

What's so European about the European Union?

Legitimacy between Institution and Identity

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Abstract

This article explores the tension between an understanding of Europe as purveyor of a certain kind of cultural, spiritual or religious identity and the more or less bureaucratic project of European construction undertaken in its name. The central axis of this tension is the theoretical relationship between *identity* and *legitimacy*. The classical modern problem of nation-state building involves integrating the legitimating force of collective identity into the institutions of the state. How does the project of European construction respond to an analogous challenge? This article develops this theoretical question by turning to two canonical positions concerning the relation between institutional legitimacy and its cultural, spiritual or religious underpinnings – Montesquieu and Weber. It then returns to the founding documents of the EU in order to interrogate the legitimacy of the EU in light of the concept of European identity.

Key words

■ culture ■ democracy ■ European Union ■ identity ■ legitimacy

Introduction

Europe has many roots and many identities. Never before has this been made more evident than in the ongoing attempt to institutionalize the European cultural heritage in the accelerating process of European construction (Viehoff and Segers, 1999; Ferry, 2000; Hermet, 1998; Lapeyronne, 1998). Europe is a variegated, multi-level institutional arrangement (Appadurai, 1990), a complex set of deeply historical values issuing from the Greco-Latin synthesis, a constellation of ideas about the rights and obligations of human beings that emerged

from the Renaissance, and a set of politico-moral principles that served as the motor for the American and the French Revolutions (Girault, 1994; Trubeckoj, 1982). In other words, and for better or worse, a long spiritual and cultural legacy is the red thread of European identity. The problem facing European construction, from the Schuman Plan to the Treaty of Nice, is how to give flesh and blood to this legacy. This article attempts to explore the relationship between Europe understood as a cultural, spiritual and religious collectivity, on the one hand, and the legitimacy of institutional construction of the European Union, on the other.

By re-opening the question of the legitimacy of political institutions in the context of European construction, this article circumscribes the so-called 'crisis of legitimacy' in the EU. But instead of focusing on the political crisis that many observers detect in the process of European construction, it examines the scientific presuppositions that make the idea of crisis possible. Typically, this crisis is perceived in two different varieties. The first is the famous 'democratic deficit', the lack of democratic control mechanisms, which saps European Union institutions of legitimacy. The second is the general lack of popular support for the EU as a forum for deliberation on matters of European concern. The problem implicit in approaching legitimacy according to these two approaches, argue Banchoff and Smith (1999), is that they build upon a projection of the traditional models of nation-state legitimacy onto a transnational institutional structure. This misprision has to some extent been corrected by newer literature on 'multi-level-governance', which attempts to go beyond both intergovernmental approaches and the simple opposition European identity – national identity.

The following analysis attempts to rethink some of the *conceptual* elements that organize the relationship between political action and the ideas that motivate it. It is thereby conceived as a 'back to basics' approach to political theory and EU scholarship, a re-visiting of the foundations of political thought, and an attempt to reinterpret and recast them in terms that problematize more traditional methods for the study of contemporary European politics. Methodologically this involves a meeting between several disciplines: cultural history, legal philosophy, and political philosophy, in the study of two keystone texts in modern intellectual history. It is thus not the intention of this article to in any sense 'measure' the legitimacy of the European Union through empirical studies of those who are under the jurisdiction of its policies. It is rather to explore the theoretical conditions of its legitimacy and its intertwining with the European identity to which it is intended to relate politically.

The article is divided into three parts. The first section discusses a number of theoretical issues associated with understanding the concept of legitimacy from within a European cultural framework. The following section analyzes two classical philosophical approaches to the relation between legitimacy and cultural community: Montesquieu and Weber. Finally, the third section revisits the major documents of European construction in an attempt to locate the notion of legitimacy between European cultural identity and its institutionalization.

