Why legitimacy and political identity are connected to each other, especially in the case of the European Union

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The main focus of this paper is on the link between legitimacy and identity (§2) and the use of this connection in the political theory that focuses on the European Union (§3). Yet "identity" is a great source of confusion and equivocation, which is why I shall start from a definition of this notion and a clarification about its misuse (§1).

1. Political Identity.

If "political identity" is to be used as a conceptual tool connected to "legitimacy" and this connection is to reap benefits in the understanding of what is going on in the EU, we have to agree on a well-defined language, which excludes *four* fairly common usages.

*First*, political identity is not whatever may be attributed to the EU or done by it as an institution, but only what is clearly or confusedly perceived and talked about by the Europeans (common citizens, elites etc, see below) as a communal issue. Just to mention an extreme example, the notion of an "European defence identity" made of military units, common procurement and joint command is a conceptually abhorrent reification of the identity concept. Policies and institutions are not by themselves "identity", but only as far as they are perceived by the individual actors as something which is meaningful to our self-description as Europeans and relevant to the image of ourselves we want to project on to external actors. Political theory is different from objectivistic *Soziographie*.

*Second*, when talking about political identity we are nor necessarily assuming a dominance of the past over what we would like to be in the present and in the future, nor an inescapable path-dependence. The cultural heritage does matter, but more important is the re-elaboration we make of it in our projects for the future. Also, in the age of globalization the very cultural heritage is more rapidly changing than ever and producing "glocal" life forms, which admittedly are inspired by American rather than European models.

*Third*, identity is not based primarily on exclusion, and Huntington’s view that “we know who we are when we know whom we are against” is a false oversimplification. It means taking a pathological, e.g. ethno-nationalist type of identity for the very nature of identity. Suggestions aimed at shaping European identity as what is opposed to American culture and politics are not very far from this approach. Yet it is true that even the identity of a liberal and tolerant group, made predominantly by the sense of having certain shared values and goals, needs to be accompanied by the distinction between ‘us’ and ‘the others’; otherwise identity vanishes into diffusiveness and does not accomplish its task of defining social groups and making their coexistence and interaction possible (“good fences make good neighbours”). Group identity always contains two moments: the mirror, in which the group reflects and redefines its features, and the wall, by which the group (nation, political party, social community) gives itself a self-contained image which does also play a
role in its relations to other groups\(^1\). Although new and post-national, European identity cannot be cosmopolitical in the sense that Europeans are citizens of the world who happen to live on the European continent, but refuse to identify themselves as citizens of a particular polity\(^2\).

**Fourth,** the identity that plays the defining role for legitimacy is political, not social or cultural. Epistemologically and ontologically, society and polity are two different things, the second is not simply a by-product of the first, as some Marxists and some sociologists want to have it, and has specific features: the ability to make ultimate decisions acting as one actor (in this sense it is premature to call the EU a polity, as it is at best a would-be polity) and the normative framework (usually a Constitution plus ordinary legislation, but also the ethics of patriotism or civic obligations) in which the preferences and projects of social groups are put in hierarchical order and/or reconciled with each other. Political identity is the normatively embedded project which is shared by the members of the polity or a majority of them, or in other words the set of values and principles in which they recognize themselves as a political "we". More important than this set (identity) is the process (self-identification by self-recognition) by which the people recognize themselves as belonging together because they come to share, but also modify and re-interpret those values and principles, that is the framework within which they pursue their interests and goals\(^3\). To do so, a degree of homogeneity in the political culture (say, orientation towards liberal democracy) is needed as a pre-condition, but not at all a convergence of the entire cultural world (language, religion, morality, images of the world and everyday life-forms). This is why to speak in one sentence of the “European cultural and political identity” is flawed, and leads inevitably to deny the Europeans any chance to achieve a political self-awareness of themselves as an actor, since an European culture exists and will exist as little as an European society. This is not to say that cultural backgrounds do not play any role in politics, but they have importance in shaping the various interpretations that the social, philosophical and national groups that are the members of a polity generate in an permanent debate on how to translate the shared values, principles and goals into everyday life and ordinary legislation\(^4\).

