Law and Identity in the European Integration

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Abstract

The success of the European integration depends, to a large extent, on restoring the equilibrium amongst its various dimensions: the economic, the political and the cultural. This rebalancing should primarily focus on upgrading the hitherto relatively neglected cultural dimension of the European construct, as a basis of European identity. Since law is not only an instrument, but a core element of European identity, rule of law, should be respected on the international, European and national level. The traditional strict, 'Kelsenian' hierarchy of legal norms has been substantially loosened, primarily, but not exclusively due to the emergence of European law. The geometric order of legal norms has become heterarchic and the neat ranking of the different levels as well as the absolute primacy based upon that ranking has been questioned. This applies equally to the relationship between international law and European law and between European law and the national laws of the Member States. Both the principle of the autonomy of European, law and the constitutional identity of the Member States aim at protecting the core principles of European law, and the laws of the Member States, respectively. The rule of law does not necessarily presuppose a neat geometric hierarchy of legal norms. It does require, however, an orderly structure, where the precise areas of the autonomy of EU law, as well of the constitutional identity of Member States are defined in a clear and foreseeable manner. While a perfect order can never be established, legal certainty and ultimately, rule of law could be substantially reinforced through mutual empathy and understanding as well as continuous and effective dialogue, consultation and concentration between the various levels of legislation and, in particular, of adjudication.

Keywords: hierarchy of norms, heterarchy, rule of law, identity, culture.

1. Introduction

The European integration process has been the most successful political exercise in the history of our continent. It has been, and it is confronted with numerous challenges and a series of crises prompting various reactions generally referred to as reforms. It is no wonder that the two most frequently used words in the history of European construct are crisis and reform. One of the main reasons for this success is the fundamental and indispensable role that law, legal norms, rules

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and regulations have played all through this complex political, economic, and institutional development.

It all started as a political project (*'finalité politique'*), born in a given historical situation. After the failure of establishing a political union, a European Political Community and a European Defence Community the founding fathers arrived at the conclusion that this political finality was to be achieved by the means and on the basis of gradual economic integration. What was, however, unique, perhaps unprecedented in this exercise, was its method: the instrument of legislation for building a legal and institutional structure and establishing a constitutional order. This construct was established and developed through law and has been functioning through legal norms ever since – legislation or case-law – creating legal rights and obligations for the European institutions, Member States, and most importantly, their citizens and economic actors as well. Without this legal construct: its core elements, the primacy of community law and its direct effect, that is without an autonomous legal order, neither the common (and subsequently, the single) market, nor the common policies could have been put in place, and economic integration could not have reached the level – albeit still far from perfect – where it stands now.

What was one of the main factors of success, at least for the economic dimension of the project, also gave rise to criticism geared precisely towards the preponderant role of rulemaking and the legalistic approach dominating the integration process. Critics referred to the excesses of regulatory fervor together with the rulemaking competition between European institutions, with all of these contributing to the perceived or real 'competence creep' of the very same institutions.

However, law is not only an instrument, a useful device of the integration process. It is, at the same time, the core element of European identity. It is often said that this identity is symbolized by the three hills; the Acropolis, the Golgotha and the Capitolium, standing for the antique Greco-Roman cultural heritage, Christianity and the Roman law heritage, which directly or indirectly shaped or influenced all national legal systems throughout Europe. Law is therefore an indispensable and core element of the cultural heritage upon which Europe is based and should continue to be based also in the future.

While the European construct was a political project to be achieved *via* economic integration, the third basic driver of any individual or collective human venture, *i.e.* the cultural dimension upon which a European identity could be built, has largely been neglected.

Out of the three main drivers of history of mankind in general, trade (representing the economy) performed with flying colors; the flag (representing political power) was less successful, while the script representing culture (based upon the heritage of the past but meant to address the present and the future), essentially failed in European integration. The result is a fundamental disequilibrium between these three dimensions. The political objective is lagging behind economic integration, while the cultural element, a common vision and identity, is without doubt, the weakest point. In other words, or to put it

symbolically, the Merchant went far ahead, the Soldier only followed him from a distance and the Missionary representing ideas fell way behind.

2. Integration by Law

It is often said that the EU is an economic giant and a political dwarf. Although this statement is undoubtedly excessive, the disequilibrium between the economic weight and the geopolitical clout is evident and well reflected in the difference between the achievements of the successful trade policy and the half successes and failures of the common foreign and security policy. The imbalance between trade and flag is compounded and deepened by the even more serious disequilibrium between the material and cultural-spiritual dimension, which is the ultimate source of most of the flaws, challenges, distortions and the consecutive crises integration has been facing, right from the beginning and all through its history.