Culture and Legitimacy

EU = Europe

The reasoning of this article begins with a commonplace assertion. The European Union is not identical to Europe. To better understand this formula one might imagine a counterfactual thought experiment, modeled after Borges' 'Tln, Uqbar, Orbis Tertius', in which EU = Europe, in which the *institutional matrix* 'European Union' were defined at the outset as *identical* to Europe understood as a socio-culturo-material reality. It would be a situation in which every conceivable property of Europe, every individual, every collectivity, every political, economic, social, cultural entity were included *in toto* in the European Union, the entire population of the continent, and the continent itself, its soil, water and air, every beast, from the last brown cow of Flanders, to every wild boar of Tuscany, were a part of the institutional apparatus of the EU. Now, where would we be with respect to the questions of legitimacy and identity? It seems clear that these questions would not be questions at all. The question of the *legitimacy* of the European Union would never cross the minds of its 'functionaries', and the question of European identity would be inconceivable. There would simply be no 'space' for these questions. Both would be unimaginable precisely because there would be no thinkable *alternatives*. There would be nothing, which is not completely integrated in the European Union, and thus nothing which is not European, nothing which is not *legitimately* institutionalized by the European Union. Europe and the European Union would be coeval, reciprocally self-present, the *difference* between them inconceivable. There would be no otherness, no alterity, no difference.

Obviously, EU is not Europe. Our question becomes: What emerges out of their *divergence*? What happens in the 'space' between them? How does one get from the social-cultural-anthropological-material reality of 'Europe' to the institutional bulwark of the European Union (and back)? In what sense are they similar? In what sense different? In what sense do they communicate? To what degree are they reducible to one another? Or, to put it another way: Who needs the EU? Who needs Europe?

Hard Law and Soft Law

These questions might be profitably approached from the point of view of the distinction between 'hard law' and 'soft law' often evoked in debates in European law. 'Hard law' refers to the laws and regulations that make up legal systems in the traditional sense. 'Soft laws', on the other hand, are 'informal rules which are legally non-binding' or 'rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects' (Cini, 2000: 1–2).

What is the relationship between 'hard' and 'soft' law in terms of legitimacy? Is 'hard' law more 'legitimate' than 'soft', because more 'legal'? Is soft law less

legitimate because less 'rigorous'? Or is it more legitimate because more proximate to the cultural reality of those civic objects of the 'law'? If we construe 'hard law' as an ideal type in Weberian style, it takes the form of pure legality. A hard law is a formal rule, a generalized, abstract codification of a norm. It is generalized and abstract in the sense that it is applicable to any number of potential objects in any number of concrete situations. Its legitimacy is supposed universal. Moreover, if we respect the opposition between 'hard' and 'soft' law, then the former must be understood as law which is binding, that is, law which is not dependent upon the informal arrangements which characterize cultural norms, standards and practices. Its legitimacy is therefore not derived from cultural norms but rather arises from its attachment to the authority and the legitimacy of the institution, independent of the concrete social or cultural context in which it is applied. The directives relative to the functioning of Interpol, for example, are only 'hard' to the degree their validity is general and formal, and thus is independent of the particular country or context in which they are deployed. Yet based on this theoretical point of departure, it seems clear that 'hard law' in its ideal form does not exist. Of course, there are 'hard laws' according to the nominal definition. But they are laws whose 'hardness' – whose generality and formality – depends upon their softness, that is, on their association with informal customs or norms. Or to put it another way, hard law has real meaning and real application only when it is associated with informal, non-binding rules, standards and practices.

Thus hard law is not completely coherent unless it is already soft. In other words, the meaning, authority and thus *legitimacy* of hard law appeal to norms and standards, which are already in vigor, in other words, which already invoke soft law. An obvious illustration of this is the set of rules and standards that govern traffic. Traffic laws are of course hard laws, formal and of indisputable legality. And yet for Italians, for example, they are meaninglessly and abstractly 'hard', emptied of the soft component, detached from the culturally based norms and standards of traffic. They thus have little or no significance and only nominal effect. Indeed, in Italy one is in some cases culturally or socially *sanctioned* for adhering to the far too 'hard' law – to the abstract legality of traffic regulations, for adhering to the *letter* of the law, instead of to its *spirit*, that is, instead of understanding implicitly – based on cultural fluency or cultural identity – that a completely different set of regulations – soft laws – is in vigor. This stands in contrast to a country like Norway, in which hard law is nearly softer than soft law, and where the social and cultural sanctions against violating soft law – the cultural norms and standards – are often more severe than the sanctions proffered for violating the hard law of the legal system.

