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From European Integration to European Integrity: Should European Law Speak with Just One Voice?

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Abstract: *This article examines whether and how the moral principle of legal coherence or integrity, which has recently been developed further as a response to disagreement in the national legal context, applies to European law. According to the European integrity principle, all national and European authorities should make sure their decisions cohere with the past decisions of other European and national authorities that create and implement the law of a complex but single European legal order. Only by doing so, it is argued, can the European political and legal community gain true authority and legitimacy in the eyes of the European citizens to whom all these decisions apply. Although European integrity is primarily a product of European integration, it has gradually become one of the requirements of further integration. The article suggests that the principle of European integrity would help dealing with the growing pressure for common European solutions under conditions of increasing diversity. It places disagreement at the centre of European politics, as both an incentive and a means of integration by way of comparison and self-reflectivity. It constitutes therefore the ideal instrument for a pluralist and flexible further constitutionalisation of the European Union.*

'Leges sunt inventae quae cum omnibus semper una atque eadem voce loquerentur'.[1]

Introduction

Should the law 'speak with just one voice'?[2] This is what Cicero says in *De Officiis* and it is also what many of us assume should be the case.[3] In fact, our national legal practice seems, at first sight at least, to confirm this intuition. It suffices to think of the

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[1] Cicero, *De Officiis*, Loeb Classical Library (Heinemann and Harvard University Press, 1968) Liber secundus, at 42.

[2] J. Waldron, *Law and Disagreement* (Oxford University Press, 1999) at 190.

[3] See e.g. M. Poiares Maduro, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action', in N. Walker (ed.), *Sovereignty in Transition* (Hart, 2003), who assumes that coherence is an essential quality of any legal order.

principle of precedent or of analogical reasoning to see that the law already works so as to preserve its overall coherence.[4] As a result, many legal philosophers argue nowadays that the law should speak with one voice. Of course, they do not always use these exact terms.[5] Metaphors abound: some say that the law should 'hang together',[6] while others speak of the law as a 'tightly knit unit'.[7] Despite terminological differences, these accounts are usually read as promoting the same political virtue and principle: *coherence*, that is to say consistency in principle or, more famously, *integrity*, as it is sometimes referred to since Ronald Dworkin's provocative postulate in *Law's Empire*.[8]

According to Dworkin, even though citizens as political participants speak in different voices and are aware of their divisions on matters of justice, when individuals act in the name of the political and legal community, they should, for that very reason, always regard it as a moral demand to speak in just one voice.[9] This applies even if the single voice in which officials speak does not always lead to what they individually regard as just results.[10] Integrity requires, in other words, that the laws and decisions[11] they adopt as officials,[12] and hence that the state acts on, should be made to cohere as much as possible with past laws and decisions in force (diachronic coherence), on the one hand, and within themselves (synchronic coherence), on the other, as if they conveyed a single view of justice. Reasonable disagreements about justice and the principles governing fair decisions do not indeed guarantee that this will always be the case naturally.[13] Integrity may therefore be understood as a response to the pervasive fact of disagreement in politics and the law, but also as being restricted by it, as it only applies within the limits of the legal and political consequences of both moral and social pluralism.[14]

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[4] See K. Kress, 'Coherence', in D. Patterson (ed.), *A Companion to Philosophy of Law and Legal Philosophy* (Blackwell, 1996) 533, 536.

[5] See J. Dickson, 'Interpretation and Coherence in Legal Reasoning', in E. N. Zalta (ed.), *Stanford Encyclopedia of Philosophy* (Summer 2001 Edition), at <http://plato.stanford.edu/archives/sum2001/entries/legal-reas-interpret/>, accessed 17 July 2003.

[6] N. MacCormick, *Legal Reasoning and Legal Theory* (Clarendon, 1978) and N. MacCormick, 'Coherence in Legal Justification', in A. Peczenik, H. Lindahl and B. Van Roermund (eds), *Theory of Legal Science* (D. Reidel, 1984) 235.

[7] A. Peczenik, *The Basis of Legal Justification* (Lund, 1983).

[8] R. Dworkin, *Law's Empire* (Fontana, 1986). Other theorists of legal coherence include: R. Alexy and A. Peczenik, 'The concept of coherence and its significance for discursive rationality', (1990) 3:1 *Ratio Juris* 130; S. Hurley, *Natural Reasons* (Oxford University Press, 1989); S. Hurley, 'Coherence, Hypothetical Cases, and Precedent', (1990) 10 *Oxford Journal of Legal Studies* 221.

[9] Dworkin, *op. cit.* note 8 *supra*, at 174. Note that although I use Dworkin's conception as a starting point, I am not defending a Dworkinian conception of European integrity.

[10] *Ibid*. at 165.

[11] In this article, 'decisions' refer, in a *broad sense*, to the different products of authorities' deliberations, such as legal norms, rules, or principles.

[12] In this article, 'officials' encompass legislators, executive officers or judges and are not limited to the latter as in other accounts of European coherence, such as Maduro, *op. cit.* note 3 *supra* or J. Bengoetxea, N. MacCormick and L. Moral Soriano, 'Integration and Integrity in the Legal Reasoning of the European Court of Justice', in G. de Burca and J. Weiler (eds), *The European Court of Justice* (Oxford University Press, 2001) at 43. Note that some exceptions to the inter-institutional application of integrity may have to be drawn to respect the principle of parliamentary sovereignty.

[13] Dworkin, *op. cit.* note 8 *supra*, at 166, 273.

[14] The conception of coherence defended here is therefore limited as opposed to 'general' conceptions of legal coherence such as Dworkin's. See J. Raz, 'The Relevance of Coherence', in *Ethics in the Public Domain* (Clarendon, 1995) for a more limited account of coherence as a local virtue of some laws only.

But can this principle of coherence also apply to post-national law, and to European law in particular?[15] After all, the pluralism that characterises the multilayered legal order in Europe,[16] by contrast to unitary national legal orders, seems at first sight at least to contradict the possibility of legal coherence.[17] As I will argue, however, nothing prevents competing legal determinations in Europe from being made coherent if the justification and conditions of integrity are given in such a complex and pluralist legal order.

Ever since its creation, the European Union has been oscillating between strong unification, on the one hand, and subsidiarity, on the other. As the European Union is deeply pluralist and disagreement-ridden, however, none of these alternatives has been in itself very promising. Unification would undermine the flourishing of a political culture *within* Member States and subsidiarity would undermine it *between* them.[18] Hence the attractiveness of a political virtue that would enable Europe to escape this dualism between alienation and fragmentation. Integrity could do just that, as it would help integrate further on issues that are part of European competence, without denying the importance of disagreement and divergence of views between European and national authorities on these matters. In fact, it could put disagreement at the centre of the European construction, as both an incentive and a means of integration.

According to the European integrity principle, each jurisdiction or legislature in Europe, be it European or national, would have to do more than just speak with a single voice in its own legal order; it would have to try to do so in a way that is representative of the entire European political community's expressed legal views, thus revealing the true sense of constituting such a community in the face of diversity in Europe. With this aim in mind, each authority should take into account past laws and decisions of other European and national authorities and try to adjust its own laws and decisions so as to make them fit with the former as much as possible. In doing so, it would confirm that it is one of the many national and European authorities to create and apply the law of a complex and pluralist but single European legal order.

Understood in these terms, integrity would ensure that European integration amounts to a truly dynamic and cooperative project in which dialogue and mutual learning receive a central role in constituting a European political community.[19] This

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[15] In the present article, the term 'European law' or 'EU law' refers to the law of the Treaties on the European Union, including the law of the European Community. Although in many cases, European law will in fact be EC law, I will refer for reasons of clarity to European or EU law in general.

[16] See on European legal pluralism, e.g. N. MacCormick, 'Beyond the Sovereign State', (1993) 56 *Modern Law Review* 1 and N. Walker, 'The Idea of Constitutional Pluralism', (2002) 65 *Modern Law Review* 317, 337 ff.

[17] See K. Günther, 'Rechtspluralismus und universaler Code der Legalität: Globalisierung als rechtstheoretisches Problem', in L. Wingert and K. Günther (eds), *Die Öffentlichkeit der Vernunft und die Vernunft der Öffentlichkeit* (Suhrkamp 2001) 539, 541. Note that I am assuming that it is possible to apply philosophical concepts, which have been developed in the national context, to the European Union, provided they are translated as this article proposes to do with the concept of integrity. See on this point, J. Shaw and A. Wiener, 'The Paradox of the 'European Polity' ', in M. G. Green Cowles and M. Smith (eds), *Risks, Reform, Resistance and Revival*, State of the European Union Series, Vol. 5 (Oxford University Press, 2000) 64 on the 'touch of stateness' of the political and legal concepts we use to analyse European law.

[18] See A. Follesdal, 'Subsidiarity and Democratic Deliberation', in E. O. Eriksen and J. E. Fossum (eds), *Democracy in the European Union: Integration Through Deliberation?* (Routledge, 2000) 85, 105.

[19] See O. Gerstenberg, 'Expanding the Constitution Beyond the Court: The Case of Euro-Constitutionalism', (2002) 8 *European Law Journal* 172; O. Gerstenberg, 'The new Europe: Part of the Problem or Part

could prevent having, at the one end of the spectrum, a story of 'constitutional self-positioning' on the part of European authorities[20] or, at the other end, a story of entrenchment of differences and sanctification of local independence on the part of national authorities.[21] In this sense, integrity could become a useful vehicle for a progressive constitutionalisation of the European Union,[22] and this even more so in the context of the recent enlargement of the Union and of the increasing acknowledgement of the degree of pluralism that characterises the European legal and political order.