It is remarkable what a different role law plays in the various fields of the integration process. The establishment and the functioning of the common and single market would have been impossible without the primary role of rulemaking. This was the natural cause as well as the consequence of the well-known incremental, technical, functional, reactive approach in line with what is referred to as the Monnet method or the neo-functional approach.[1] Rules and regulations had to be made in order to harmonize and unify the vast variety of existing national regulations. For the organic and technocratic construction of the new structure, law was the only possible method, the instrument that best served the purpose of economic integration. Similarly, to create a common commercial policy (for a long time the only perceptible area of external action), legislation and case-law were paramount devices. In fact, the scope of common commercial policy has been progressively extended and widened not only by the subsequent treaties but also by a list of groundbreaking decisions of the CJEU, of which the *Singapore Opinion* was the most recent one.[2]

This was certainly not the case in the field of foreign and security policy, as it is very well demonstrated by the restricted scope of the legal acts and accordingly, the minimal role granted to the Court by the Treaties in this area. The jurisdiction of the Court is limited to monitor compliance with procedural provisions and the extent of institutions' powers for the exercise of competences,[3] and to review the legality of decisions providing for restrictive measures against natural or legal persons.[4]

1 Federico Ottavio Reho, *For a New Europeanism*, Wilfried Martens Centre for European Studies, 2017, available at www.martenscentre.eu/sites/default/files/publication-files/future-europe-new-europeanism.pdf.

2 Opinion of 11 November 1975, *Opinion 1/75, Opinion given pursuant to Article 228(1) of the EEC Treaty,* ECLI:EU:C:1975:145. Opinion of 16 May 2017, *Opinion 2/15, Opinion pursuant to Article 218(11) TFEU,* ECLI:EU:C:2017:376.

3 Article 40 TEU.

4 Article 24 TEU and Article 275 TFEU.

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In brief, for trade, law is the main, indispensable tool, while in the case of the flag, law, as a device or instrument, plays a limited role.

As it has been referred to above, law has a double role in the European integration. It is not only a tool or device; it is also a basic ingredient of our identity based on European cultural heritage. In fact, the two roles of law are closely intertwined, and one cannot function or exist without the other. Law, as a tool, is the indispensable functional device and law as an element of identity, is the cultural-spiritual basis for the strategic objectives inseparable from the system of values and principles legal norms are supposed to reflect. Accordingly, the functional role of law is hard difficult to detect in the third, weakly developed dimension of the European construct. Here, law is not a device but the heart of the vision giving a sense of purpose to the whole exercise. The two roles of law are not only interrelated, but they also have to maintain a proper balance. The tool function can only be successful in the long run if it doesn't run counter to the value-related nature of the rulemaking. In other words, the technique used must be in full respect of the law as a fundamental component of European identity.

It is equally important that law, when used as an instrument for achieving economic, political and societal objectives, takes fully into account and follows the demands of the systemic logic of its own internal structure, the principles and rules of its own complex structural and conceptual order. If these rules are not fully respected, the use of law as an instrument becomes dysfunctional, and the transformative effect of legal rules and regulations will be distorted.

Just how powerful the transformative role of law is, has been demonstrated not only through the establishment of the main elements of European economic integration, but also by the systemic changes in the Central European countries in the 90s. Here again, the main instrument of fundamental economic, political, societal, and institutional transformation (often and rightly referred to a 'constitutional revolution') was, on the one hand, the dismantling, 'deregulating' of an existing system, and on the other, the building up a new one. Here again, the given structural and conceptual rules of the complex and sensitive system of the law had to be considered, as the instrument for achieving fundamental political, economic, and societal objectives. This is not always easy to understand for political decision-makers who tend to believe that the transformative and creative power of law is unlimited and can be used irrespective of its own internal order.

Another risk related to the use of law as a transformative and creative device is not external, *i.e.* does not arise from the expectations or needs of political decision-makers but is inherent in the internal mechanism of law-making. The power of law, be it through legislation or court decisions, is never unlimited and must be exercised with reasonable self-restraint. Judicial power must have its own delimitations and has to resist not only excessive external demands, but also its own temptations to go beyond the boundaries of its role and function.