In this sense, institutional formalized law is only meaningful when appeals – by chance or by the wisdom, sensitivity and cultural fluency of lawmakers – to the kernel of cultural norms and standards. The closer the 'fit' between culture and legality, between hard law and soft, the better the function of law. But this fit will never be perfect, never absolute. For an absolute fit would mean the obsolescence of legal systems. If everyone behaved according to the cultural norms

and standards, which it is the aspiration of lawmakers to legislate, then the meaningfulness of the laws would also evaporate. The legitimacy of law is possible only within the 'space' between pure legality – hard law – and cultural identity that structures and determines the norms and standards of a given culture – its soft laws. Legitimacy is the movement or the tension between pure norms – tacit or even unconscious – and pure legality, pure hard law.

Legitimacy between the Ideal and the Real: Montesquieu and Weber

I have suggested that the nature of law is such that it can be neither completely formal, nor completely concrete. The legitimacy of any legal institution in general, and the EU in particular, depends upon the tension between the ideal form of law and the empirical terrain on which it is to have validity. The institutions of the EU can neither assure their legitimacy by mirroring the cultural norms of European reality, nor by abstracting themselves from it. The legitimacy of legal institutions emerges from tension between the concrete cultural identity and the formalized, universal ideals of correctness. In a schematic way the two endpoints of this 'field' of legitimacy – the formal and the concrete – are expressed in Montesquieu's Enlightenment legal rationalism and Weber's late-modern reflexions on the nature of legitimacy. In *On the Spirit of Laws* (1748), Montesquieu constructs an empirical catalog of legal forms with the aim of fleshing out their 'spiritual' ideality. In his *Sociology of Law* (Weber, 1972) and other classical writings on legitimacy, Weber constructs a system of ideal-types in order to specify the meaning of their 'objective' legitimacy.

Montesquieu: Does Law have Spirit?

According to Montesquieu, all existing things, from the highest human affairs to the most primary natural processes, are governed by law. Law may be institutionally, socially, or scientifically differentiated, but its essence is unchanging. Law constitutes the structure of the intelligible world. It is not only the way things are, it is also the key to the meaning of the way things are. What is more, law is not merely the object of chance; it is the work of God, who is both the creator of the universe and its primary administrator. The law, according to which God created the universe, is identical to the law with which he conserves it. 'Thus there exists a primitive reason; and laws are the relations that one finds between this reason and the different beings, and the relations between these different beings' (Montesquieu, 1961: 123). The rationality of law transcends and precedes humanity. It has universal validity; it is the common denominator of all human beings, regardless of class, standing, patrimony, etc. Whether or not the universal rationality of law to which Montesquieu refers also transcends *cultural* differences is a question widely debated in the last decade by cultural studies and various theories of orientalism. Indeed in his *Persian Letters* (1967 [1758]) Montesquieu

himself contributed to the nineteenth-century tendency toward implicitly differentiating between the reason of European cultural heritage, and the other, inferior 'reason' of other cultures.

Montesquieu's basic typology of law consists of three forms of government: democracy, constitutional monarchy, and despotism. The differentiation is based on the locus of sovereign power. The novelty of this typology compared with its predecessors is the presence of the notion of democracy, defined as the situation in which 'the people collectively (*en corps*) has a sovereign power' (1961: 123). It is essential to recall here that 'democracy' is not defined in terms of *universal suffrage*, as it is, for better or worse, understood today. Democracy in our contemporary sense is based on a notion of power embodied in a government in which the will of the majority of qualified citizens rules (Lively, 1975: 51). To verify today whether or not a given nation is a democracy involves a certain checklist of procedural requirements, institutional stipulations and legal provisions. The contemporary notion of democracy is *procedural*, that is, it is based on a certain set of rules and procedures designed to assure conformity and verifiability. Though Montesquieu takes pains to describe the system of suffrage necessary to assure the function of democratic government the notion of democracy as a procedural logic *alone* is foreign to him (Montesquieu, 1961: 132–4). Democracy for Montesquieu foresees the legitimacy of the state based on the will of the people; contemporary democracy foresees the legitimacy of the state based on the correct execution of a set of valid procedures. For Montesquieu, the institutions of the state form a conduit to the cultural substance of the nation. In the contemporary version, democracy is defined in formal terms.