It remains to be established, however, whether and how such a post-national and European principle and virtue of integrity can be justified and implemented in practice. The idea of European integrity is still very much unexplored, but for a few exceptions,[23] and it is the point of the present article to examine it further. In a first section, I very briefly present what I take to be the moral justification for the principle of legal integrity *per se*, before discussing in the next section the scope and limits of the principle of European integrity itself. In the third section, I explore the extent to which the main condition of integrity, i.e. the existence of a single political community whose decisions should demonstrate coherence, applies to the European Union. The following section addresses two potential preliminary difficulties with the principle of European integrity: sovereignty and authority. In the fifth section, I present the different forms European integrity can take depending on the type of authorities it applies to. The last section provides three illustrations of how relevant the principle of European integrity can be for the future of European integration.

I The Principle of Integrity *per se*

Before examining the principle of European legal integrity, it is important to assess the moral justification of the principle of legal integrity *per se*. More particularly, does the principle resist to the point where speaking with one voice commands a result that is

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of the Solution to the Problem', (2002) 22 *Oxford Journal of Legal Studies* 563; O. Gerstenberg and C. Sabel, 'Directly-Deliberative Polyarchy: An Institutional Ideal for Europe?', in R. Dehousse and C. Joerges (eds), *Good governance and administration in Europe's integrated market* (Oxford University Press, 2002).

[20] See J. Weiler, 'A Quiet Revolution: The European Court of Justice and Its Interlocutors', (1994) 26:4 *Comparative Political Studies* 510, 515 ff. See also J. Weiler, 'The Transformation of Europe', (1990–1991) *Yale Law Journal* 2403, 2478 ff. on the opposition between 'community' and 'unity' in Europe.

[21] See Follesdal, *op. cit.* note 18 *supra*, at 106.

[22] On experimentalist approaches in the European context, see M. Dorf and C. Sabel, 'A Constitution of Democratic Experimentalism', (1998) *Columbia Law Review* 267; J. Cohen and C. Sabel, 'Sovereignty and Solidarity: EU and US', in J. Zeitlin and D. M. Trubek (eds), *Governing Work and Welfare in a New Economy: European and American Experiments* (Oxford University Press, 2003) Ch. 13.

[23] There is only a brief mention of the 'general rule of integrity' as part of the issue of legal pluralism in M. La Torre, 'Legal Pluralism as an Evolutionary Achievement of Community Law', (1999) 12 *Ratio Juris* 182, 193. See also the discussion of European coherence in M. Poiares Maduro, 'Europe and the Constitution: what if this is as good as it gets?', in J. Weiler and M. Wind (eds), *European Constitutionalism beyond the State* (Cambridge University Press, 2003) 74, 99–100. See, more recently, Maduro, *op. cit.* note 3 *supra*, who does not, however, provide a detailed argument for the principle of coherence he refers to as a basic principle *presupposed* by his account of constitutional pluralism and competitive sovereignty in Europe. In their recent article, Bengoetxea, MacCormick and Moral Soriano, *op. cit.* note 12 *supra* refer to European integrity, but limit their discussion to an assessment of the legal reasoning of the European Court of Justice. See, finally, Walker, *op. cit.* note 16 *supra*, at 335 ff. who mentions 'inclusive normative coherence' as one of the criteria for a revised conception of constitutionalism in Europe.

regarded as unjust? Or, in a more practical vein, does it withstand the observation that 'nothing in the way . . . law [is] produced guarantees [one's] success in finding a coherent conception of it',[24] since it amounts at the most to a 'checkerboard'[25] or 'patchwork'[26] of disparate conceptions of justice left by different majorities at different times?[27]

Integrity has become fashionable in legal and political philosophy ever since Dworkin qualified it as the independent virtue of a true community of principle.[28] But is there really such a distinct and independent virtue of political integrity? It would go beyond the scope of the present paper to assess the extremely complex claims that have been made for and against integrity over the past twenty years.[29] It is important, however, to briefly mention two main arguments for the justification of an independent albeit limited virtue of political integrity as they constitute this article's premise.[30]

First, the *argument of public morality*. Integrity can be justified, in conditions of widespread and persistent disagreement about justice, on grounds of an obligation of public morality to respect others' reasonable, albeit diverging, conceptions of what a particular law should be in our political community.[31] Of course, even if all this is granted, the requirements of integrity may clash with the obligation to do what one takes individually to be just. This may even lead, in extreme cases, to the rejection of coherence on grounds of justice. These cases should, however, remain exceptional if one wants to remain faithful to the idea of a respectful community in conditions of widespread reasonable pluralism. There is a sense indeed in which it is because such decisions are possible in some extreme cases only that integrity may be a virtuous attitude to adopt in other cases.[32]

Second, the *argument of authority*. Legal integrity also amounts to a justified principle, because we must be able to see ourselves as the authors of the political decisions made by our authorities. Inconsistent rules cannot match pre-existing individual reasons that tend to be coherent overall. Besides, they cannot enable a citizen to abide by her reasons better than she would on her own.[33] They cannot therefore be regarded as binding law.

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[24] See Raz, *op. cit.* note 14 above. See even Dworkin, *op. cit.* note 8 *supra*, at 166, 273, who voices this critique himself. Dworkin acknowledges therefore the *existence* of incoherence in existing law and regards his own account as a *heuristic one* according to which past and present laws should be reconstructed in order to *be made coherent*.

[25] On this expression, see Dworkin, *op. cit.* note 8 *supra*, at 179.

[26] On this expression, see Waldron, *op. cit.* note 2 *supra*, at 189.

[27] This point was made most famously by R. Unger, *What Should Legal Analysis Become?* (Verso, 1996) 66.

[28] Dworkin, *op. cit.* note 8 *supra*, at 176–177, 217.

[29] See Kress, *op. cit.* note 4 *supra* for a complete attempt to do so. See also Dickson, *op. cit.* note 5 *supra*.

[30] I have argued more extensively for the independence and the justification of integrity elsewhere. See e.g. S. Besson, 'Four Arguments Against Compromising Justice Internally', (2003) 2 *Oxford Journal of Legal Studies* 211, 233 ff.

[31] See Waldron, *op. cit.* note 2 *supra*, at 188 ff. for a presentation of the circumstances of integrity, rather than an argument for integrity itself.

[32] See M. Weber, 'Politics as Vocation', in H. Gerth and C. Wright Mills (eds), *From Max Weber: Essays in Sociology* (Oxford University Press, 1991) at 127.

[33] See on this account of authority, J. Raz, *The Morality of Freedom* (Clarendon, 1986) 53.

II The Principle of European Integrity

The principle of European integrity is best understood if one distinguishes its scope from its limits. This first presentation of the principle is intentionally brief and will be fleshed out in Section III, where the different forms that European integrity can take in practice will be presented.

A The Scope of European Integrity

According to the European integrity principle propounded here, each jurisdiction or legislature in Europe, be it European or national, should not be satisfied with speaking with a single voice in its own legal order. This traditional form of integrity is what is commonly referred to as *horizontal coherence* in the European context.[34] Each authority should indeed also try to speak in a way that is representative of the legally expressed views in the entire European political community or polity, be it by European or Member States' authorities.[35] This second form of integrity is also called *vertical coherence* in the European context.[36] Only on this condition can European law and the European legal order *lato sensu*, which encompasses European law *stricto sensu*, but also its implementation and interpretation in national law and national law *tout court*, be said to be the law of Europeans, the law of the European political and legal *c*ommunity as a whole (*Rechtsgemeinschaft* in German) and not only of the European *C*ommunity itself.[37]

Coherence and continuity with past laws and objectives of the European Union is already something that is required by Article 3 of the consolidated version of the Treaty on the European Union (TEU). In other words, there is already a legal translation of the principle of integrity in European law. It is important to examine, however, how exactly this *legal principle* of integrity relates to what is taken to be required by the *moral principle* of European integrity defended here.[38] This way we should be able to see how much can and should still be achieved by the independent moral virtue of integrity in the European Union.

The scope of Article 3 TEU's principle of coherence is controversial and its content remains quite vague. This is largely because its wording is not consistent in the differ-

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[34] See D. Curtin and I. Dekker, 'The EU as a 'layered' international organisation: institutional unity in disguise', in P. Craig and G. De Burca (eds), *The Evolution of EU Law* (Oxford University Press, 1999) 83, 103; C. Tietje, 'The concept of coherence in the Treaty on European Union and the Common Foreign and Security Policy', (1997) *European Foreign Affairs Review* 211, 224–231; N. Neuwahl, 'Foreign and Security Policy and the Implementation of the Requirement of 'Consistency' under the Treaty on European Union', in D. O'Keeffe and P. M. Twomey (eds), *Legal Issues of the Maastricht Treaty* (Chancery Law Publishing, 1994) 227, 234–238. Note, however, that Maduro, *op. cit.* note 3 *supra* uses vertical and horizontal coherence to distinguish respectively between coherence among European and national courts, and coherence among national courts.

[35] Note that, both at the national and European levels, past judicial decisions do not necessarily bind legislatures.

[36] See Curtin and Dekker, *op. cit.* note 34 *supra*, at 103; Tietje, *op. cit.* note 34 *supra*, at 224–231; Neuwahl, *op. cit.* note 34 *supra*, at 234–238.

[37] See I. Pernice, 'Der Beitrag Walter Hallstein zur Zukunft Europas—Begründung und Konsolidierung der Europäischen Gemeinschaft als Rechtsgemeinschaft', <www.rewi.hu-berlin.de/WHI/deutsch/papers/whipapers901/index.htm>, accessed on 17 July 2003.

