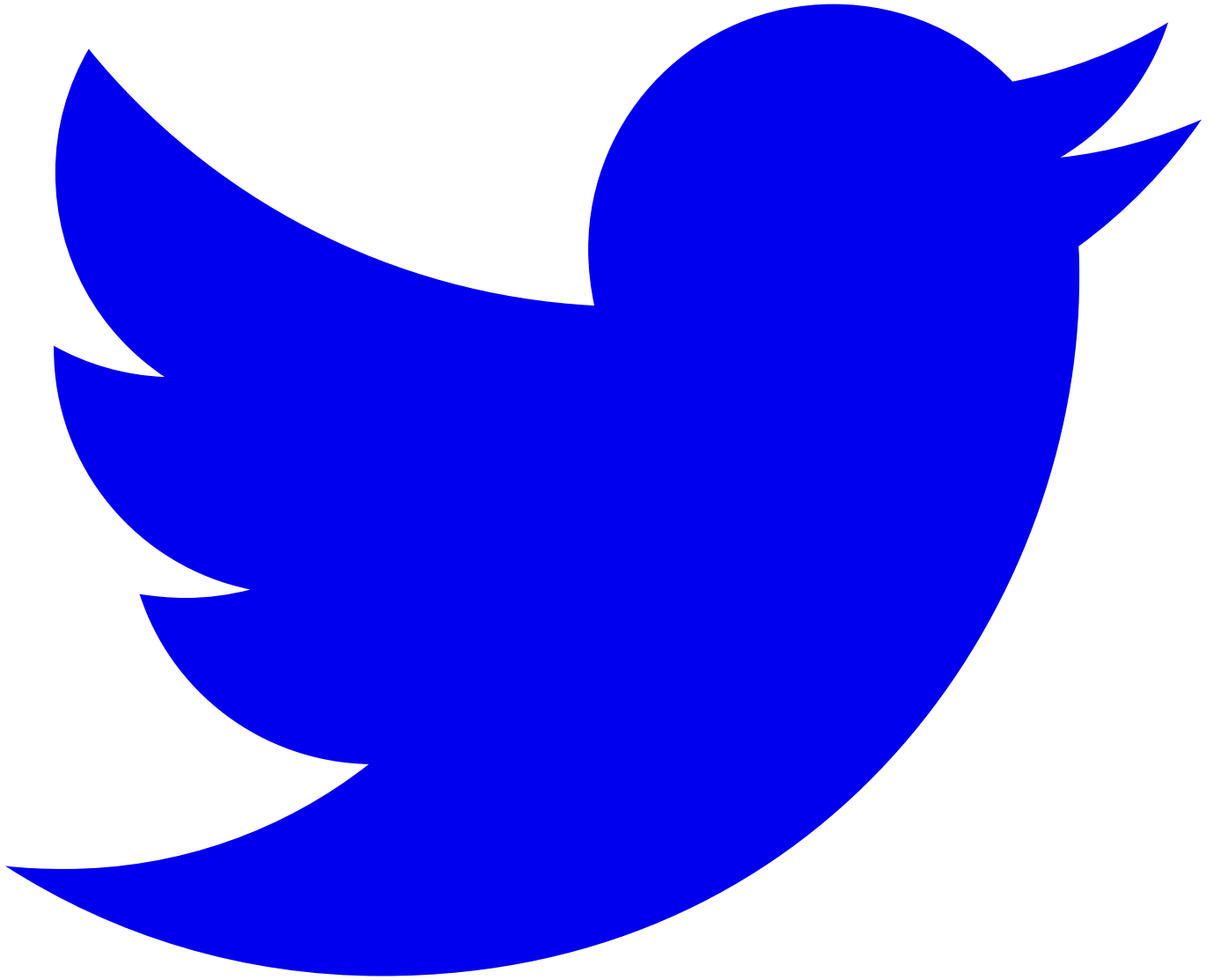
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BY Mathieu Leloup

Mathieu Leloup is assistant professor of constitutional law at UGent, assistant professor at Tilburg University, and postdoctoral researcher at the Judicial Studies Institute, Masaryk University.