Montesquieu's classical notion of democracy encapsulates what we today would call 'national identity'. The procedural logic of contemporary democracy opts for a 'safer', that is a more instrumentally verifiable logic of representation. The price to be paid is that the democratic representation is far more detached from the cultural identity it is supposed to institutionalize. In contemporary democratic situations the cultural substrate of the nation-state comes to the fore through other, extra-democratic means. The tension between these two understandings of democracy is the same as the tension between culture and law in any given institutional setting (in Montesquieu's terms, between laws and the 'spirit' of laws).

For Montesquieu, political and civil laws are a mere outgrowth of a higher, more general form of reason that is universal to all of humanity. The specific laws of any one nation concretize this universality of the nation. Yet this national particularity – the expression of national identity – is particular to the extent of being exclusionary. The political and civil laws of each nation, explains Montesquieu, 'should be so proper to the people for which they are made, that it is only by great chance that those of one nation should be appropriate for another' (1961: 128). Montesquieu's philosophy of legitimacy thus leads straight into a paradox; national laws are universal only in the sense that they reflect the universally inscribed reason of all individuals. And yet the most universal expression for such laws is their exclusiveness of their particularity in the specific setting

that produces them (Montesquieu, 1961: 128). Strange universality: national laws are universal to the degree that they are determined by the concrete cultural, ethical, social, intellectual, religious, economic, demographic, and geographical situation of the given nation. What's more, according to Montesquieu, there is even a reflexive dimension at work in the determination of legal-institutional universality. The laws of the nation also depend upon the kind of *objects* to which they are to be applied, the association *between* legal objects, the *order* of objects, and even upon their own origin and development. In short, the laws of a nation are anything but transparent, anything but democratic in the contemporary procedural sense.

What are the lessons of *On the Spirit of Laws* with respect to the institutional project of European construction? Montesquieu's decisive contribution is his linking of a Renaissance philosophy of rationalism to a modern notion of democracy and political sovereignty based on the natural rights and rationality of the individual. Montesquieu's message is double. The foundation of the modern notion of *universality* is its *cultural particularity*. Democracy as a purveyor of political meaning is culturally determined, shaped and organized in relation to the cultural, social, moral particularities whose ambition it is to erect institutions of democratic representation. Representational democracy is not formal, not a mere structure, which can be filled with any national or cultural content. Institutional representation, here in its earliest modern form, is not transparent, not a resistance-free conduit from 'people' to 'institution'. This is a decisive insight for the theory of the reconstruction of the contemporary notion of legitimacy based on cultural identity. The 'spirit of laws' is its first forceful expression. Law has 'spirit', an implicit meaning and cultural/ethical/spiritual substratum. Institutions of legal representation cannot be emptied of cultural or spiritual reference. For this is the very presuppositions of its ideality.

The Weberian Categories of Legitimacy

Weber represents the other side of the legitimacy coin. The major thrust of Weber's theory of power and legitimacy for this study is to help us map out the *limits* of idealized rationality for the understanding of the legitimacy of legal institutions, on the one hand, and the cultural aspects to which it is opposed, on the other. According to Weber, the evolution of modernity corresponds to the evacuation of legitimacy of its ties to the cultural identity of a given group. In other words, Weber sees the historical development of legitimacy as the mirror image of Montesquieu's 'spirit of laws'.

For Weber, the legitimacy of any given order is distinctive according to the means used to attain compliance with it. Thus his distinction between 'convention' and 'law', underscored above in our discussion of hard and soft law, is based on the degree of institutionalization of the sanctions applicable in the case of deviance. The sanctions applicable in the case of the violation of a convention are based on general feelings of disapproval of a group, while sanctions applicable in the case of a violation of 'law' are based on organized, official, power-based

compulsion and coercion. Leaving aside the behaviorist aspect of this distinction, let us open up the distinction itself by looking at the kind of structural logic it deploys. What is the 'official-ness' of the official power based on? What gives meaning and validity to the institutions that find themselves charged with handing out coercion?