[38] See F. Snyder, 'Constitutional Law of the European Union', in *European Community Law*, Collected Courses of the Academy of European Law, Vol. VI: 1 (Martinus Nijhoff Publishers, 1995) 41, 106 on the legal, moral, and political dimensions of the issue of European law's 'effectiveness'.

ent linguistic versions of the Treaty; the English version refers to consistency and continuity and not to coherence as such, whereas the French version does. Surprisingly enough, this linguistic inconsistency remains in the Convention on the Future of Europe's (CFE) Draft Treaty establishing a Constitution for Europe of 27 June 2003 (hereafter the Draft Constitution).[39] In its Art I-18, the Draft Constitution speaks of 'consistency' in English, and of 'cohérence' in French, of the policies and actions undertaken in the European single institutional framework by reference to the Union's objectives. Most commentators of Art 3 TEU consider, however, that ' "coherence" means not only the absence of [logical] contradictions—often referred to as "consistency"—but also the presence of positive connections [of principle] between different parts of a legal system'.[40] One may therefore legitimately assume that this interpretation will also apply to Article I-18 of the Draft Constitution.[41]

Article 3 TEU's principle of coherence consists mostly of horizontal coherence, but some commentators argue that it also encompasses vertical coherence. The Treaty does not provide any express general organisational rules so as to guarantee the respect of the principle of coherence, other than the principle of a single institutional framework and the special responsibility conferred on the Council and the Commission in that respect (Article 3(2) TEU). All these refer mostly to horizontal coherence. However, nothing excludes these rules from applying to vertical coherence in some cases that still remain quite indefinite. In this context, this would imply mostly coherence with national decisions on the part of European authorities in the case of the implementation of a European competence.[42]

According to the vertical dimension of the principle of European integrity proposed in this article, all authorities should take into account past laws and decisions of other European authorities, be they national or strictly European, and try to make their own laws and decisions fit with them as far as possible; indeed, these laws and decisions represent the European political community's or polity's views on issues that are often heavily controversial and on which officials should speak with one voice. This principle applies among European authorities and national authorities, but also among national authorities that implement and interpret European law.[43] To distinguish both forms of vertical integrity, one could speak of *vertical-vertical* or *supranational* integrity between European and national authorities, on the one hand, and of *vertical-horizontal* or *transnational* integrity between national authorities, on the other. What remains difficult to assess is how far the legal principle of vertical coherence as it currently exists in the European legal order applies not only to coherence on the part of national authorities with European laws, but also to coherence on the part of European

[39] All constitutional drafts may be retrieved on the CFE's website: http://european-convention.eu.int.

[40] Curtin and Dekker, *op. cit.* note 34 *supra*, at 89; Tietje, *op. cit.* note 34 *supra*, at 213. In this sense, the European principle of integrity or coherence may be regarded as more precise and incisive than the existing European principle of loyalty (Art 10 EC); it requires an effort of horizontal and vertical *convergence* of *national and European* laws and decisions rather than the general *collaboration* of *national* authorities on European issues.

[41] Of course, Art I-18's interpretation may differ in the long run from Art 3 TEU's, especially once the existing Treaties are replaced by a European Constitution, but for the time being there is no evidence of potential discrepancy.

[42] See Curtin and Dekker, *op. cit.* note 34 *supra*, at 102.

[43] See Weiler, 1994, *op. cit.* note 20 *supra*, at 521 on the increasing tendency to cooperate among national authorities in the EU.

authorities with national implementations of European objectives and to national authorities' decisions, on the one hand, and to transnational coherence among national decisions on matters of European competence, on the other.[44]

Article 14 of the Preliminary Draft Constitutional Treaty of 28 October 2002 seemed to provide an answer to this question. It clearly indicated that the principle of coherence applies equally to areas of European competence and to areas of national competence, thus indicating that coherence should be ensured *vertically* by European *and* by national authorities, be it supranationally or transnationally. These additional elements seem, however, to have been left out of the CFE's last Draft Constitution's Article I-18. Nevertheless, one could argue that these elements have now been encompassed among the duties of loyal cooperation stated in Article I-5.2 Draft Constitution. Article I-5 deals with the relations between the Union and the Member States in general. More particularly, Article I-5.2 Draft Constitution, which restates the principle of loyalty as the principle of *loyal cooperation*, foresees duties of mutual assistance on the part of Member States *and* the Union, thus indicating the possibility of a kind of vertical-vertical coherence on the part of both the Union *and* the Member States. Of course, what remains unclear for now is whether Article I-5.2 can be interpreted as implying vertical-horizontal forms of coherence as well.[45] It remains to see therefore how these proposals will fare in the 2004 Intergovernmental Conference (IGC) deliberations.

One last element of the proposed principle of European integrity is to be explained. In domains where there is no *European competence*, integrity does not seem as relevant at first sight. In these cases, indeed, there are no pertinent European decisions and laws to cohere with or no European decision or law that should demonstrate sufficient integrity. Of course, there could be national decisions from other European countries to be cohered with, but without at least a shared European competence, it is difficult to see how there could be an argument for the existence of a European community of principle in these cases. It is nevertheless possible to build a case for European integrity in this context even in the absence of a directly relevant European competence. Cases in which there is such a competence have indeed given rise to sufficient laws and decisions to constitute an important part of the laws that apply in the European community, thus affecting the balance of all the laws that apply to European citizens, including national laws. In these conditions, any national law and decision will have to cohere with all other laws including European and national laws and decisions in other domains and vice versa, as they might affect each other in practice. For instance, it is not because some areas of tax law remain a national competence in the European Union that national decisions and laws in that area can afford not to cohere with other European and national laws and decisions in domains that overlap and which might conflict with them, the reverse being true as well.

This is also what seemed to flow from the October 2002 Preliminary Draft Constitutional Treaty and its Article 14 on the principle of coherence and continuity

[44] See Curtin and Dekker, *op. cit.* note 34 *supra*, at 102 for an extensive interpretation of Art 3 TEU.

[45] See in this respect the most recent proposal of an adjunction of a third paragraph to Art I-5 and of a principle of mutual loyalty *between the Union's constituent states and peoples*, and hence of a kind of vertical-horizontal coherence, in cases of European but also of national competence, in a series of amendments to the Draft Constitution put forward by a group of academics and researchers from across the EU in a document entitled 'Making it Our Own': <www.umich.edu/~iinet/euc/MiscHTML/EUnews.html>, accessed on 2 October 2003.

of objectives in the European Union. According to the Preliminary Draft, the principle of coherence was clearly meant to apply as much to cases in which there is an exclusive or shared European competence as to cases in which Member States retain their competence and apply them jointly. This element seems, however, to have been left out of the most recent Draft Constitution, and in particular of Article I-18, but also of Article I-5, which restricts the duty to loyal cooperation to the 'carrying out of tasks which flow from the constitution', to the 'achievement of the Union's tasks', and to the 'objectives set out in the Constitution'.[46] It remains again to be seen how these proposals will fare in the IGC deliberations.

In sum, it seems that the legal principle of European integrity is still very limited in its scope and leaves a broad margin of appreciation as to how it should be implemented. It is the aim of the next contentions in this article to determine how the proposed moral principle of European integrity could help complement the application of the European legal principle of coherence as it currently exists, with respect in particular of vertical-vertical and vertical-horizontal coherence.

B The Limits of European Integrity

Before we examine the conditions, qualifications and forms of the proposed principle of European integrity in more detail, it is important to examine some of the principle's material limits, as they do not apply as stringently in the national legal context.[47]

First, the *quantity* of past European laws and decisions. The amount of decisions and laws to be cohered with could become extremely large and also very diverse in the European context, thus making European integrity an unattainable virtue. This is not so much the case for integrity on the part of national authorities that have to pay respect to European law, but it is a concern for integrity on the part of European and national authorities that have to take into account all past national laws and decisions.[48] This concern may easily be set aside, however. The gradual strengthening of a community of principle through integration in Europe implies that the social and cultural

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[46] See in this respect the proposal of an adjunction of a third paragraph to Art I-5 and the principle of mutual loyalty between the Union's constituent states and peoples, and hence of a kind of vertical-horizontal coherence, *in cases of European but also of national competence*, in the amendments to the Draft Constitution 'Making it Our Own': <www.umich.edu/~iinet/euc/MiscHTML/EUnews.html>, accessed on 2 November 2003.

[47] This difficulty is also encountered in comparative law. See C. McCrudden, 'A common law of human rights? Transnational judicial conversations on constitutional rights', (2000) 20 *Oxford Journal of Legal Studies* 499.

[48] Note that in principle *all* European authorities have to make sure their decisions cohere with past laws and decisions of *all* national authorities. True, the Court of Justice is only making decisions in specific cases that raise national issues and, in these cases, coherence has to be ensured primarily with a specific Member State's past laws and decisions rather than with all past national laws and decisions. However, given the general force of past judicial decisions in the EU, the Court of Justice should attempt to ensure general coherence with other national decisions on the same issue in Europe; otherwise, different decisions would be made in different national contexts, thus endangering the coherence of the European legal order (see S. Besson, 'Conflits constitutionnels en Europe—une lecture de l'Affaire *Kreil c. République fédérale d'Allemagne*', (2000) 5 *Aktuelle Juristische Praxis* 563 for an illustration of this point). In fact, the presence of national governments' representatives in the procedure ensures that other national perspectives are taken into account. Thanks to Ruth Zimmerling for raising this issue in the EuroConference in Legal Philosophy in Girona in November 2002.

diversities among Member States will tend to decrease,[49] even if diversities due to value pluralism will naturally resist.[50] Moreover, integrity is a path-dependent virtue and, as such, it will gradually increase through being respected.