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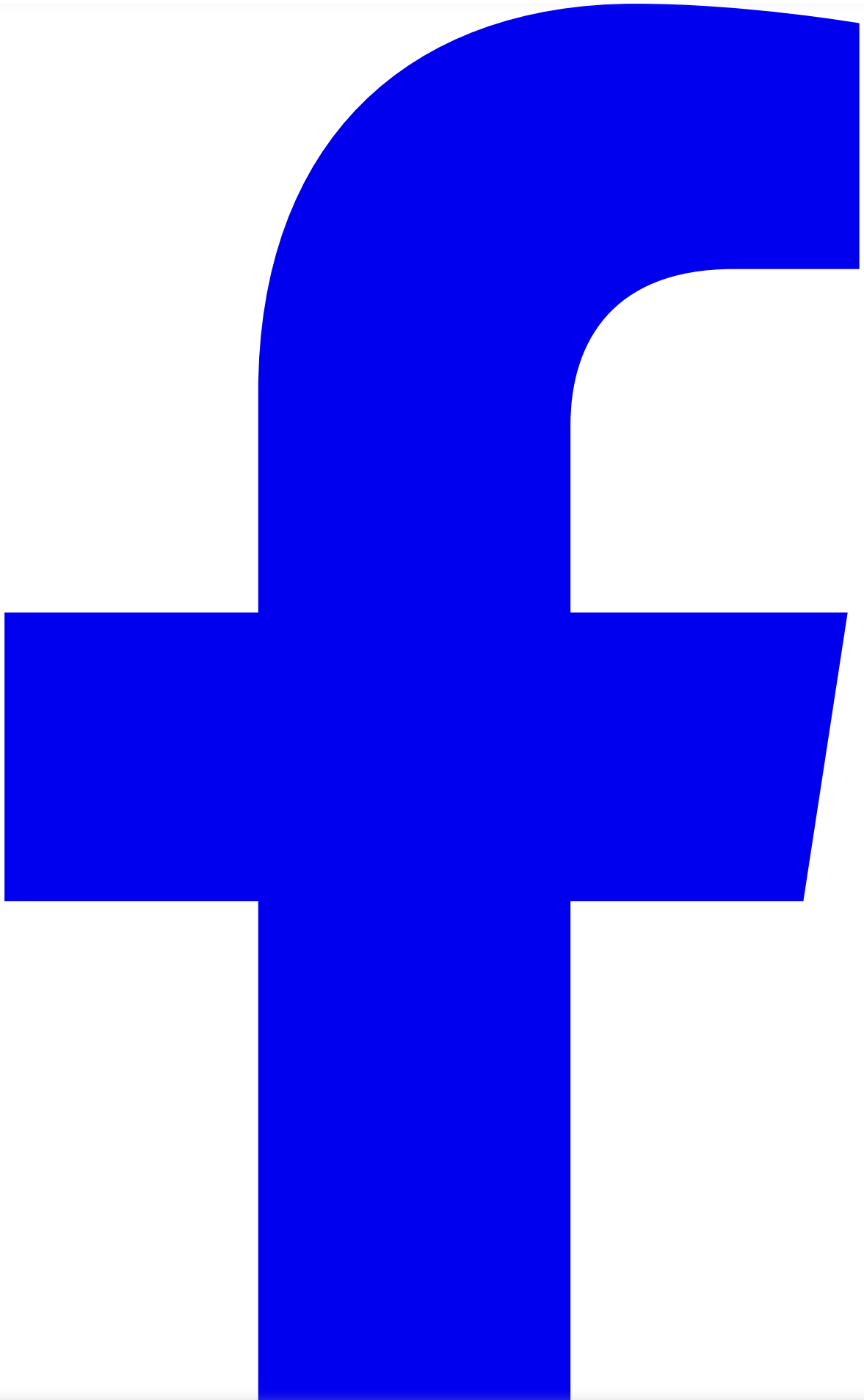
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