The problems is whether in Europe a political design can take hold that out of the persisting diversity of culture and society and beyond the functional ties dictated by the single market, but also building on them can achieve the consensus and stabilize the institutions which are necessary to take the Union up to full domestic and external actorness. So far this design has failed to score a decisive step forward, and could even be reversed, rather by the effect of stagnation rather than by anti-European forces. Whatever may happen, the emergence of an European self-identification process depends on political developments much more than on cultural pre-givens, that is on how much coagulation of national and group interests in a united Europe will take place and how far an innovative design and a new leadership will come up. The Constitution project and the elites supporting it were not up to this task. More precisely, it is a twofold dependence. First, it depends on the type of Union: a predominantly intergovernmental entity does not need much of a political *idem sentire* of its citizens\(^5\), and viceversa the predominantly intergovernmental nature of the Union, its failure in acting jointly on major issues is a main reason why identity among the citizens is not developing that far. As an example, think of how far the sense of “being on the same boat” would have been enhanced, had the European governments spoken with one voice against or in

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2 S. also Fuchs 2000.
3 The last snapshot on some fundamental values among the Europeans is in Arts-Halman 2004. In the multilevel European polity things are made more complicated by the fact that sharing for example views on social solidarity and protection by the state does not mean translate so far into a citizens’ wish to transfer competence in this field of political action from the national governments to the EU political identity in matters of social policy does not mean legitimation of a EU social policy. For a view on how values and principles along with their interpretation shape European identity s. Lucarelli 2006.
4 It should be clear at this point why doing research on political identity is different from the much more usual work on citizenship, but I cannot elaborate on this.
5 S. Moravcsik 2002.
favour of America’s intervention in Iraq. Second, it is the effect of shared decisions in high political issues such as war and peace or reshaping vs. dismantling the social protection network that can generate political identity, not mere institution-building nor Constitutional debates nor identity-promoting policies such as establishing more public symbols of unity or launching awareness campaigns.

What I have said as a clarification of “identity” may sound partly obvious and boring (but how far obvious needed to be tested) and partly controversial, because to uphold the distinction of political, social and cultural identity is a hard nut to crack, but also the premise on which to redesign their relationships without confusion. A last clarification deals with the empirical question: whose identity? In a nation state the answer would be: the citizens’. But this is different in a post-national, compound quasi-polity such as the EU, in which the citizens are only partly direct members of the polity, while indirect membership through the national governments remains prevailing in weight. In a mix whose proportions must be defined from case to case, European identity has to be studied looking at elites, opinion leaders and bureaucracies as well as at common citizens, whose choices are decisive only in the case of referenda.

How to study it? To define an empirical methodology is not the philosopher’s business, but it is clear to me that qualitative analysis has to prevail over quantitative. More than the results of elections and referenda, which are too rough and momentary a tool as to reveal the citizens’ soul, more than opinion polls and surveys, which are fundamental but can be biased or blinded by ill-formulated questions, I would stress the importance of content analysis of what the media say directly or indirectly over Europe, of constitutional and high political debates, but also of the motivations in which national and EU policies are wrapped and the debates accompanying them (just to give some example, think of the EU policies on biotechnology, biosafety and chemical industry). I want again to stress that analyzing a policy (say, foreign or security or human rights policy) adopted by the Union and attributing it the meaning of representing European identity is not what we need to investigate this phenomenon. Policy analysis becomes relevant to our research interest only at the moment in which it shifts the focus on the motivation and meaning of a policy in the political culture of European elites on the one hand and the reception given to it by the media and the citizens asked about their opinion on the other hand.

2. Legitimacy.

Whose legitimacy are we talking about? The legitimacy of political power of course, that is the legitimacy first of institutions (the Union itself), then of EU policies and leaders.