In case of European law, the scope, the limits of legislation and case-law raise two basic theoretical and practical questions, both related to the place of Union law in the universal hierarchy of legal norms. The first is the relationship between international law and Union law and the second is the relationship between

Union law and the national laws of the Member States, with special regard to their constitutional identities as derived from their national identities "inherent in their fundamental structures, political and constitutional."[5]

3. The Relationship Between International Law and European Law

The place of Union law – in what we still feebly refer to as the universal hierarchy of legal norms, despite the fact that the classic geometry based upon a hierarchic structure of these norms is increasingly dissolving and taking on a 'heterarchic structure' – is not unrelated to the much disputed nature of European integration and its product, the EU, in general. As long as there is no final answer to the original and ultimate question whether the EU is an international organization or some kind of quasi-federal state, no simple and clear definition can be given to the constitutional nature and the autonomy of European law.

This is the reason why the relationship between international law and European law has been the preferred subject of legal scholarship[6] and also a recurring issue in the case-law of the CJEU. The EU has legal personality and is the subject of public international law, bound to respect it, whether it is treaty law or customary law. International agreements concluded by the EU are binding both on its institutions and on its Member States.[7] The EU was created by international law, and the treaties creating it are themselves part of international law. The primary Union law is incorporated in international law, the latter also being subject to an ongoing and increasing fragmentation and pluralization. Union law is therefore not only a subject of international law, but also an important actor of and contributor to its development. Its contribution is also reflected by the forming and shaping of legal institutions and norms that can serve as models for universal or multilateral rules. This is the reason why Union law is often referred to as a laboratory of global rulemaking.[8]

The international agreements, to which the EU is a party, become integral part of the EU's legal order. This would mean that all these agreements are not only directly applicable, but also have direct effect, that is they can be directly invoked by individuals before national and EU instances. However, the

5 Article 4(2) TEU.

6 Timothy Moorhead, 'The European Union Law as International Law', *European Journal of Legal Studies,* Vol. 5, Issue 1, 2012, pp. 126-143; Francesca Martines, 'Direct Effect of International Agreements of the European Union', *The European Journal of International Law*, Vol. 25, Issue 1, 2014, pp. 129-147; Katja Ziegler, 'Beyond Pluralism and Autonomy: Systemic Harmonisation as a Paradigm for the Interaction of EU Law and International Law', *Yearbook of European Law,* Vol. 35, Issue 1, 2016, pp. 667-711; Inge Govaere, 'Interconnecting Legal Systems and the Autonomous EU Legal Order: A Balloon Dynamic', *Research Papers in Law*, 2/2018, College of Europe, 2018; Ramses A. Wessel, 'Studying International and European Law: Confronting Perspectives and Combining Interests', *in* Inge Govaere & Sacha Garben (eds.), *The Interface Between International and EU Law: Contemporary Reflections*, Hart Publishing, Oxford, 2019.

7 Article 216(2) TFEU.

8 Katja Ziegler, 'The Relationship between EU Law and International Law', *University of Leicester School Research Paper*, No. 15-04, 2015, p. 2.

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recognition of direct effect, while being the main rule, has never been unconditional or automatic. In its case-law, the CJEU developed two requirements for direct effect: first, the 'nature and the broad logic' of the agreement does not preclude direct effect; second, the provisions invoked are on the basis of their content "unconditional and sufficiently precise."[9] The application of these requirements gradually moved in the direction of a narrower recognition of direct effect, as regards both invoking the given provision and invoking the invalidity of an EU legal act because of incompatibility with the agreement. Until 2008, the main line of cases was that direct effect was a presumption that could be rebutted by producing proof as to the absence of one of the requirements.[10] Since then, the concept of the autonomy of Union law has become more robust, and the limits to the recognition of direct effect were reinforced. In the absence of the direct effect of an international agreement, the acts of Union law must be interpreted as far as possible consistently with it.[11]

All this essentially refers only to the secondary legislation of the Union and does not apply to the founding treaties and the other parts of primary law. In *Kadi I* the CJEU made clear that the primacy of international agreements does not extend to primary law "in particular to the general principles of which fundamental rights form part" and "that international agreements cannot have the effect of prejudicing the constitutional principles of the Union Treaties, which include the principles that all (Union) acts must respect fundamental rights."[12] In *Kadi II* the CJEU further underlined that international law (permeating the autonomous European legal order) can only be applied, if it is in line with the conditions as created by the basic principles of European law.[13] While the decision in *Kadi I* was essentially based on the concept of the autonomy of the Union legal order, in *Kadi II* the CJEU focused on the normative hierarchy argument.