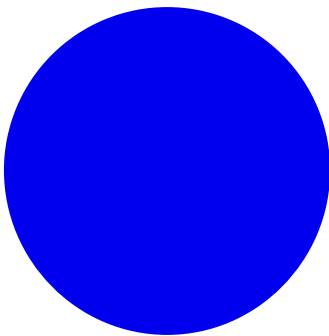
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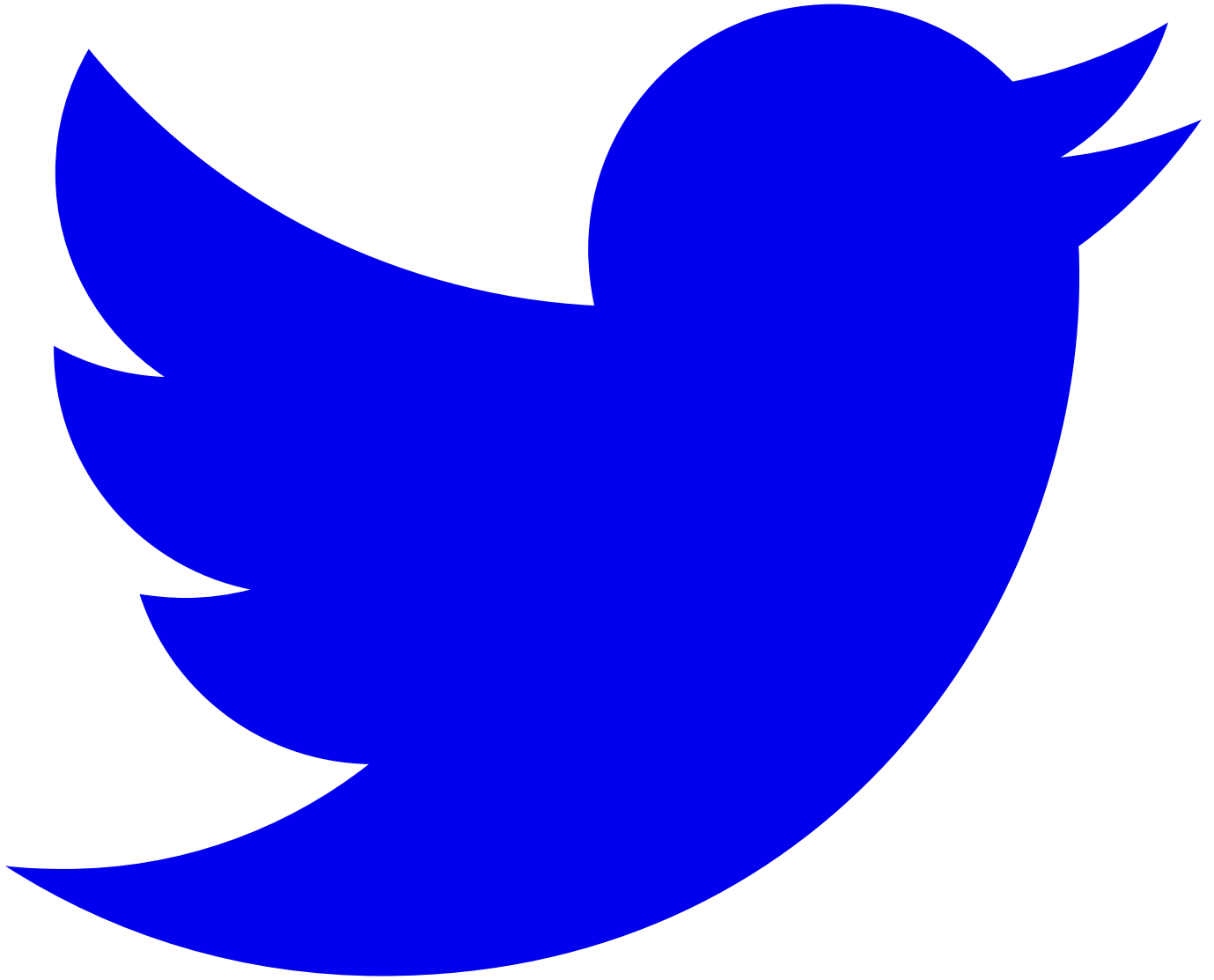
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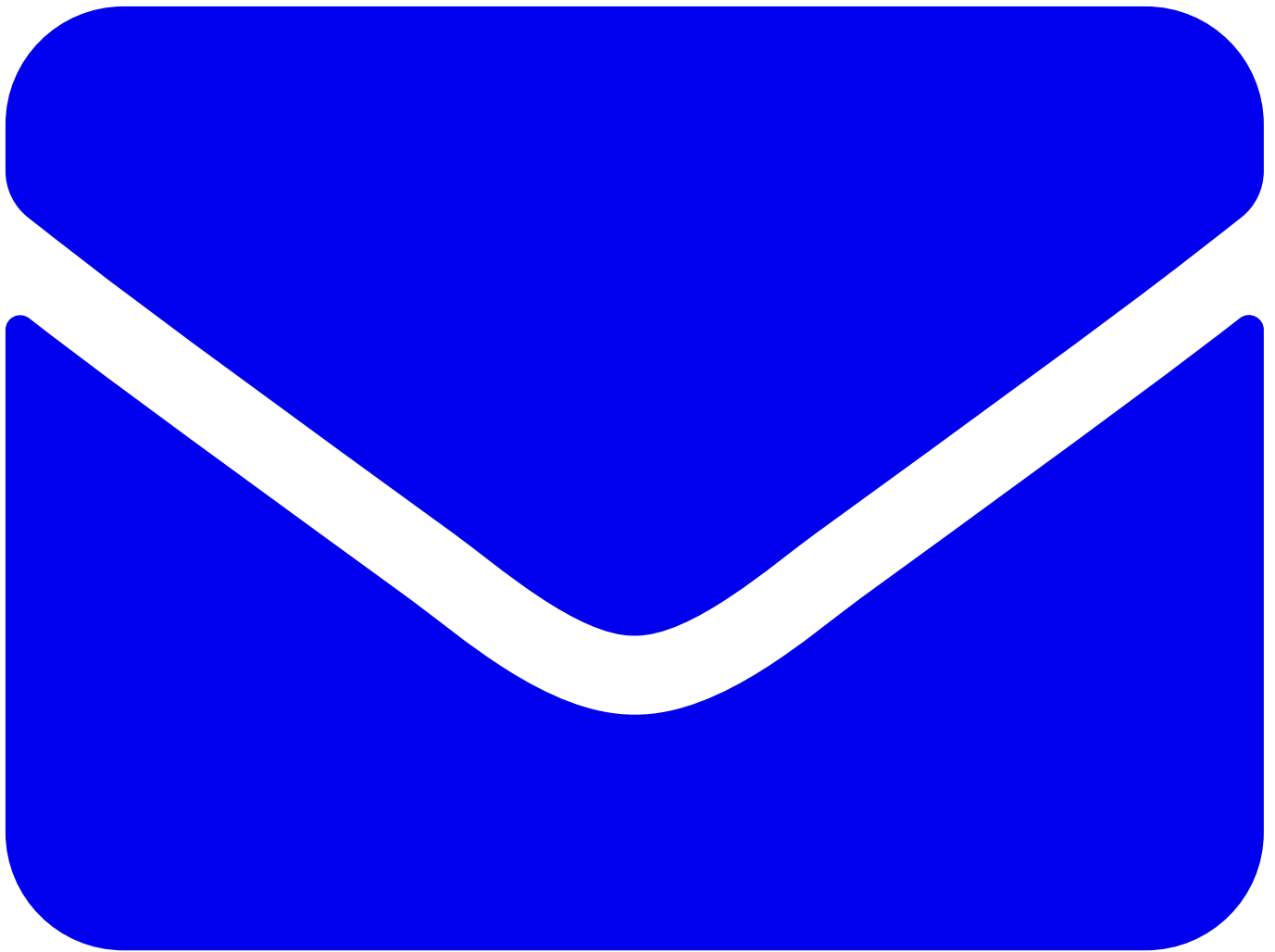