I am afraid this notion also requires a clarification, as it is nearly as polyspermic as identity. Legitimacy in general, but even more in the case of the EU, is not or not simply what is often meant to be.

First, legitimacy is not consensus, which is just one and some time not unambiguous manifestation of legitimacy, one way to gauge its momentary state. More will be said later.

Second, legal legitimacy as based on the Treaties is just a secondary element of the whole. Third, legitimacy is not just output legitimacy, based on the performance of the EU as caterer of wellbeing to the citizens (Scharpf 1999). This is just a component of the whole, to make it the exclusive or overwhelming component of it is not just (normatively) a technocratic reduction of the European process, it is (analytically) false, as this process is known to have gone for good or evil beyond the stage of a single market that makes economic actors, acting on pre-defined self-interest, cooperate. Cooperation followed by integration means sooner or later having to answer to questions of social policy and justice not just within the Union but also towards other peoples, as the development of the Doha round of WTO negotiations indicate.

Fourth, the legitimacy stemming from the substantive performances of the Union works only in conjunction with the legitimacy deriving to it from its perceived conformity to a model of just

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6 Other approaches are in Eder 2001 and Mayer-Palmowski 2004.
and good governance, which citizens have in mind and refer to in a emotional or discursive way, as it embodies the values, principles and goals they believe in as members of a polity (this is Weberian legitimacy, in the sense of the conformity to a democratic and quasi-federal sub-species of the rational or legal-bureaucratic type of legitimate power; it is comparable with Scharpf’s input legitimacy). These three types of legitimacy are given different weight by different authors and constitute all together a sort of patchwork legitimacy of the Union.\(^8\)

Fifth, and most important, it is not a mere sum of performance and conformity to a model, of output and input legitimacy, that can do the job of legitimising the EU or one of its policies. The good economic and social reasons (satisfaction with former EU policy results and further expectations of wellbeing) and the acceptance of (existing pieces of) EU government because it is “democratic” or “social” have to be linked to each other and embedded in the shared belief that the EU institutions are “our” government, that they embody a shared memory of our controversial history and can speak to us through accepted and understandable symbols. Now, I have seen the motivations for the fall of the Constitutional Treaty among the Dutch and French voters in an overdose of Weberian or input legitimacy (the Constitution itself, particularly in its normative overweight), a diminished performance legitimacy (the presumptive inability of the Union to protect countries and underprivileged layers from the effects of globalization) and a large lack of emotional and symbolical grasp on the citizens’ souls by the political elites, although these were almost unanimously in favour of ratification. The European integration process is much more complicate a business than politicians, technocrats and social scientists obsessed with economic models of politics have been able to understand, and the disaster in France and the Netherlands, accompanied by the recent numerous signs of stagnation or retreat, gives everybody a bitter food for thought.\(^9\)

I would like to call what I have just described substantial legitimacy, which has a lot to do with identity. Before I explore this link, let me stress that substantial legitimacy is not an empirical quantity, as it is rather a reservoir of meanings, arguments and symbols to which political power can reasonably resort in order to justify its existence and behaviour. It is the job of the political leadership to decide what meanings and symbols to activate at a given moment of the political and social conflicts, thus actualising legitimacy, translating it into consensus and stabilising it around institutions. The several fathers and mothers of the Maastricht Treaty succeeded in this enterprise, appealing at the right moment to the Europeans’ search for a new role after the end of the Cold War and to the economic and symbolical promise of the single currency to come. On the contrary, to push forward political integration the luckless fathers and mothers of the constitutional project chose the wrong instrument, a legal text evoking the image of a superstate, and the wrong timing (the sluggish recovery of the European economy and the lingering unemployment favoured the populist search for a scapegoat, which was found in “Brussels”).