According to Weber there are a large number of different forms of legitimacy for a given order or institution: through tradition, charisma, belief in values, belief in legality (Weber, 1972: 17). The distinction between these in Weber's analysis is that the legitimacy of institutional authority is predicated on the kind of rationality that organizes the link between the institution and those who are likely to respect it and obey its rules. The types of rationality that have historically organized relations of authority have evolved in time. The most profound changes are those that have come about through the modernization process of modern society.

As is well known, Weber distinguishes between three types of legitimate authority, based on three 'logics' of legitimacy: the *rational*, the *traditional* and the *charismatic*. (1) *Rational* authority is based on the *legality* of the institutional authority in question. Its essence is the *exercise* of this legality. (2) *Traditional* authority is based on the everyday belief in the 'sacredness' of valid *traditions* and the legitimacy authority of those who are called to that tradition. (3) *Charismatic* authority is based on the extraordinary gifts or sacredness, heroic nature, or preeminence of a *person* and the authority of those who are called to him or her (Weber, 1972: 124). In a nutshell, rational authority is based on the legitimacy of and respect for the law itself, traditional authority is based on the legitimacy of and respect for a tradition, and charismatic authority is based on the legitimacy of a person.

How might Weber's classical distinction between the three pure types of legitimate authority be useful for our analysis of the legitimacy of the EU? Or rather, to what extent does it apply to the European Union, and to what extent not? Of these ideal types, the most insistent, because the most modern for Weber is the rational. It is clearly this ideal type that interests us most as a model for the legitimating structure of the European Union. The 'rational' type of authority is organized by a 'cosmos of abstract and intentionally set rules' (Weber, 1972: 125). Its legal authority is based wholly on the circulation of directives, themselves based on instrumental reason. The institution's only function is to apply the rules and regulations, which in some sense exist independently of them. The sub-groups and sub-organizations within the institution exist by virtue of their approval of the very rationality, whose application it is the legal duty of the institution to assure. In short, it is not the person, the tradition, or the cultural norm, which is the basis for authority. The real source of respect and authority is the *law itself*, the completely impersonal set of rules, which organize the bureaucracy. According to the model of the rational ideal type, it is the institutional matrix itself, which is the basis of legitimacy. In this way, the institution is self-legitimizing, referring to itself or its own legal and bureaucratic structures in order to legitimate its policies. This ideal-type is organized around a logic of

instrumentality. As in the strange metonymy of the American 'pledge of allegiance to the flag', allegiance is here pledged to the rationality of the law itself. In a circular movement of self-reflexive legitimization, that rationality in turn provides the 'legitimate' structures, categories and institutional logics, which re-address themselves to their own legitimacy.

The rational-legal ideal type is universal in the sense that its rules and regulations are applicable anywhere and at all times. Rational authority in the rational-legal type is primarily administration, which, within the framework of the laws, knows no prejudice. There is no discretionary dimension. For discretion is only possible where the non-rational, or at least a-rational has validity. There is no need for judgment, cultural fluency or cultural competence. Association with any cultural, moral, or custom-based substance is completely absent. Instrumental rationality is wholly portable, endlessly transferable, because it has no ties to anything on the cultural horizon, least of all to any cultural anchorage that would embody a need for cultural judgment. Or to put it another way, all need for 'judgment' is already programmed in the institutional hierarchy, in the standardized competence of the bureaucrats, the differentiation of bureaucratic duties and in the clear, even idealized, distinction between private and professional life (Weber, 1972: 126–7). In contrast, *discretion* presupposes the human dimension, capacity for judgment, knowledge of customs, personal standards and prejudices, cultural and ethnic characteristics, political aspirations, ideology, etc. This is what Weber calls 'domination of formalistic impersonality': '*sine ira et studio*, without hate and passion, and thereby without "love" and "enthusiasm", under the pressure of the concept of duty; "without consideration for the person" formally equal for "Everyman"' (Weber, 1972: 129). This is an instrumental model of the institution, that is, the sense or meaning of its activities is exhausted in the realization of the directive. There is no residual meaning, be it political, cultural, or moral. The institution is in this sense completely transparent. The *intention* of any given directive immediately gives rise to its *effect*. Or to put it more radically, the mandating of the directive is the effect. On the one hand, we begin to see the limits of the Weberian ideal type, its over-idealized vision of the technocratic rationality. On the other hand we also see how it in some ways resembles our counter-factual thought experiment EU = Europe.