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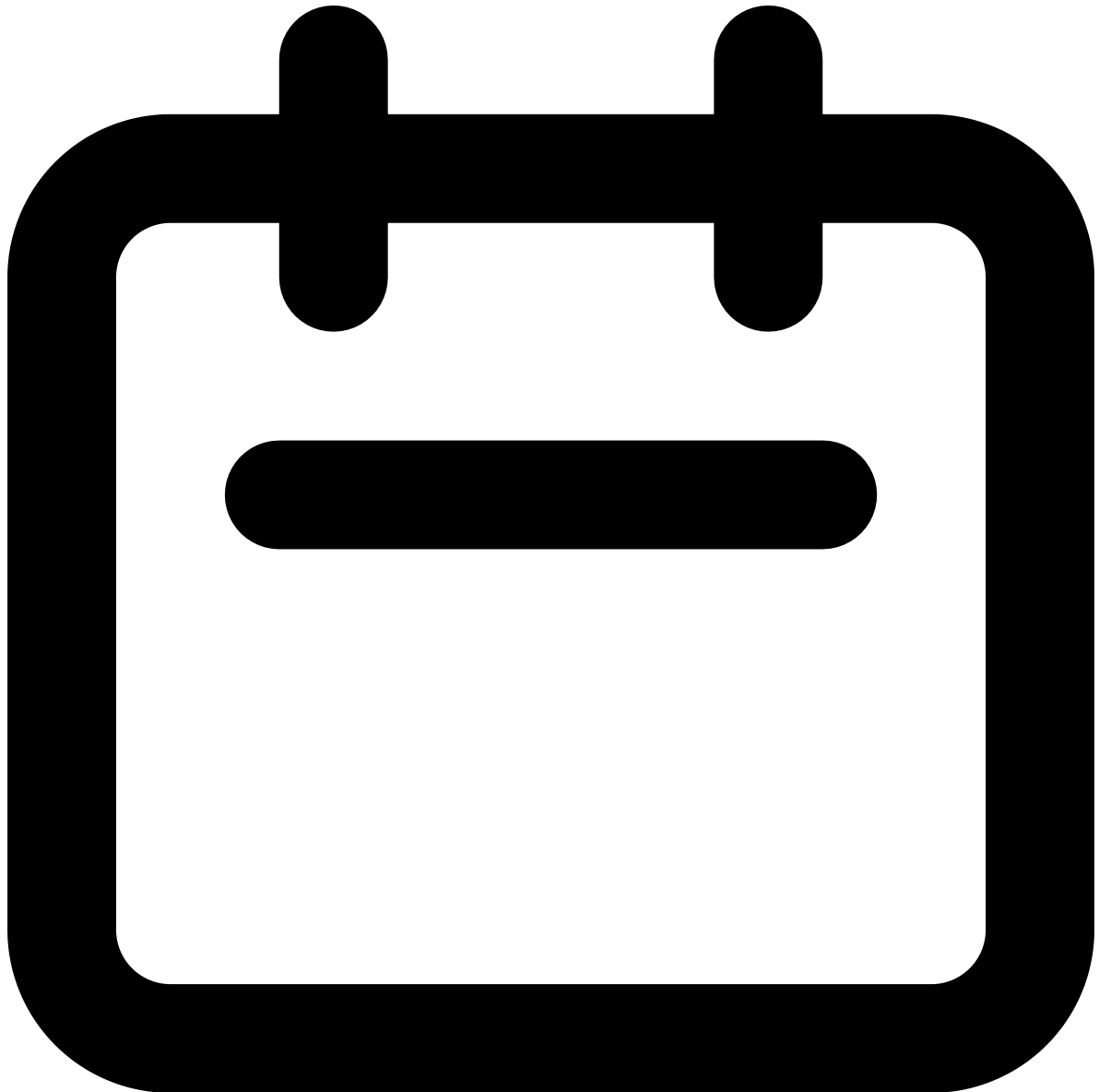