Second, the *complexity* of European integrity. Geographical and linguistic barriers[51] mean that European integrity, much more so than national integrity, is affected by time obstacles, lack of economic means, and the limited subjective abilities of national authorities. One way of accommodating these difficulties would be to reduce the level of stringency of the principle from 'speaking with one voice' to 'speaking in harmony'. Integrity is indeed better understood as an optimisation principle. As such it should be implemented to the highest degree possible given the circumstances.[52]

Third, the *reciprocal* nature of European integrity. It is interesting to note that since both the national and the European sides of the European political community have to cohere with one another's past decisions, it is *prima facie* difficult to see how integrity could be a real virtue. Coherence could indeed tip the balance simultaneously in the national direction on the part of European authorities, and in the European direction on the part of national authorities, thus potentially influencing European decisions into taking opposite directions. This objection may be easily discarded, however. It is through this form of 'double-effect' of European integrity that European integration can take place. By adjusting progressively to each other's laws, active political entities in the European Union will gradually converge and coherence should become less of a problem. Associating European integration with a unique virtue of integrity helps to see all authorities in all political entities in Europe as contributing to the same goal of further integration. It also helps to dismiss the idea that only some, namely national authorities, should be the ones integrating themselves. Of course, one may object that this might lead to a very conservative form of European law that would not suit everyone's conception of what it should stand for. This critique is misleading, however. Nothing in European integrity involves a 'levelling-down' or prevents innovation; all it requires is that innovation should not depart too broadly at first from past national and European laws and decisions.

III The Conditions of European Integrity

For European integration to generate and then benefit in return from a virtue of integrity, there has to be a single European political and legal community whose

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[49] I assume that social pluralism and epistemological sources of conflict can gradually be set aside. Note that this concern may increase in association with the difficulties created by the European enlargement.

[50] In this case too, legal choices have to be made and integrity requires that we stick to those choices. See Raz, *op. cit.* note 14 *supra*.

[51] In the European legislative context, see L. Blichner, 'The anonymous hand of public reason: interparliamentary discourse and the quest for legitimacy', in E. O. Eriksen and J. E. Fossum (eds), *Democracy in the European Union: Integration Through Deliberation?* (Routledge, 2000) 141 and V. Miller and R. Ware, 'Keeping National Parliaments Informed: The Problem of European Legislation', (1996) 2:3 *The Journal of Legislative Studies* 184, on the ways to guarantee the flow of information between European and national parliaments. See also J. Habermas, 'So Why does Europe Need a Constitution?', <www.iue.it/RSCAS/e-texts/CR200102UK.pdf>, accessed on 17 July 2003.

[52] On this idea of optimisation, see R. Alexy, 'On the structure of legal principles', (2000) 13 *Ratio Juris* 294. On the fact that the respect of European coherence is a *matter of degree*, see Curtin and Dekker, *op. cit.* note 34 *supra*, at 90.

integrity is at stake. Only such a community may then become a community of principle by demonstrating sufficient consistency in its decisions and laws. Then, only can this community constitute the principled and respectful entity in whose name national and European officials are speaking when they produce laws and decisions, and with which all European citizens associate when they obey its laws and decisions. This is a consequence of the two arguments I presented earlier for the justification of an independent principle of legal integrity, i.e. the argument of public morality and the argument of authority.

This legal and political community need not, however, rely on a historically shared and homogeneous European identity.[53] It is enough, indeed, on a Kantian model, for it to amount rather to a community constituted out of disagreement and diversity and the corresponding need to coordinate and converge on some issues of principle. Instead of depending on pre-existing shared fundamental understandings and beliefs, the political and legal community will arise, on this account, out of the necessity to live together and to deal with difference and disagreement.[54] In the European context, several writers have emphasised the heterogeneous and pluralist nature of the European identity and community.[55] This is also what flows from Jürgen Habermas' 'constitutional patriotism'.[56] In a recent paper, he contends that the European community should not be 'confused with a pre-political community of fate deriving from common origins, language and history because this would undermine the voluntaristic character of a contractual nation whose collective identity neither pre-dates nor can ever be seen in isolation from the democratic processes from which it educes'.[57]

Nowadays there is sufficient evidence of the strong community ties that characterise the European construction.[58] Founded with an aim of economic coordination, the

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[53] See e.g. J. Habermas, 'The postnational constellation and the future of democracy', in *The Postnational Constellation—Political Essays* (Polity, 2001) 58; J. H. H. Weiler, *The Constitution of Europe: 'Do the new clothes have an emperor?' and other essays on European integration* (Cambridge University Press, 1999) 324; D. Grimm, 'Does Europe Need a Constitution?', (1995) 1 *European Law Journal* 282.

[54] See J. Waldron, 'Cultural Identity and Civil Responsibility', in W. Kymlicka and W. Norman (eds), *Citizenship in Diverse Societies* (Oxford University Press, 2000) 155, 171 for such an account of the political community.

[55] See Follesdal, *op. cit.* note 18 *supra*, at 105; L. Blichner and L. Sangolt, 'The concept of subsidiarity and the debate on European co-operation: pitfalls and possibilities', (1994) 7:3 *Governance: An International Journal of Policy and Administration* 284, 300.

[56] J. Habermas, 'Citizenship and National Identity: Some Reflections on the Future of Europe', (1992) 12 *Praxis international* 1, 12. Note, however, that I wish to disassociate myself from Habermas' conception of the European monolithic and state-like *demos*.

[57] Habermas, *op. cit.* note 51 *supra*. Curiously, Gerstenberg and Sabel (*op. cit.* note 19 *supra*) seem to think that Habermas and Dworkin are bound to consider the European community as a pre-existing community that cannot therefore re-create itself constantly on the basis of deliberation. The passage quoted shows the exact contrary with respect to Habermas' conception of the European community. As for the critique of Dworkin's account, it does not affect the model of integrity defended here, which is distinct from Dworkin's. With respect to the arguments I have been using to justify integrity, however, I think Gerstenberg and Sabel's critiques do not cut any ice. The point is indeed, once starting points are given, to find a way to subject them to constant democratic and political redefinition and I think my account as well as Dworkin's can do that. In fact, it is one of their semantic and conceptual presuppositions that they can. See Dworkin, *op. cit.* note 8 *supra*, at 111 and 139 on the revision of paradigms.

[58] Habermas, *op. cit.* note 51 *supra* also mentions the ease with which the EU Charter of Human Rights has been accepted as a sign of the new European 'consciousness of community'. See also D. Curtin and I. Dekker, 'The Constitutional Structure of the European Union: Some Reflections on Vertical Unity-in-Diversity', in P. R. Beaumont, C. Lyons and N. Walker (eds), *Convergence and Divergence in European Public Law* (Hart, 2002) 59, 71–72.

European Community has now become an even closer *Union*, which is grounded in common principles and rights.[59] It hence shows clear signs of political and legal convergence on issues that previously divided its Member States and citizens. It may be objected, however, that these ties amount to little more than ties between distinct political communities and legal orders; they might not amount to the ties of principle between individuals that are required to constitute an overall European political community or an overarching European legal order. If this were true, it would undermine the emergence of principle and virtue of integrity in Europe.

The evidence that is usually given to counter this kind of objection is well known.[60] It suffices to mention the existence of autonomous European institutions, the autonomy of the European law-making process, the specificities of European legal interpretation and legal adjudication, the primacy and direct effect of European law, and the European majority rule to understand that the European and national legal orders are deeply imbricated and that neither of them could be conceived without the other one anymore. Of course, the European political and legal community is clearly not a state in the absence of a monopoly of European coercion.[61] It is not as centralised as a federal state, since it relies on, and does not negate the distinct existence and sovereignty of the political and legal communities of its Member States. It remains, however, more centralised, on the face of the evidence that has just been given, than an ordinary confederation or international association of states.[62] Its hybrid nature demonstrates, therefore, the existence of a *sui generis* overlapping European political and legal community, which could become a true community of principle by showing sufficient integrity.

European law binds all citizens of the Union in an integrated legal order. The latter is clearly no longer derived from the international legal order and hence it is neither subordinated nor superior to the national legal order in a monistic and hierarchical conceptualisation of the relations between the European and national legal orders. Nor is it totally independent from national legal orders, contrary to dualist conceptions of their relations. The European legal order *stricto sensu* and the national European legal orders are united in a broader and overarching pluralist but interdependent legal order. Direct ties of both obedience and legitimisation between European citizens who are also national citizens, on the one hand, and this overlapping European legal order, on the other, confirm the latter's communal nature. As a consequence, national and European authorities alike are part of the complex set of authorities, which create and interpret European law and apply it to European citizens.

True, as Andreas Follesdal argues, 'the task of generating and maintaining the requisite trans-European values and commitments is a daunting challenge'.[63] European integrity, however, could be the virtue of an integrated but diverse European commu-

[59] See on this point Weiler, 1990–1991, *op. cit.* note 20 *supra*, who discusses the importance of the distinction between 'community' and 'unity' in Europe.

[60] See C. Richmond, 'Preserving the identity crisis: autonomy, system and sovereignty in European law', (1997) 16 *Law and Philosophy* 377; J. Weiler and U. Haltern, 'The Autonomy of the Community Legal Order: Through the Looking Glass', (1996) 37 *Harvard Journal of International Law* 411; N. MacCormick, 'Risking Constitutional Collision in Europe?', (1998) 18 *Oxford Journal of Legal Studies* 517.

[61] See A. von Bogdandy, 'The European Union as a Supranational Federation: A Conceptual Attempt in the light of the Amsterdam Treaty', (2000) 6 *Columbia Journal of European Law* 27.

[62] See P. Magnette, *L'Europe, l'Etat et la Démocratie* (Editions complexe, 2000) 139 ff. on the hybrid nature of European federalism between traditional federalism and confederalism. See also J. H. H. Weiler, 'A Constitution for Europe? Some Hard Choices', (2002) 40 *Journal of Common Market Studies* 563.