Weber derives the three ideal-types of legitimate authority from their historical situation. The emergence of the rational-legal ideal-type, as I have already indicated, is the kernel of the *modern* Occidental (or European) state (Weber, 1972: 128). At the same time, in his mapping out of the traditions of legitimacy Weber assembles three threads of intellectual and material history: the tradition of 'natural law', the evolution of political systems from feudalism to parliamentary democracy, and the development of capitalism out of mercantilism (Weber, 1972: 128). Thus the type of bureaucracy I am trying to extrapolate to the bureaucratic structures of the European Union is proper to Europe, concomitant with the historical development of European science, law, politics and commerce. Only in Western modernity, Weber insists, do we find that conflation of philosophical traditions of law and justice, the historical development of political

structures and the powerful emergence of capitalist rationality. This distinction is made particularly clear in the long comparative-historical analysis presented in *Sociology of Law* (Weber, 1972: 505).

The 'Case' of Europe

The project of European construction is carried out in the name of Europe. When we read in Article O of the Maastricht Treaty (TUE) that 'Any European State may apply to become a Member of the Union . . .' the naturalness of the *concept* of a 'European State' appears to be a natural extension of progress *already* made toward European integration, while the essence of the European Union requires reams of documents and a complex system of self-interpretation in order to constitute itself. Nobody will deny that something like 'Europe' exists, that this concept has a meaningful and universally understood content. Indeed, it is presumably on the basis of this concept that the European Union is being 'constructed'. It is this concept that assures the *legitimacy* of the European Union. Sociological research shows that among the 'multiple identities' by which Europeans understand themselves is a European one. Furthermore, whether one takes the perspective of the 'long' history of Europe, beginning for example with Alexander's campaigns in the name of the unification of Europe, or the 'short' history, from the re-construction of Europe after the Second World War, a unified and self-evident 'essence', 'spirit' or substance has provided the *legitimacy* for the project. Whatever concrete consequences the 'construction' of Europe may have for individual Europeans, businesses, and other groups and interests, the principled motivation has always been the assumed or perceived existence of the European. The trace of this principled foundation persists in the documents and directives of everyday life in the European Union. The EU is never just a normatively good idea, a set of regulations, which in countless diverse ways serves the concrete interests of Europeans. It is also encoded with a European identity, with the basis for any 'normatively good idea', which surpasses individual actors and unites them in one general interest.

The Marshall Plan

The Marshall Plan, launched in 1947, was a pragmatic project designed to organize and finance the re-construction of a continent in ruins after World War II. Its means were instrumental. Investment, loans, grants and transfers were the primary tools for putting Europe back on its feet. The object of the Marshall Plan was a certain level of European unity, the restoration of some kind of identity that is presumed obliterated – along with its material basis – by the horrors of war. On the one hand there were concrete interests – the normalization of commercial relations, the resumption of goods and services to ordinary people. On the other hand, these concrete aims were only meaningful against the backdrop of a European collectivity, an implicit understanding of the need to cultivate a

European identity in the name of European harmony. Europe's catastrophe was not only economic. It was cultural and social. The solution was to restore confidence in the European by restoring confidence in currencies that were stable and dependable: economic reorganization in the name of Europe (Mioche, 1997: 33–4). This is not meant as a neo-Marxist theory of culture in which the material conditions of life determine the intellectual and culture conditions. Nor is this intended as a neo-functionalist approach in which something called 'Europe' would be the consequence of institutional development. It is rather a suggestion that the meaningfulness of economic projects reposes on the meaningfulness of the cultural, social identity in the name of which it is carried out.