The conclusion that can be drawn from the relevant decisions of the CJEU is that international law 'ranks' between the secondary legislation and the 'constitution' of the EU. International law, with the exception of *ius cogens*, does not rank higher than primary EU law, in particular the basic constitutional

9 Judgment of 4 February 2016, *Joined Cases C-659/13 and C-34/14, C & J Clark International*, ECLI:EU:C:2016:74, cited by Allan Rosas, *The European Court of Justice and Public International Law*, CAHDI, Strasbourg, 23 March 2018, at https://rm.coe.int/statement-delivered-by-judge-allan-rosas-at-the-55th-cahdi-meeting-55t/16807b3b04; *See also* László Blutman, *A nemzetközi jog érvényesülése a magyar jogban: fogalmi keretek*, Szeged, 2015, pp. 97-99.

10 Ziegler 2015, p. 8.

11 Katja Ziegler, 'International Law and EU Law: Between Asymmetric Constitutionalisation and Fragmentation', *in* Alexander Orakhelashvili (ed.), *Research Handbook on the Theory and History of International Law*, Edward Elgar, Cheltenham, 2011, pp. 300-303.

12 Judgment of 3 September 2008, *Joined Cases C-402/05 P and C-415/05 P, Kadi v. Council and Commission (Kadi),* ECLI:EU:C:2008:461. *See* Ziegler 2015, pp. 9-10; Katja Ziegler, 'Autonomy: From Myth to Reality – Or Hubris on a Tightrope? EU Law, Human Rights and International Law', *in* Sionaidh Douglas-Scott & Nicholas Hatzis (eds.), *Research Handbook on EU Law and Human Rights*, Edward Elgar, Cheltenham, 2017, p. 295; Rosas 2018, p. 5.

13 Judgment of 18 July 2013, *Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Commission v. Kadi,* ECLI:EU:2013:518. *See* Ziegler 2015, pp. 11-12.

principles, whether we follow the argument based on the autonomy of EU law (*Kadi I*)[14] or the normative hierarchy argument (*Kadi II*), the result is that international law does not prevail over EU law of constitutional nature (primary law or rules enshrining basic constitutional principles). This is because the EU is not only a subject of international law but also a highly constitutionalized international organization, forming part of and contributing to the shaping of international law.[15]

There is clearly a strong and evident correlation between the limits of the supremacy of international law above Union law, and the doctrine of constitutional identity developed in a series of Member State constitutional court decisions creating similar barriers to the primacy of EU law over the constitutional principles of Member States' legal systems.[16] The autonomy of EU law and the barrier it creates to the supremacy of international law as developed by the Court, and the barrier created by the doctrine of constitutional identity based on Article 4(2) TEU establishing the basic principle of respect for Member States' national identities "inherent in their fundamental structure, political and constitutional" originates from the same fundamental principle and stems from the same reality. Namely, that the hierarchy of legal rules is not neat and absolute, the vertical structure of the legal order has its limits. These limits are both rooted in the core constitutional principles inherent in EU law as well as in national legal systems. It is only natural that the boundaries of both doctrines cannot be precisely drawn and, that they shift according to the decisions rendered by the Court and the constitutional courts of the Member States, following not only legal considerations but also political objectives. This is what makes the scope of application of both doctrines uncertain and hard to foresee, as both are mainly shaped by case-law without a system of precedents and the doctrine itself changes in line with policy objectives. As for the principle of autonomy of EU law, the precise scope of the concept has been molded not only by decisions taken in the field of human rights but also by recent case-law in the area of the settlement of investment disputes. While the question of the validity of dispute settlement clauses of intra-EU bilateral investment protection treaties was unambiguously (albeit with controversial reasoning) answered in the negative (*Achmea*),[17] it is still not clear whether the bilateral investment protection treaties, concluded by EU Member States with third countries, meet the test established by the *CETA*

14 Allan Rosas & Lorna Armati, *EU Constitutional Law: An Introduction*, Hart Publishing, Oxford, 2018, pp. 57-58.

15 Ziegler 2015, pp. 2-3; Wessel 2019, pp. 2-3.

16 "The reference" (*i.e.* to the autonomy of the Union legal order) "is reminiscent of what amounts to the untouchable core of the German Constitution." Ziegler 2011, p. 295.