[63] Follesdal, *op. cit.* note 18 *supra*, at 106. See also Weiler, 1990–1991, *op. cit.* note 20 *supra*, at 2479.

nity of principle. It could help generate and maintain trans-European values and commitments by insisting on European coherence and the constitution of a European political community in circumstances of disagreement, but without artificially imposing that coherence from a centralised European perspective and without jeopardising the importance of subsidiarity considerations. Integrity could therefore be said to be both a way to deal with European disagreement in speaking with a harmonious voice, on the one hand, and a way to make the most out of it without necessarily replacing the diversity of views by a unified voice, on the other.[64]

IV The Obstacles to European Integrity

Because the virtue of European integrity calls for transnational and supranational coherence, it raises interesting but difficult issues with respect to sovereignty, on the one hand, and authority, on the other. These questions are two conceptually distinctive sides of the same coin, which are worth distinguishing with respect to integrity.

A European Integrity and Sovereignty

Not all cases in which European integrity is respected will raise issues of sovereignty. Some areas of European law are indeed now organised in such a way that European and national authorities are quite content with the allocation of powers and competence between the European and the national levels. Things are rarely that evident, however. Given the crucial role of national authorities in implementing and interpreting European law and objectives, sovereignty can no longer be clearly located in all cases of European competence. Besides, the higher one goes in the hierarchy of competence in each political entity, the more difficult it is for national authorities to cope with a concurring or shared European competence. Lastly, another area of difficulty is the strictly transnational application of the principle of European integrity, as competence and powers are jointly exercised by Member States in those cases. This difficulty will actually even increase in the future given the more and more differentiated nature of European integration.[65]

All this is hardly surprising given that, in fifty years, the economic integration project has turned into a political construction whose nature is still indeterminate and unprecedented in political history.[66] Different degrees of cooperation are now in place between Member States and the Union, which do not correspond to any of the previously

[64] See Curtin and Dekker, *op. cit.* note 58 *supra*, at 70–71 on this very balance between autonomy, on the one hand, and mutual solidarity, on the other. On this point, it is interesting to note that the Draft Constitution restates in the same article both the *principle of loyal cooperation* and the *principle of respect for national identities* (Arts I-5.2 and I-5.1 respectively), without, however, unpacking and solving their potential tensions. See also Magnette, *op. cit.* note 62 *supra*, at 261 for a similar point about the virtue of diversity and conflict for the future of European citizenship and democracy.

[65] On this point, see N. Walker, 'Flexibility within a Metaconstitutional Frame: Reflections on the Future of Legal Authority in Europe', in G. De Burca and J. Scott (eds), *Constitutional Change in the EU: Between Uniformity and Flexibility* (Hart, 2000) Ch. 9; N. Walker, 'Sovereignty and Differentiated Integration in the European Union', in Z. Bankowski and A. Scott (eds), *The European Union and its Order* (Blackwell, 2000) 31.

[66] See on this point J. Cohen and C. Sabel, 'Directly-Deliberative Polyarchy', (1997) 3:4 *European Law Journal* 313; Cohen and Sabel, *op. cit.* note 22 *supra*; Gerstenberg and Sabel, *op. cit.* note 19 *supra*; Gerstenberg, 2002a and 2002b, *op. cit.* note 19 *supra*.

known political categories.[67] The difficulty is that neither the Treaties nor European practice do, or perhaps should entail a precise division of powers, and this trend has not been reversed by the CFE's Draft Constitution despite important clarifications in Article I-10.1 (first explicit statement of the primacy clause[68]) and in Articles I-11 to I-17.[69] Moreover, both the Union and the Member States have adopted very clear positions on the issue of the primacy of European law, but their perspectives do not correspond to each other. Each legal order regards its own sovereignty as absolute, original and supreme, and the other's as relative and derivative.[70]

If authorities are to consider other European authorities' decisions when they take their own and have to make sure that they cohere in order for the European legal community to speak with one voice, then it would become an important obstacle if they felt that they are thereby losing their sovereignty. The problem is that often sovereignty is understood in a very basic way as the power to have the last word on specific issues. Given the pluralist nature of the European legal order *lato sensu*, the different authorities in charge are not subordinated to one another. It is necessary therefore to find a way to reconcile European political authorities' sovereignty with their motivation to belong to a European community of principle in re-conceptualising sovereignty in Europe.

To start with, the clashes of sovereignties I have just been describing should not be taken, in a 'winner-takes-all' manner, to mean that either the Member States or the European Union retain original sovereignty.[71] This does not mean, however, that sovereignty should be pooled or divided as some suggest it should, since this would empty the concept of sovereignty from any meaningful implications.[72] Nor does it have to mean that sovereignty is lost and that we have moved beyond sovereignty, since we clearly look for and need a final umpire in most political circumstances.[73] All it reveals is that paradigms of sovereignty have changed and that new conceptions have emerged which conflict with prior ones, thus confirming the essentially contestable nature of the

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[67] See S. Douglas-Scott, *The Constitutional Law of the European Union* (Longman, 2002) 518 ff. See also the exchange between F. Mancini, 'Europe: the case for statehood', (1998) 4 *European Law Journal* 29 and J. H. H. Weiler, 'Europe: the case against the case for statehood', (1998) 4 *European Law Journal* 43.

[68] Part of the difficulty with this new primacy clause is its ambiguous wording, particularly as to what should happen in the constitutional realm. One may therefore even venture that Art I-10 will increase the degree of controversy in the area.

[69] In fact, one may argue that, in the cases where the division of competence has been reorganised and clarified, more complex conflicts of competence and cases will arise, thus making the principle of European integrity even more essential.

[70] See on the complex relationship between primacy and sovereignty in European law, G. De Burca, 'Sovereignty and the Supremacy Doctrine of the European Court of Justice', in N. Walker (ed.), *Sovereignty in Transition* (Hart, 2003).

[71] On a critique of this Manichean opposition, see N. Walker, 'All Dressed Up', (2001) 21:3 *Oxford Journal of Legal Studies* 563, 569; S. Weatherill, 'Is Constitutional Finality Feasible or Desirable? On the Cases for European Constitutionalism and a European Constitution', Constitutionalism Web-Papers, ConWEB No 7/2002, <http://les1.man.ac.uk/conweb/papers/conweb7–2002.pdf>, accessed on 17 July 2003.

[72] For a critique of this conception, see N. Walker, 'Constitutionalism and Late Sovereignty in the European Union', in N. Walker (ed.), *Sovereignty in Transition* (Hart, 2003); B. de Witte, 'Sovereignty and European Integration: The Weight of Legal Tradition', in A.-M. Slaughter, A. Stone Sweet and J. Weiler (eds), *The European Court and National Courts: Doctrine and Jurisprudence* (Oxford University Press, 1998) 277, 302.

[73] Contra: MacCormick, *op. cit.* note 16 *supra*, and N. MacCormick, *Questioning Sovereignty*, (Oxford University Press, 1999).

concept of sovereignty.[74] As Neil Walker rightly notes, the concept of sovereignty has sufficient scope to accommodate a multi-dimensional conception of sovereignty.[75]

Of course, it is possible to go beyond mere disagreement on these conceptions of sovereignty[76] and to choose one of them that would fit current paradigms in Europe. For instance, sovereignty could very well be conceived as plural along the lines of a *cooperative model of sovereignty*.[77] This approach of sovereignty, which corresponds to the concept's contestable nature, also mirrors the cooperative dimension that has recently characterised international relations between interdependent and so-called 'open' states.[78] When understood in this *cooperative* way, sovereignty amounts to a *reflective* and *dynamic* concept.

First, it is *reflective* as it creates a constant questioning of the allocation of power, thus putting into question others' sovereignty as well as one's own. Read together with subsidiarity, cooperative sovereignty may require a centralisation or even a decentralisation of competence depending on the circumstances. In each case, the decision to cooperate or not is sovereign. and subsidiarity does not look as antithetical to sovereignty as it is sometimes made to. Although the exercise of cooperative sovereignty is divided, sovereignty itself is not diminished. On the contrary, its cooperative dimension makes it stronger thanks to its concerted or polycentred exercise. This is what some authors refer to as polyarchy.[79]

Second, the exercise of sovereignty is *dynamic* as it implies a search for the best allocation of power in each case and by all the sovereign authorities affected.[80] This common exercise of political sovereignty is then reflected in the structure of the relationship between the different legal orders at stake; none of them is ultimately and entirely submitted to another. This reality is what many nowadays refer to as legal pluralism.[81] This kind of legal cooperation reveals the possibility of a non-hierarchically organised plurality of legal orders, which may individually remain hierarchical in their internal structure or in their relationship to international law,[82] but which relate to one another in a heterarchical way.[83]

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[74] I have argued for such a concept of sovereignty elsewhere: see S. Besson, 'Post-souveraineté ou simple changement de paradigmes? Variations sur un concept essentiellement contestable', in T. Balmelli, A. Borghi and P.-A. Hildbrand (eds), *La souveraineté au XXI*ème *siècle* (Editions Interuniversitaires Suisses, 2003) 7 and S. Besson, 'La souveraineté co-opérative en Europe', in T. Balmelli (ed.), *La Suisse saisie par l'Union européenne* (Editions Interuniversitaires Suisses, 2003) 5.

[75] See on this point Walker, 2000b, *op. cit.* note 65 *supra*, 32; Walker, *op. cit.* note 72 *supra*.

[76] See on the importance of collective uncertainty about sovereignty, I. Ward, 'In search of European identity', (1994) *Modern Law Review* 315; Richmond, *op. cit.* note 60 *supra*.