The European Coal and Steel Community

This point can perhaps be made clearer by revisiting the discourse employed by Robert Schuman in his 1950 proposal on the construction of Europe, based on cooperation in the coal and steel markets, under the aegis of a centralized 'European' authority. In his memoirs *For Europe*, Schuman refers to the 'choice' of Europe made by Europeans as the fruit of a collaboration of 'spirits' (Schuman, 1964: 23). He evokes the courage and tenacity of prominent Europeans in the work in a collective effort in the name of the heritage of Europe. For Schuman, Monnet and the other original architects of the European Union the institutional form that Europe takes is a means to an end. Economic unity – here in the form of the European Coal and Steel Community – is not the only way to reestablish the European spirit threatened with destruction by the war, but it is judged the most expedient. Indeed one might in this regard ask why certain paradigms of European construction (i.e. monetary, social, juridical, etc.) present themselves at certain historical crossroads, while some do not, why some present themselves with less resistance by others. Thus in order to justify the constitution of the ECSC Schuman borrows freely from the universalistic principles of the *Declaration of the Rights of Man and Citizen* and sees a clear parentage between that document and the 1951 Treaty of Paris (Schuman, 1964: 27). Schuman argues from spiritual unity and interest, seeing clear ties between them and confidently predicting their mutual integration in the institutionalization of European unity (Schuman, 1964: 51). That unity, he claims, will not necessitate a homogenization, a smoothing-out of national particularity, but rather a gathering of particular interests – economic as well as national-cultural – in the communicative collectivity of an economic union. The ECSC and the EC as constituted by the Treaty of Paris in 1951 are thus, in the eyes of Schuman, legitimate *purveyors* of the interests of a Europe in search of itself, since they preserve the internal coherence of the European Idea in the form of institutional organization (EC, 1951).

The Treaty of Rome

The Treaty of the ECSC seeks to assemble the fragmented peoples of Europe under the sign of 'the European', a cultural value-complex that recognizes implicit

European unity in a divided continent, possessing the power to unite the most elementary form of cooperation, around the cold materiality of coal and steel. In contrast to the Treaty of the ECSC, the 1957 Treaty of Rome, 'determined to lay the foundations of an ever closer union among the peoples of Europe', begins not from de facto division, but from presumed unity. Its mandate is to tighten the existing union. Its tools are multiple discourses of political economy, with a hint of neo-liberal economic ideals. The authors of the treaty are resolved to ensure economic and social progress 'of European countries' through 'common action to eliminate the barriers which divide Europe'. Europe is unified in part, but further unification is not only possible, but also necessary in order to achieve the social and economic well-being of member states. Once again the logic of unity is interesting when placed beside the concrete institutional measures that are to be *legitimately* carried out in its name. Oddly enough, the Preamble to the Treaty lets some ambiguity persist regarding the type of barriers to broken down, not specifying *economic* barriers. The body of the treaty, however, makes clear that the weight of the European heritage will be thrown in the direction of a development and redressing a kind European social-welfare policy through the tools and strategies of a 'soft' (pre-monetarist) economic liberalization. The final lines of the Preamble corroborate that the principled program of the EC will be to 'confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations'. Once again, the 'solidarity' which is intended to bind Europe and 'overseas countries' in question is difficult to ascribe to the categories of economic instrumental rationality, which otherwise permeate the Treaty. And once again it is a question of 'Europe' and not of the 'member states', which, in 1957, number only six. It is a transcendental European solidarity that 'binds' Europe in the global community.

The Maastricht Treaty

Conceptually speaking, the Preamble to the Maastricht Treaty is a *tour de force* in the history of European history of ideas. It pronounces a new stage in the 'process of European integration', recalling the 'historic importance of the ending of the division of the European continent', which we can recall from the rhetoric of the ECSC. It makes an appeal to the need to create 'firm bases for the construction of the future Europe', while at the same time respecting 'the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law'. Like its predecessors, the preamble to the Maastricht Treaty takes up the theme of solidarity, expressing the desire to 'deepen solidarity between their peoples while respecting their history, their cultures and their traditions . . .'. Moreover, the concept of European identity, child of the 1972 *Declaration on European Identity* – and which had a relatively dubious career ever since – appears explicitly in the Maastricht Preamble, and yet in an unlikely context: the common foreign and security policy.