17 Judgment of 6 March 2018, *Case C-284/16, Achmea,* ECLI:EU:C:2018:158. *See* Rosas 2018, p. 11; Csongor István Nagy, 'Intra-EU Bilateral Investment Treaties and EU Law After Achmea: 'Know Well What Leads You Forward and What Holds You Back", *German Law Journal,* Vol. 19, Issue 4, 2018, pp. 981-1016.

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Opinion.[18] The scope of the issues considered to be covered by the concept of constitutional identity (itself a subject of legal and political debates) also varies, and can be construed more broadly or narrowly in the jurisprudence or constitutional legislation of the different Member States.

The two concepts – autonomy and constitutional identity – both contribute to the same outcome: the loosening of the hierarchic structure of legal sources in general. The uncertainties displayed by the triangular relationship of international law, EU law and national law reflect the structural changes in the formerly well-established, vertical structure of legal norms. The hierarchy is progressively transforming into a more heterarchic structure, where the elements are less ranked, become non-hierarchical, and can be ranked both in horizontal and vertical positions.[19]

At the same time, the borderlines between the various elements of the structure are becoming more permeable, which again, does not promote legal certainty and predictability. Increasing legal uncertainty is only a factor of the overall rise in complexity, unpredictability and disorderliness characterizing the economic, geopolitical, societal and institutional developments in the world. If we nevertheless try to illustrate the tentative geometry of the order of legal norms, we must certainly put *ius cogens* at the apex, from which international treaties, and even EU primary law cannot derogate.[20] This is followed by the primary law of the EU, itself a source of international law prevailing over other rules of an increasingly fragmented international law, which shall form the next level. The rank of both treaty and customary international law is higher than that of the secondary law of the EU, although the direct effect of international law is subject to the conditions referred to above. Regarding the direct effect of customary international rules, the CJEU introduced additional criteria further restricting individuals' right to rely on customary international law because "a principle of customary international law does not have the same degree of precision as a provision of an international agreement."[21] Both primary and secondary EU law have primacy over the national laws of the Member States, and the higher rank of EU law is reinforced by its direct effect, indeed, by the synergic effect of the combination of both principles.

Although the Court's claim elaborated in *Costa* and in subsequent case-law was for unreserved, absolute primacy of EU law, the concept of constitutional identity, as developed by the constitutional courts of Member States, clearly challenged the absolute nature of this ranking. EU law still ranks above national law, but there is an area of exceptions, which is not precisely defined and is subject to legal and political arguments and to development by Member States'

18 Opinion of 30 April 2019, *Opinion 1/17 pursuant to EU-Canada CET Agreement*, ECLI:EU:C:2019:341. *See e.g.* Christian Riffel, 'The CETA Opinion of the European Court of Justice and Its Implications – Not That Selfish After All', *Journal of International Economic Law*, Vol. 22, Issue 3, 2019, pp. 503-521.

19 The word itself is borrowed from neuroscience – organization of human brain –, and biology – horizontal gene transfer – as well as from information science.

20 Article 53 of the 1969 Vienna Convention on the Law of Treaties.

21 Rosas 2018, p. 6.

constitutional law. Again, the 'unreserved, absolute' ranking is becoming less unambiguous, and the vertical hierarchy is modified by heterarchic features. The commonalities between the concepts of the autonomy of EU law and the constitutional identity of Member States all ultimately originate from the fundamental question regarding the legal status and nature of the EU. There is no clear answer to the question of legal nature, *i.e.* whether the EU is an international organization (with distinctive features) or an embryonic federation, a *quasi* federal state. The particularities of the EU can, of course, be described by accepting compromises, referring to it as a *sui generis* institution or implying linguistic innovations (like *Staatenbund* or *fédération d'États-nations*). But using innovative terminology does answer the substantial dilemma of the legal nature of the entity and the precise status of the rules created by it.[22] It is a question that goes beyond the scope of legal scholarship, and essentially depends on general developments in the European integration process.

4. Trade, Flag and Script

This brings us back to the questions relating to the general developments. How can a balance be established between the economic and the political dimension (pillar) of the process, how can the economic and trade power be transformed into geopolitical clout? How can the EU combine economic and political power and use the synergy of the trade and the flag in its external relations and as a result, how can the EU become – despite all the challenges and threats – a far more important global actor? Meanwhile, establishing a balance between the economic and political dimension of integration is a minor or secondary issue, as against the upgrading of the third relatively neglected cultural dimension, upon which a strong European identity could and should be built. The first thing we have to recognize is that European identity is a collective identity, because it is shared by millions of people belonging to the same community, the same group. Some call such communities tribes, coining the recognition of collective identities as tribalism. In fact, words do not matter much; what is important is the meaning and substance of such an identity. Humans have always formed, and belonged to communities, developing a cognitive and emotional attachment to these groups.[23] The sense of affiliation can also be multiple, stronger or weaker to various smaller or larger groups. For thousands of years these groups were called tribes. (Some of them are still called tribes – not without a negative overtone.)