The link between legitimacy and political identity in the EU can only be formulated as a problem: why should there be one actor (or, more philosophically, one subject), the EU, seeking legitimacy for its actions? The patchwork legitimacy we have mentioned before can at best sustain and help reproduce the sense of “being one” among the citizens of Europe: the better the legal foundation and, what is more, the more efficiency the Union turns out to possess, the more reasons we have for sticking to it. But efficiency in the output of public goods alone is necessary but not sufficient to create meaning, the scarcest resource in the post-modern and particularly globalised world to which the Europeans belong as well. Only when people come to find staying united at the same time highly convenient for their well-being and highly relevant to their image of collective life, can a new polity reach the critical point of acceptance. In other words, they would then find that decisions concerning ultimate issues such as peace or war, openness or closure towards the rest

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\(^8\) With respect to this multifaceted concept of legitimacy the popular notion of accountability is not a synonym, rather a way of implementation.

\(^9\) More in Cerutti 2005. These critical view is not shared by the American authors who are enthusiastic about the EU in as much as it can be used as an alternative model to G.W.Bush’s America, cf. Rifkin 2004 and Leonard 2005.
of the world, social solidarity or deregulated competition should not be left to national governments or the dynamics of globalisation, but rather made within the new polity, whatever (federal, semi-federal, multilevel etc.) method of government this may have chosen. Substantial legitimacy contains as a core element the political identity or rather self-identification of the people involved. How these two elements develop (or rather struggle to develop) in the EU and play into each other cannot be explained here (s. Cerutti 2003 and more in depth Schmidt 2006). I would like to stress that, if we fail to grasp the complexity of the legitimacy-identity link, particularly in front of strange beast like the EU, we lack the conceptual tools and the sensitivity that are necessary to keep the eye on political change, which always includes legitimacy crises. Besides, if we take consensus for legitimacy itself, we give up the position from which to keep liberal democracy from populism and plebiscitarian democracy.

Now, in the case of the EU the legitimacy problems surrounding institution-building and policies are complicated by the circumstance that, beyond all questions regarding the social, economic or legal substance of the issues, a further question of political entitlement remains open: whether or not those who are called to justify new institutions and policies are entitled to respond as a whole (“the Europeans”) and can be asked to do so bearing in mind the interest of all Europeans. The French and Dutch majorities against the Constitutional Treaty answered “no” also to this question, and were allowed to decide for the rest of Europe because they were called to the polls on that particular French or Dutch election day, not on the same day for all Europeans, a fact that in the hindsight looks like an unconscious pre-emptive choice against the legitimacy of a Constitution for the all of Europe made by an European Council unaware of how political identity and legitimacy play into each other. Well before all trouble with the “democratic deficit” due to the decision-making processes within the Union, it is in this complex interplay that the source of many a problem in the present deep crisis of the EU must be sought.

If we want to do so, two further complications have to be reckoned with. First, the legitimacy of EU policies and the EU as such can never be isolated from the national contexts. It is only in the scholarly division of labour or in the fictitious worldview of some Euro-enthusiast that image and accomplishments of the Union can be neatly separated from those of the member states. The French referendum has shown how naïve it was to tout the EU Constitution as a pure European issue, pretending to separate it from the conflicts in French politics and the mentality of most voters, who tend to air their discontent with government, national or European that it be, in the first available polling station, with little institutional esprit de finesse. What is more, Union and national governments are some time merged into each other in the voters’ view, while some time they are competitors in mobilizing the citizens’ interests and beliefs.

Second, it is obvious but perhaps not useless to remember that neither identities nor legitimization processes are monolithic. On the one hand national identities still play a major role in European countries, but not without fractures along regional and local or class and generational lines. On the other hand, on the acceptance of the EU itself Europeans have been for a long time divided among themselves in roughly two halves, according to Eurobarometer. This holds true also in the case of the Constitutional Treaty: the referenda may have killed it, as I believe, but we should not forget that a large number of Parliaments as well as a majority of Spanish voters approved it. To sum up, the question of the legitimacy of the European institutions remains open and controversial, matter of political and cultural struggle between nations, parties, ideologies and interest groups, in a constellation that is bound to change depending on economic developments, social movements and communicative strategies of future leaderships.