Despite two decades of popularization of post-colonial and feminist theory as

well as a rigorous critique of eurocentrism, reference to the 1789 *Declaration of the Rights of Man and Citizen* remains a sacrosanct and inviolate source of meaning and European self-understanding. This can in part be understood by the fact that European cultural and social policy is largely directed inward, dedicated to cultural exchange and understanding *between* European member states, precisely those who, according to the principled foundation of European *principled* unity have little or no need to understand each other or, at least, understand each other well enough to grasp the notion of European unity as self-evident. The basis of the European project, from its earliest post-war declarations to the fine print of Maastricht, derived from a shared cultural understanding. The challenge to the principles of European tradition of universal rights lies in the European Union's relation to the rest of the world within the matrix of economic globalization – precisely the domain that has seen the most advanced and rapid bureaucratization.

The 1972 Declaration on European Identity defines European identity based on three pillars: (1) common heritage, interests and special obligations within the community; (2) the 'dynamic nature' of European unification; and (3) the extent to which the Nine are 'already acting together in relation to the rest of the world' (EC, 1973: 492). All three are based on internal unity and commonality, heritage, and internal coherence with regard to the rest of the world. This relation to the non-European is considerably modified in the thirty years that intervene between it and Maastricht. In the Maastricht Treaty the notion of European Identity is inscribed in the discourse of the 'third pillar', the 'common security and foreign policy', attached to the logic of international strategic otherness of Article J. The common foreign and security policy includes 'the eventual framing of a common defense policy, which might in time lead to a common defense' (EC, 1992, Article J4). This implementation will serve, according to the Preamble, to reinforce European identity and its independence in order to promote peace, security and progress in Europe and in the world. An ambiguous notion of European identity informs in widely divergent ways the network of legitimization on which the Europe Union is being constructed. Maastricht reduces the concept of identity in the best case to a basis for international diplomacy or, in the worst case, to a quasi-militarized kernel, a celestial fix from which to navigate a defense policy in an increasingly complex global battlefield.

Conclusion: Who Speaks when 'Europe' Speaks?

Knowledge about Europe is also produced by Europe. Part of the institutional governance of the continent is a certain governance of its ideas, the channeling and evaluation of what knowledge is available, setting the conditions for how available knowledge becomes available. The history of Europe is also the history of the form and availability of knowledge about Europe. The history of the European Union, from the nascent European Coal and Steel Community, through Rome, Paris, Maastricht and beyond is also the story of the evolution of

the European subject, of the discursive or rational position from which European unity is understood. The history of Europe is also the history of the changes and mutations in the tools available to the European who sees, hears and knows the European. The sociology of the European Union is also the sociology of European knowledge.

It is clear that the question posed at the outset of this article, 'how European is the European Union?' can be reformulated in terms of what is called discursive position. Who or what is the *subject* of the discourse of the European? Who or what determines the value-conditions from which the treaties and directives of the EU are formulated? What values and norms, interests and ideologies determine the European reality upon which the European Union understands itself and carries out its political mandates? What premises and arguments, what rationality, what theories – economic, juridical, scientific, social or other – what cultural or social values, interests, ideologies, and finally, what *identity* – political, economic or other – is *available* to those who formulate the policies and directives of the European Union, an institution whose *legitimacy* is entirely derived from the conceptual force of this thing called Europe? Who speaks in and through the treaties and directives emitted by the European Union? The discursive subject of the treaties, the 'place' from which they are emitted is hardly free-floating or objective in any traditional sense. Yet I have tried to demonstrate that the top contender for the legitimate 'voice' or 'subject' of Europe – the EU – does not derive its legitimacy from a clear source or origin. Rather, its legitimacy is produced through a relation to two more or less contradictory poles, the institutionalized legal system and the complex cultural value system of European identity.

There is thus arguably a 'legitimacy crisis' in the European Union. But it is a legitimacy crisis of a completely different kind than the one implied by Euro-skeptics. The institutional Europe that seeks to legitimate itself through a reference network associated with the 'culture' of the real Europe is in constant negotiation with it. Institution and identity are in constant historical reciprocal determination. European identity is never far from the institutionalized forms taken by the EU, and the EU will always evolve to be tied to the European reality. Legitimacy, if it can be 'located' at all, inhabits the space of difference between the Europe that can be institutionally documented, delegated and directed, and the Europe negotiated on the cultural scene of everyday life. That European identity can be located by empirical means is only true to the extent that discursive struggles in which it plays itself out are observable at every level of the European edifice. The EU will never be Europe, and its legitimacy will always be – necessarily but also productively – ambivalent.

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