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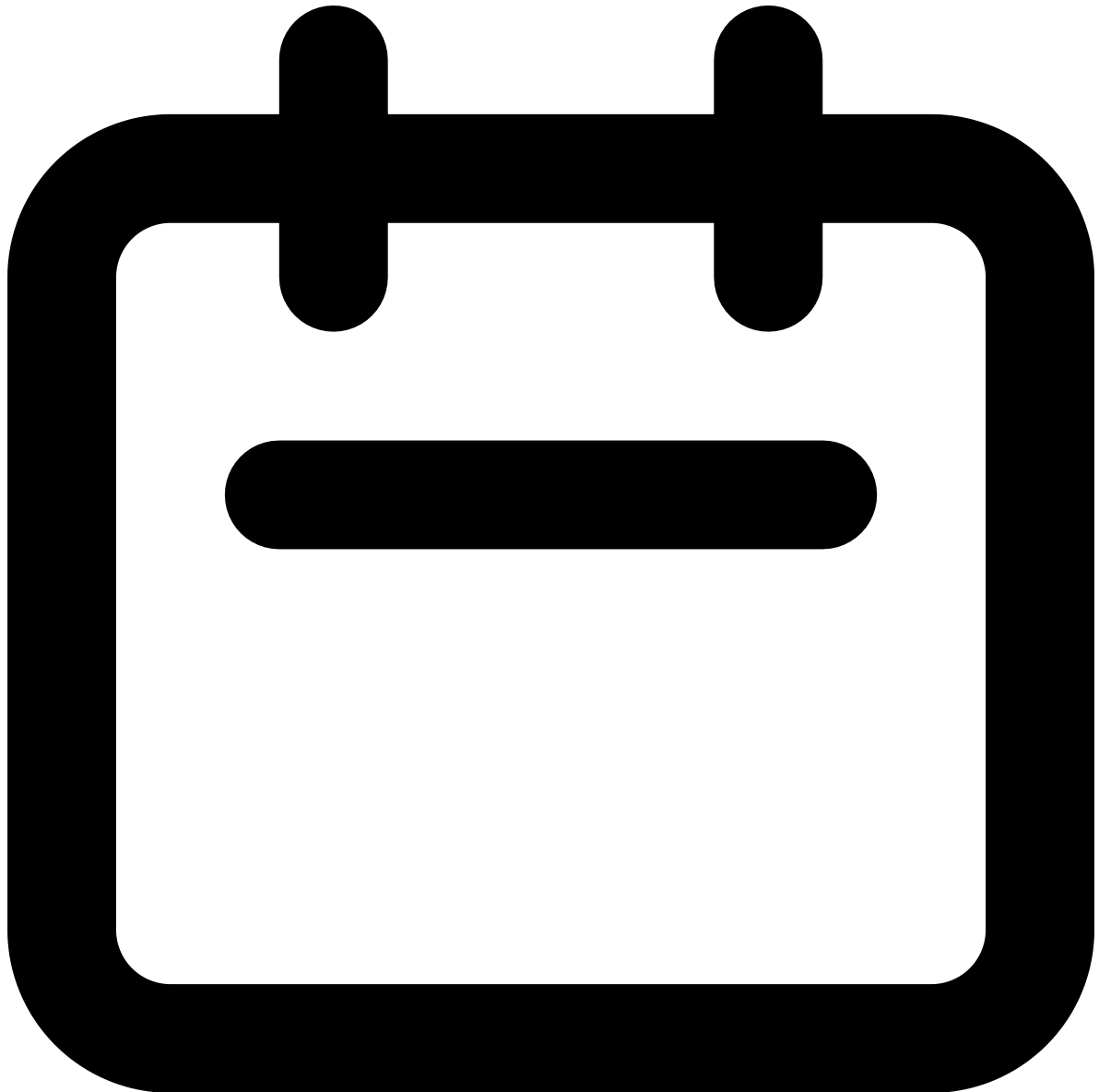
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