[77] See Besson, 2003a and 2003b, *op. cit.* note 74 *supra*. See for other cooperative accounts of sovereignty: Magnette, *op. cit.* note 62 *supra*; Walker, *op. cit.* note 72 *supra*; Maduro, note 3 *supra*. See also J. Weiler and J. Trachtman, 'European Constitutionalism and Its Discontents', (1997) 17 *Northwestern Journal of International Law and Business* 354; Weiler, *op. cit.* note 53 *supra*, at 347; Weatherill, *op. cit.* note 71 *supra*; Douglas-Scott, *op. cit.* note 67 *supra*, at 281.

[78] See J. Esher, 'Der kooperative Nationalstaat im Zeitalter der Globalisierung', in D. Döring (ed.), *Sozialstaat in der Globalisierung* (Suhrkamp, 1999) 117; Habermas, *op. cit.* note 53 *supra*.

[79] See Cohen and Sabel, *op. cit.* note 22 *supra*; Gerstenberg and Sabel, *op. cit.* note 19 *supra*.

[80] MacCormick, *op. cit.* note 73 *supra*, at 142.

[81] See MacCormick, *op. cit.* note 73 *supra*, at 104, 131. See also Richmond, *op. cit.* note 60 *supra*; Z. Bankowski and E. Christodoulidis, 'The European Union as an Essentially Contested Project', in Z. Bankowski and A. Scott (eds), *The European Union and its Order* (Blackwell, 2000) 17, 27 ff.

[82] See Richmond, *op. cit.* note 60 *supra*, at 417 on the coexistence of independent albeit conflicting viewpoints among distinct legal orders in the European context.

[83] See Walker, *op. cit.* note 16 *supra*, 336 ff.

It should be clear by now how the cooperative conception of sovereignty may allow for integrity to become a truly sovereign virtue in the European political and legal community. As sovereignty is not undermined by being cooperative and as its exercise requires looking for the best way to ensure the values it protects, all European and national authorities would benefit from examining, comparing, and cohering with past decisions and laws of other European and national authorities. Integrity could thus become the virtue of Europeans' integrated sovereignty, i.e. the virtue of a community that wants to integrate itself without, however, renouncing to diversity and hence to pluralism.

B European Integrity and Authority

A second preliminary obstacle that should be addressed before we look at the principle of European integrity in more detail is the question of authority. By authority I mean the capacity of laws and decisions to bind, in order to distinguish it from the other side of the same coin, which is constituted by sovereignty.[84]

Whereas the authority of European laws and decisions in Member States is clearly given, the reverse is not necessarily true. It is even more difficult in the case of transnational relations of integrity among European Member States. Integrity requires that the authorities to which it applies take European or foreign national decisions into account when they decide. True, they are not bound to apply them as valid law, but they are expected to be inspired by them since they should make their decisions cohere with them. This is enough to trigger an authority-based problem for European integrity, since in a pluralist legal order such as the European legal order *lato sensu*, the different authorities in charge are not subordinated to one another and, strictly speaking, do not therefore have authority over one another.

This difficulty is at first sight paradoxical since the principle of integrity was first justified in this essay by reference to authority. Indeed, it was contended earlier that, in order for the recipients of legal decisions to be able to feel bound by them, they should be able to have been their authors and this is only possible if the law demonstrates integrity and speaks with one voice. The type of authority at stake in this justification of integrity is, however, the authority of *the decision* that coheres with others, in relation to its *recipients*, i.e. European citizens. By contrast, the issue at stake in this section is the authority of the *other decisions* with which the decision should cohere, in relation to the *authorities* in charge of making the decision. An illustration might help to understand the difficulty.[85] Let us imagine, for instance, that the Court of Justice of the European Communities might feel that it is not bound by German constitutional principles when applying a European Directive on equality. The German citizen, however, to whom the Court of Justice's decision and the German constitutional principles apply equally will not be able to feel she is the author of all the laws that allegedly bind her before they are made to cohere, thus requiring that the Court of Justice solves its authority-based problem and ensures that its decisions cohere with German constitutional principles.

The difficulty is not as insoluble as it first appears. First, there is a sense in which the authority of the decisions that are to be cohered with is only *ancillary* to the authority

[84] Note that the term 'authorities' is used in its general meaning in this context.

[85] This example is freely adapted from case C-285/98 *Tanja Kreil v Federal Republic of Germany* [2000] ECR I-69.

of the decisions by which citizens are bound. It is indeed part of the rules that bind authorities that they should make rules that can bind citizens. As such, they should also be able to be the authors of all laws that apply to citizens and this transforms into an authoritative directive whatever can make them true authors of a coherent set of laws. Second, there is an important *difference of degree* between the way in which a person is bound by a law *qua* citizen and the way in which she is bound *qua* judge or official. In the latter case, the obligation to abide may be much more tenuous and one speaks sometimes of 'persuasive authority'.[86] It is sufficient, indeed, that the decisions in question constitute a potential solution rather than a binding one as in the former case.

V The Forms of European Integrity

There can be two main forms of European integrity depending on which authorities are bound by it: integrity among Member States and the European Union, on the one hand, and integrity among Member States, on the other. This distinction corresponds to the opposition I drew earlier between vertical-vertical or supranational integrity and vertical-horizontal or transnational integrity.

A Integrity among Member States and the European Union

In order to grasp the importance of this main form of integrity in the European context, it is useful to distinguish cases in which national authorities are bound by integrity from those cases in which European authorities are.

a) Integrity on the Part of National Authorities

The least controversial case of European integrity is its application to national authorities. National laws and decisions that fall broadly within European domains of competence become part of a global set of laws and decisions, i.e. the laws and decisions of the European community that apply to all European citizens. Hence the requirement to speak with a single or at least harmonious voice with European laws and decisions.[87] This applies as much to coherence on the part of national laws and decisions, which, strictly speaking, implement or interpret European law as to coherence on the part of those national laws and decisions that implement a national competence but which affect or may be affected by European laws and decisions.

Most national authorities in Europe have tended in practice to cohere willingly in their decisions with European past laws and decisions. Cooperation on the part of national authorities in the translation, the enforcement, and the interpretation of European law in national law is facilitated in some cases where European procedures and institutions enable national authorities to ask for advice on particular questions. This is the case, for instance, of the possibility to apply for a preliminary ruling on a particular issue given by Article 234 of the consolidated version of the Treaty establishing the European Community. In practice, however, the growth in European litigation and the time constraints on national adjudication have led to an increase in national

[86] On persuasive authority in comparative law, see McCrudden, *op. cit.* note 47 *supra*.

[87] See Curtin and Dekker, *op. cit.* note 58 *supra*, at 77, who derive this 'obligation to give *indirect* effect to Union law' (emphasis added) from Art 10 EC's principle of loyalty. An analogy could therefore be drawn with the new principle of loyal cooperation as stated in Art I-5.2 of the Draft Constitution.

decisions on these matters. National authorities should therefore ensure consistency in principle with other European laws and decisions on their own, when they take this kind of decision. One should note in this respect that the increase in the national competence of adjudication over the interpretation of European law also implies a heightened need for vertical-horizontal integrity among national decisions in the implementation and interpretation of European law, as we will see.

b) Integrity on the Part of European Authorities

If one wants to go up one rung in the ladder of controversy regarding the principle of European integrity, the next stage is to assess integrity as a virtue of European authorities. According to European integrity, European authorities should render decisions that cohere with their own past laws and decisions, but also with the decisions and laws of Member States' authorities.

In practice, European authorities have been quite inclined to ensure coherence between their own decisions and national decisions. It has been the case for many Court of Justice decisions on controversial constitutional and human rights issues. The Court of Justice decided in these cases to take into account national guarantees of human rights in a mutual dialogue with its national counterparts and hence to cohere with national positions rather than rule in isolation and at the price of integrity.[88] This tendency reveals the consciousness on the part of European authorities that they are speaking in the name of the European political community as a whole rather than just in their own name. This applies as much to coherence with national laws and decisions that implement or interpret European laws and decisions, as to coherence with those national laws and decisions which, strictly speaking, implement a national competence but affect or can be affected by European laws and decisions.

B Integrity among Member States

Integrity among Member States is mostly encountered in a national setting, but one should also mention the instances of vertical-horizontal integrity that take place in a European setting.

a) Integrity on the Part of National Authorities in a National Setting

One of the most controversial cases of application of European integrity is the case of integrity among Member States' authorities. According to this variant of the principle, authorities in Member States should not only make their decisions cohere with their own past decisions and laws, but also with the decisions of other national authorities in the European Union. This applies of course mostly to decisions of interpretation and implementation of European law in national law, but also in some cases to other national laws and decisions.

The difficulty is to establish a sufficient link between these national decisions and the European community of principle that called for integrity in the other two cases discussed before. The problem is not as intractable as it first seems, however. Transnational cross-fertilisation, both in adjudication and legislation, is a widespread phenomenon.[89]

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[88] See e.g. Case C-285/98 *Tanja Kreil v Federal Republic of Germany* [2000] ECR I-69 in which the Court of Justice tried to cohere with the core of German constitutional law, although its decision departed from the German highest administrative court's decision on the matter.

[89] See McCrudden, *op. cit.* note 47 *supra*.

True, it does not apply universally, but in communities of countries that feel bound by common principles and rules. Belonging to the European Union has motivated many European countries to borrow rules in other European countries and, more generally, to cohere in the decisions that have relevance for the European political community as a whole.[90] This is particularly important now that, as we saw earlier, national authorities are those mainly in charge of controlling the European conformity of national laws, and are thus also contributing to the construction of the European legal order.

