Towards a Constitutional Responsibility Approach for Securing Good Regulation and Enforcement in the Shared European Legal Order

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Overarching CoCoT Question

How can the law be better used as a means to shape regulation and enforcement in the shared (inter)national and European legal order, in such a way that it contributes to a European society that enjoys peace, guarantees the protection of core values and the well-being of its citizens?

⇒ Article 3(1) TEU goals leading benchmarks

⇒ Flesh out its conceptual, constitutional and theoretical foundations

**Focus Working Paper: taking a constitutional perspective on regulation and enforcement in Europe requires a closer consideration of:**

(i) how the institutional framework and its different – (inter) national and EU – layers and actors can be understood in relation to one another from a regulation and enforcement perspective (thin approach);

(ii) and how it should be organised and behave vis-à-vis one another so as to secure good regulation and enforcement in Europe (thick approach)
Our thesis: existing EU constitutional theories largely fall short in providing answers to the above questions....

- Focus is mostly on legal status/authority conflicts before courts; supremacy, fundamental rights, constitutional identity, rule of law, Kompetenz-Kompetenz...

Constitutional pluralism/hierarchy debate and judicial dialogue focus

Descriptive shortcomings as they fail to consider actors other than courts and role of other branches of government and regulation and enforcement arrangements, including those not provided for in the Treaties

Normative shortcomings as the focus is on power-balancing Member States – EU rather than on putting Article 3(1) goals and citizens central and their role and interests in legitimising regulation and enforcement in Europe
What we propose: shift focus towards the development of a constitutional responsibility approach...

- Important building blocks of this, reinforced since the Treaty of Lisbon...

  *Behavioural principles* such as sincere cooperation, but also openness, transparency, effectiveness, equality, solidarity, coherency and consistency, participation, consultation (should) guide the conduct of EU and national authorities....

  *Political dimension of pacta sunt servanda*; status of EU-membership entails obligations but also opportunities and responsibilities, at all levels of government and beyond (cf *Integrationsverantwortung*)...

  *Realising the Economy of Wellbeing*; focus on the promotion and mainstreaming of security, EU core values and people’s wellbeing
Trust as a precondition for constitutional responsibility

Horizontal/mutual trust; in-between EU institutions and in-between Member States

Vertical: between EU-institutions and Member States

But fundamentally so:

citizen’s trust in EU and national institutions delivering on Article 3(1) goals...
TRUST AS A PRECONDITION

CONSTITUTIONAL RESPONSIBILITY

(in-between) EU-institutions

(in-between) Member states

Citizens
Framing the more specific presentations of this Conversation

- What does it mean to take a constitutional approach to regulation and enforcement in Europe, and what should such an approach prescribe to secure good regulation and enforcement? What is the relevance and meaning of trust in that regard?

- How/Why is trust key for securing good regulation/enforcement in certain policy fields? How does it relate to the notions of effectiveness and legitimacy?

- How is/can trust (be) conceptualised in these fields and based on what sources?

- To what EU/(inter)national legal principles does it connect or in what legal principles does the concept of trust translate?

- How has trust been researched in these fields, based on what methodology?

- What are the biggest challenges or hurdles that need addressing to secure trust and therewith a solid basis for good regulation and enforcement?