The strongest and most enduring attachment developed in modern history is national affiliation, as it is expressed through national identity. Some call this attachment tribalism; some call it national identity, serving as a basis for the concept of the nation in a cultural sense: a cultural nation. Names may vary, but the substance remains the same, including the facts upon which successful policies can be built.

22 Bruno de Witte, 'EU Law: Is It International Law?', *in* Catherine Barnard & Steve Peers (eds.), *European Union Law*, Oxford University Press, Oxford, 2017, pp. 190-192.

23 Amy Chua, 'Tribal World. Group Identity Is All', *Foreign Affairs*, Vol. 97, Issue 4, 2018, pp. 25-33.

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As group attachments are not exclusive, nothing prevents the existence of additional group attachments supplementing the primary – national – attachment. The additional or secondary attachment – a collective sense of being Europeans – has also been formed and shaped by history and is also subject to further future development.

Once we accept the existence of a 'European tribe' as well as our belonging to it, two basic tasks lie ahead. The first is to achieve some degree of consensus upon the core elements of European identity; the second, building upon this consensus, is to strengthen and deepen this identity, always respecting reality, in particular, the primacy of national identity.

The first task is the easier one. We have to find and agree upon what is common and what binds us together. The core elements are well known, even if not always fully respected. We also have to identify those elements of European identity, where we disagree, unfolding and analyzing the reasons behind the differences rooted in the diversity of our historical experiences. Repeating the slogan 'unity in diversity' will not suffice without understanding, accepting and respecting the legitimacy of those differences. At the end of this exercise, it might turn out that we agree on much more elements than it is often believed and suggested, and we only have disparate visions as regarding the importance of the same elements, or indeed, values.

We may also have various approaches to questions such as how those elements of European identity have to be put into effect and how they are to be transformed into political decisions shaping European integration or more generally, the European way of life. Again, emphasis may be placed on different aspects, but the ultimate outcome could be much more encouraging than the picture drawn based on existing ideological and political divisions.

5. Law and European Identity

We all agree that law has not only been an indispensable device of establishing, building, developing – and saving – European integration, but it is, in fact, a core element of European identity. The two roles of law are intertwined, but each of the two needs to be respected. Law as a technique must be applied with reasonable self-restraint, avoiding all or any temptation of using it selectively for political purposes.[24] The basic conceptual and structural order of legal rules, be it legislation or case-law, always has to be respected, in particular, when law is used for basic economic, political – and cultural – constructions such as European integration. On the other hand, European law as a core element of European identity must be embedded in the universal legal order. Rule of law is universal; it has to be respected at a European as well as at a universal level. The growing fragmentation, pluralization and regionalization of international law and the changing, more diffuse geometry of legal rules reflect the current general tendencies of the global economy, the world trading system and geopolitics alike.

24 Ziegler 2015, p. 16.

However, law should not give up its basic mission, which is to bring order into the growing disorder, or at least to alleviate the consequences following from the phenomenon some refer to as entropy. Law always has to be on the side of harmony constituting a source of external energy, whereby the increase of disorder can be stopped or at least slowed down. The strict legal hierarchy may become heterarchic, but it has to remain orderly and competences must be respected. This does not exclude room for reasonable flexibility and mutual understanding, quite to the contrary, it presupposes a constructive dialogue, cooperation and concertation between all levels of rulemaking, not only legislation and regulation, but also between the judiciaries. This is the way law could make a substantive and not only technical contribution to the future of European integration.

The success of this future primarily depends on the question of how the present lopsided relationships between the three dimensions of the process, the economic, the political and the cultural/spiritual can be rebalanced. Namely, how the present disequilibrium between the trade policy and the CFSP/CSDP can be reduced by strengthening the EU's external action and global role, and – first and foremost – how the cultural/spiritual dimension, the soul, indeed, the collective identity of Europe can be elevated at least to the level of the former two dimensions. In summary, the task is to continue to trade, to raise the flag and to call back the missionary.

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