Transnational integrity not only applies to cases in which national authorities interpret and implement European law, but also to other areas of national competence. Some national laws are indeed bound to affect the implementation of other European laws or may affect the way these areas might one day be europeanised in the country in question but also in others.[91] Support for transnational integrity may also be found in the evolving practice of 'mutual recognition' of national regulations and the attempt to overcome market fragmentation resulting from differing national standards when there is no European competence.[92]

In sum, although this transnational form of European integrity remains relatively rare in practice among authorities, as opposed to litigants or defendants, there are no obstacles in principle to its implementation.[93] It is therefore, as Miguel Poiares Maduro rightly argues, a matter of conviction and reform in the process of European law-making to further its implementation in the future.[94] This should be strongly encouraged given the crucial role transnational coherence and cooperation, rather than top-down or even bottom-up approaches, can play in constituting a pluralist albeit common European identity and citizenship.

b) Integrity on the Part of National Authorities in a European Setting: the Case of the OMC

European integrity may also apply between Member States in the context of the increasingly prevalent 'Open Method of Co-ordination' (OMC).[95] This procedure aims at addressing problems created by European integration in Member States.[96] OMC is in essence a form of community-based control as between Member States.[97]

There are many ways of implementing this procedure, but one of the most promising ones puts the emphasis on national authorities' decisions. These have to focus on a common problem and to consider their own policy choices in relation to this problem by comparison to other Member States' choices. In this account of OMC, integrity can obviously play a crucial role as it would ensure the very form of European institutional coherence among Member States the procedure aims at obtaining: mutual correction

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[90] See Weiler, 1994, *op. cit.* note 20 *supra*, at 52 ff. on this phenomenon in the European context.

[91] See Maduro, *op. cit.* note 3 *supra* on the similar idea of internalisation of other national decisions in one's national laws and decisions. See also Maduro, *op. cit.* note 23 *supra*, at 100.

[92] See Curtin and Dekker, *op. cit.* note 58 *supra*, at 72 ff.

[93] See A-M. Slaughter, A. Stone Sweet and J. Weiler (eds), *The European Court and National Courts: Doctrine and Jurisprudence* (Oxford University Press, 1998) at xiii on cases of vertical-horizontal coherence among courts.

[94] Maduro, *op. cit.* note 3 *supra*.

[95] See, for instance, the *de facto* inclusion of the OMC in the Draft Constitution and in particular in Arts III-174.2, III-175.2, III-102 and III-97.

[96] See C. Joerges, ' "Deliberative Supranationalism"—Two Defences', (2002) 8 *European Law Journal* 133; C. Scott, 'The Governance of the European Union: The Potential for Multi-Level Control', (2002) 8 *European Law Journal* 59, 71.

[97] See Scott, *op. cit.* note 96 *supra*, at 71.

and consistency, but not uniformity.[98] Not only should Member States try to demonstrate the effectiveness of nationally divergent solutions in comparative analysis, but they should also aim at establishing that these solutions 'integrate common European concerns'.[99] European integrity in this context also implies integrity with other Member States' decisions with which they are compared in respect of their integrity with European law.

In fact, European integrity in the OMC context might even be a way to redeem the latter's democratic legitimacy[100] in a space devoid of legal constraints apart from the Treaty itself.[101] Integrity will indeed lead Member States' authorities to account for their decisions a second time at the national level through the publicity gained at the European level, as well as to account for them before the European authorities which take part to the OMC. More importantly, it will constrain Member States' authorities to account to each other for the lack of European coherence of their decisions overall, thus generating a form of *transnational democratic practice* in Europe. This could in turn contribute to the emergence of a truly European public sphere that may more generally enhance democratic legitimacy at the European level.[102] This form of democratic coordination across political and legal sub-communities, that supplements democratic decisions taken in the separate units, is characteristic of the new form of democracy some authors hope for in the European Union: deliberative polyarchy.[103]

In a nutshell, when European integrity among Member States is applied through the OMC, it protects, on the one hand, the importance of diversity and context-sensitivity in European law by allowing Member States a broad margin of appreciation, and, on the other, the importance of the search for a common approach that shapes Member States' decisions. This form of integrity may therefore well become a vehicle for further constitutionalisation of the EU thanks to an enterprise of transnational legal coherence among Member States' authorities.[104]

VI The Relevance of European Integrity: Three Illustrations

As may be deduced from the title of this paper, European integrity is one of the outcomes of European integration, but it has also become one of its necessary requirements. The process of European integration that contributed to the constitution of a European community of principle, and hence to the emergence of the principle of integrity, has generally weakened, despite numerous recent attempts to boost it through the European enlargement and constitutionalisation processes. There are different reasons for this, but one may want to mention the legitimacy crisis caused in part by the extension of judicial powers, the alleged democratic deficit of the European decisionmaking process, and the lack of sufficient constitutional guarantees at the European level.

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[98] See Cohen and Sabel, *op. cit.* note 22 *supra*.

[99] Gerstenberg, 2002b, *op. cit.* note 19 *supra*, at 569.

[100] For a defence of the democratic elements of the OMC, see in particular Gerstenberg and Sabel, *op. cit.* note 19 *supra*.

[101] See Gerstenberg and Sabel, *op. cit.* note 19 *supra*, at 570.

[102] See E. O. Eriksen and J. E. Fossum, 'Democracy through strong publics in the European Union?', (2002) 40:3 *Journal of Common Market Studies* 401.

[103] See Cohen and Sabel, *op. cit.* note 66 *supra* and more particularly note 22 *supra*.

[104] See Gerstenberg, 2002b, *op. cit.* note 19 *supra*, at 571 and Cohen and Sabel, *op. cit.* note 22 *supra* in the context of the OMC.

It is in those very areas of difficulty that a strong principle of integrity can contribute to the re-constitution of a community of principle in the European Union and hence to a new phase in European integration. Integrity could then become a truly *integrative virtue*, i.e. the virtue of a community that aims at integrating itself as much as possible in areas of European competence without neglecting its own diversity. Not only could European integrity amount to a good way of dealing with constitutional conflicts in European adjudication, first of all, but, second, it could also provide the incentive for more intense interparliamentary cooperation. Lastly, integrity could also stimulate European constitutionalism *qua* process of mutual discovery and learning among European Member States. All three difficulties have been addressed to some extent in the deliberations surrounding the adoption of the Draft Constitution, but European integrity can still make a crucial difference in the area.

A European Integrity and Constitutional Conflicts: Integrity in Adjudication

Constitutional conflicts are conflicts between national and European jurisdictional authorities, which all claim to have the final say in constitutional matters in their own legal orders. Such conflicts arise more and more frequently in the European context, even more so since the dominant conception of the relations between European legal orders has become a pluralist and heterarchical one.[105] Different ways to solve these conflicts have been brought forward over the past few years and they include dialogue[106] or international/supra-European modes of legal settlement.[107]

Constitutional conflicts raise issues of integrity as they usually lead to either side of the conflict deciding on the primacy of its constitutional rules and principles without any further regard for the other side's law, thus importing an element of incoherence into the global set of laws that apply to European citizens. Of course, it is natural that, on both sides of the debate, jurisdictions examine the validity of laws they are bound to apply.[108] The fear of conflicts and the lack of clear rules on the matter should not lead to the conclusion that controls of constitutionality have no place at all in the European construction process.[109] The question is rather to know what type of control should apply and what its modalities should be.

The principle of European integrity might offer a way out of the deadlock. It follows indeed from what has been said about cooperative sovereignty in the European Union that constitutionality controls, either on the European or the national sides, should be seen as cooperative and reflective.[110] National and European jurisdictions cannot afford to work separately and with no regard whatsoever for the other side's constitutional rules. This is what Mattias Kumm calls the 'common constitutional approach'.[111] One

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[105] See Richmond, *op. cit.* note 60 *supra*; MacCormick, *op. cit.* note 73 *supra*; Walker, *op. cit.* note 16 *supra*.

[106] See M. Kumm, 'Who is the final arbiter of constitutionality in Europe? Three conceptions of the relationship between the German Federal Constitutional Court and the European Court of Justice', (1999) 36 *Common Market Law Review* 351; Besson, 2003b, *op. cit.* note 74 *supra*; Maduro, *op. cit.* note 3 *supra*.

[107] See Weiler and Haltern, *op. cit.* note 60 *supra*; MacCormick, *op. cit.* note 73 *supra*; Besson, *op. cit.* note 48 *supra*.

[108] See Kumm, *op. cit.* note 106 *supra*, at 362.

[109] *Ibid.*, 353.

[110] See Besson, 2003b, *op. cit.* note 74 *supra*. See also Kumm, *op. cit.* note 106 *supra*, at 369, on what the German Federal Constitutional Court calls the 'co-operation relationship' in the *Maastricht Urteil*.

[111] See Kumm, *op. cit.* note 106 *supra*, at 351.

may even go further than these mere requirements of dialogue and mutual respect. Indeed, on the basis of what has been said about integrity being one of the principles underlying the exercise of reflective sovereignty in Europe, one could add that both national and European courts should do more than merely pay attention to their mutual decisions on these issues. They should also try to speak in harmony with each other.

According to the integrity-based model of constitutional control defended here, adjudication in Europe could therefore be much more respectful of other authorities' laws and decisions and coherent than it is usually said to be. Most principles and values that are protected on each side are common to all European constitutional instruments. Thus, disagreement about the best way to realise them enhances the need for cooperation and coherence in protecting them in each jurisdiction. This model of constitutional control builds upon judicial conversation,[112] but goes further than what is usually understood by these terms, as it results in true *cooperative constitutional control*. This may be done mainly through a form of mutual or reciprocal interpretation and justification.[113] One sometimes also speaks of a 'polycentered mode of judicial decision-making'.[114] This willingness to further European integrity on the part of all parties to constitutional conflicts should be warmly encouraged.[115] One of its many advantages could be to reduce the amount of distrust that has characterised the relationship between national constitutional courts and the Court of Justice in recent years.[116]

B European Integrity and Interparliamentary Discourse: Integrity in Legislation

Another area where the principle of European integrity could provide the means for a strong community of principle to establish itself is European legislation. Integrity in legislation could apply among national parliaments, on the one hand, or between national parliaments and the European Parliament, on the other.