EC/EU history is correctly intertwined with the history of the member states in Judt 2005.
3. Why bother about legitimacy and political identity?

There are good normative reasons to do so, but they are not on our *ordre du jour*. If we want European politics not to be less democratic than in the member states, we must find ways to define what democratic legitimacy may mean at Union level and to inject legitimacy checks and identity formation stimuli into the EU institutional framework. However, here I am talking about normative issues in a non-normative, theoretical approach, as I am trying to let existing ties among categories of political action in the EU surface and allow for a deeper understanding of what is going on. This means that, if I am arguing for a broader understanding of legitimacy against the usual concentration on output legitimacy, I am not doing this because I prefer more democracy over technocracy (in our age an enthusiastic preference in favour of democracy would be blind against all its faults and deficiencies). I am rather making the point that, whatever our normative preference (i.e. even if we are sympathetic with a pure performance-based legitimacy), we must take note of the fact that the integration process has for a long time been brought beyond the point in which the legitimacy of the EC/EU may have been all based on what it did for our economic wellbeing. It has thus acquired or claimed to possess a political substance whose nature and extent has never been clearly debated and determined; but it has in any case unleashed “democratic” expectations without the meaning and procedure of democracy at a post-national but non-federal level being redefined. The roots for the resulting mess of the present are to be found not just in national egoism or economic stagnation or the side-effect of American unilateralism, but also in a confuse political culture which is not up to the novelty of European politics, as the episode of the Constitutional Treaty and its failure demonstrate. The scholars’ task under these circumstances is to clear the way from the relics of an obsolete set of notions and to help forge redefined concepts. Let us be more precise about this.

The first use of redefined notions of legitimacy and political identity is to help us better understand the nature of the beast. As we have briefly seen, the two notions are tools that are relevant to examining the question of how far the EU can be regarded as a polity and has attained political actorness. In a further step, they are essential in order to understand how far a post-national polity can come up, based on patterns of political identity and legitimacy that are different from those of the nation state. This is perhaps the paramount question: if we remain stuck to national patterns and believe the same type of glue or cement must be put to work in the EU for the European identity to keep the citizens together and to make the authority of the Union legitimate in their eyes, the Union is doomed to loose the competition with the nation states, and “Brussels” will remain a den of techno-bureaucrats, despite all pretensions to be home to all Europeans. A chance for European identity to develop is given only if we conceive of it as a purely political identity, not competing with national identities on the same level and being thin rather than thick (not political and cultural, not replacing and levelling local and national identities, not emotionally and rhetorically overburdened like the latter).

This refocusing of our attention on a more problematic understanding of legitimacy and identity goes hand in hand with two epistemological steps. The first tells us to shift our main attention from policy analysis and the study of formal institutions to what was called the subjective or active side of history in German classical philosophy, “agency” being a pale successor to that notion. I mean the degree of meaningfulness of the EU in the minds of citizens and national or European elites, the motivations they feel as leading them to act in one or the other way towards EU politics and the resulting degree of participation in this in its interplay with national politics. Still using the philosophical lexicon, this amounts to designing a phenomenological approach to questions of identity and legitimacy. In this approach empirical data play a fundamental role, but they need much interpretation (let us speak playfully of a hermeneutics of the European soul) as

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11 Normative questions are obviously legitimate and necessary, but must be developed from the real political development. A pure search for Europe’s *optima respublica* leads to a hypernormativism that cuts “justification” away from “legitimacy”, s.Morgan 2005.

12 For an example s. Lucarelli-Radaelli 2004.
well as restyling; this is the second step. Questionnaires need to be revised in accordance with the open and less nation state-based approach to identity analysis, questions to be fine-tuned in order to avoid conformity to only one assumption of what legitimacy and identity may be like in the EU.

**Literature**

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