The importance of dialogue between parliaments throughout Europe has been emphasised a lot in recent years, both at the national and European levels.[117] A Protocol to the Amsterdam Treaty actually gives a formal status to the principle of interparliamentary cooperation. More recently, a Protocol of the CFE's Draft Constitution establishes a series of measures to strengthen the involvement of national parliaments in EU decision-making that include, for instance, a duty to inform national parliaments, a common code of conduct, and an early warning mechanism in case of non-compliance with the principle of subsidiarity. The benefits of interparliamentary deliberation and the creation of a European parliamentary public sphere are clear in terms

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[112] See Weiler and Trachtman, *op. cit.* note 77 *supra*, at 391.

[113] I have benefited on this point from the discussion that followed Xavier Gomez's paper in the EuroConference in Legal Philosophy in Girona in November 2002.

[114] See Douglas-Scott, *op. cit.* note 67 *supra*, at 273.

[115] See J. Schwarze (ed.), *The Birth of a European Constitutional Order: the Interaction of National and European Constitutional Law* (Nomos, 2000); Weatherill, *op. cit.* note 71 *supra*.

[116] See e.g. the signal given by the Court of Justice in Case C-285/98 *Tanja Kreil v Federal Republic of Germany* [2000] ECR I-69 and by the German Federal Constitutional Court in the *Bananas case*: BVerfGE 2 BvL 1/97 7.6.2000, EuZW 2000, 702.

[117] See Blichner, *op. cit.* note 51 *supra*, 142ff. See also Miller and Ware, *op. cit.* note 51 *supra* on the national parliaments side and M. Bond, 'The European Parliament in the 1990s', (1997) 3:2 *The Journal of Legislative Studies* 1 on the European Parliament side.

of the enhancement of the democratic legitimacy of European decisions.[118] However, another principle is also at stake here: European integrity. Once information has been exchanged, one could argue that the legislative outcome itself, be it national or European, should be affected and be required to speak with a Euro-coherent voice.

Lars Blichner contends that 'interparliamentary discussions may be seen as a way of institutionalising self-reflectivity on the parliament's own decisions'.[119] One may go further and contend that, through interparliamentary dialogue, national and European legislatures gradually conceptualise the European political and legal community they belong to. Once this idea of contributing to the constitution of the European community is accepted, it is difficult to see how the reflective requirement to compare and cohere with other national and European decisions may be discarded. Rather than conceptualising their own national identity with respect to a broader European one, on the one hand, and their communal European identity, on the other, in isolated ways, members of national parliaments should conceptualise them together as it is only then that they will belong to a true political community.

This transnational legislative dialogue and mutual comparison could in turn add onto national standards of democratic legitimacy and hence contribute to enhancing the democratic quality of national legislation.[120] National decisions in Europe are increasingly affected by European, but also by other national decisions in the drafting of which all those subject to them have not had democratic representation. Interparliamentary cooperation may help compensate these national and European democratic deficits. Moreover, the application of the principle of European integrity to European legislature could help alleviating the democratic deficit that plagues European Parliament's legislation. In some estimates, indeed, the implementation of legislation taken in Brussels already makes up 70% of all national legislation, whereas this legislation is hardly ever exposed to political debate in national arenas.[121] Bound by the principle of integrity, the European Parliament would not only have to examine national legislation, but also to make sure that its legislation coheres with it.

C European Integrity and Constitutionalism qua *Process: Integrity in Constitutionalisation*

The principle of integrity could also play a role for European constitutionalism *qua* process,[122] i.e. the process of constitutionalisation of the European Union which started fifty years ago and the outcome of which is currently being reorganised.[123] This process

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[118] See in particular Blichner, *op. cit.* note 51 *supra*.

[119] *Ibid.*, at 162.

[120] On the democratic implications of the proposed principle of European integrity, see M. Poiares Maduro, 'Where to look for legitimacy?', <www.ieei.pt/images/articles/674/PaperMPM-IEEucp.pdf>, accessed on 7 October 2003.

[121] See Habermas, *op. cit.* note 51 *supra* on this point.

[122] See Dorf and Sabel, *op. cit.* note 22 *supra*, at 473 on constitutional experimentalism. See also Cohen and Sabel, *op. cit.* note 22 *supra* on constitutionalism *qua* activity rather than *qua* set of enumerated powers and rights. See also Snyder, *op. cit.* note 38 *supra*, 56–59; F. Snyder, 'The unfinished constitution of the European Union: principles, processes and culture', in J. Weiler and M. Wind (eds), *European Constitutionalism Beyond the State*, (Cambridge University Press, 2003), 55, 62 ff.

[123] For an analysis of the different conceptions of European constitutionalism, N. Walker, 'After the Constitutional Moment', Federal Trust Constitutional Paper No 32/03, <www.fedtrust.co.uk/default.asp?groupid = 0&search = online%20constitutional%20papers>, accessed on 5 December 2003.

is a cross-disciplinary and cross-institutional one, as it implies different types of authorities in different legal fields that have a constitutional effect in a broad sense of the term.[124] Not only are there many different European authorities involved, but the process amounts to the gradual constitution of the European political community as a whole and as such it involves all those authorities in a position to produce constitutional rules and decisions that apply to European citizens.[125] This is also what the idea of constitutional pluralism aims at capturing.[126]

In these conditions, European integrity would constitute a form of *European constitutional discipline* as it would work as the constituting and hence constitutionalising principle. In all areas and cases discussed in this article, all national and European authorities would be reminded by the principle of integrity that they are contributing to the gradual constitution or even to the re-constitution of Europe. They would therefore have to test their decisions for coherence against other European and national constitutional standards before taking them.

Of course, this form of constitutional discipline should not be interpreted as a way to disavow the CFE's Draft Constitution, nor the outcomes of the 2004 IGC. It corresponds more closely, however, to the nature of the European community and the flexible way in which it has gradually constituted itself in fifty years of integration. In respecting integrity, European constitutionalism *qua* process promotes the very ideals of tolerance and cooperation Joseph Weiler associates with the European constitution.[127] This process should not therefore be discarded once a formal European Constitution has been entrenched. It should on the contrary be reinforced by current constitutional discussions and the new constitutional *fora*, which have been created by or have emerged in the wake of the CFE.[128] It is important as a consequence to prevent the potential chilling effect the adoption of a formal and unified European Constitution could have on the existing transnational dialogue and constitutional process.[129] To do so, we should actively foster the cooperative attitude among national and European authorities that has been triggered by the European 'constitutional moment', whatever that moment really amounted to.[130]

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[124] See Snyder, *op. cit.* note 38 *supra*, at 100 on this point.

[125] See e.g. D. Chalmers, 'Judicial Preferences and the Community Legal Order', (1997) 60 *Modern Law Review* 164, 180. See also K. Mortelmans, 'Community Law: more than a Functional Area of Law, Less than a Legal System', (1996) 1 *Legal Issues of European Integration* 23, 42–43.

[126] See Walker, *op. cit.* note 16 *supra*, 336 ff.

[127] See Weiler, *op. cit.* note 62 *supra* and J. Weiler, 'The Principle of Constitutional Tolerance', in F. Snyder (ed.), *The Europeanisation of Law: The Legal Effects of European Integration* (Hart, 2000).

[128] See J. Shaw, 'Postnational Constitutionalism in the European Union', in T. Christiansen, K. E. Joergensen and A. Wiener (eds), *The Social Construction of Europe* (Sage, 2001) 66; J. Shaw, 'Process, Responsibility and Inclusion in EU Constitutionalism', (2003) 9:1 *European Law Journal* 45.

[129] Arguably, the degree of potential chilling effect generated by the adoption of a formal Constitution will depend on the final form and status that is given to the current Draft Constitution, especially with respect to the ratification and amendment procedures. Depending on whether national and European authorities perceive it as a Constitutional Treaty or as a formal Constitution and as a formal Bill of rights, their respectful and coherent attitude towards other authorities' conflicting constitutional and human rights decisions will not seem as appropriate.

[130] For a discussion of this European 'constitutional moment', see Walker, *op. cit.* note 123 *supra*. See on the attitude of principled deliberation and cooperation in the European Convention, P. Magnette, 'Why and How arguing in a Constitutional Convention?', Federal Trust Constitutional Paper No 33/03, <www.fedtrust.co.uk/default.asp?groupid = 0&search = online%20constitutional%20papers>, accessed on 5 December 2003.

Conclusion

European law should speak with just one voice, or so it seems by the end of this article. The laws of the European community in a broad sense can only hope to gain true legitimacy and authority in the eyes of all European citizens if they show respect for diverging but reasonable conceptions of what it should do.[131] This can only be done if all national and European authorities speak as an integrated entity and with respect to all parts of the law that applies to individuals in Europe.

In fact, the principle of integrity has become even more relevant now that European communal ties are under scrutiny in terms of institutional, democratic, and constitutional legitimacy and that the European Union has been enlarged to integrate new members. Integrity should be conceived as a constructive approach to dealing with the growing pressure for European solutions under conditions of increasing politically salient diversity. In these circumstances, integrity constitutes the ideal instrument for a pluralist and flexible further constitutionalisation of the European Union.

[131] See in this respect the revealing *Perceptions of the European Union: A Qualitative Study of the Public's Attitudes to and Expectations of the European Union in the 15 Member States and the 9 Candidate Countries* (European Commission, 15 June 2001).