Through Thick and Thin: 'European Identification' for a Justified and Legitimate European Union

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Abstract

Debates on the viability of European integration often rest on the need for some form of common European identity. This article looks at European integration through the framework of normative political theory to explore what form of European identity is needed for the EU to be considered both justified (having a good or just reason for existence) and legitimate (having consent from its citizens). It critiques arguments for a purely justified EU, which rule out the need for a common European identity, as well as those requiring a thick common identity for a legitimate EU. In contrast, this article argues for a European identification that is both desirable as an identity and works to sustain a justified and legitimate EU. The proposed conception of European identification takes into consideration national and sub-national identities and opens up the potential for Europeanised identities at multiple levels.

EUROPEAN INTEGRATION HAS REACHED A STAGE WHERE EUROPE'S IDENTITY IS BEING questioned in more ways than one. Increased and deepened political integration, Union citizenship brought in by the Maastricht Treaty, and discussions on the Lisbon Treaty leave the European Union (EU) identified as a mix of intergovernmental and supranational levels of governance. Conceptions of a deepened and widened Europe raise the question of a different type of identity – that of the collective self-definition of its peoples. Discussions on the need for desirability and likelihood of a common European identity (EU identity) are at the centre of much debate within social science, as well as, normative political theory. While this paper draws selectively on social science literature, it is firmly based in normative theory. It explores whether the EU would require a collective identity to be both justified and legitimate. Much of the existing literature in political theory muddies the distinction between legitimacy and justification by simply conflating the two concepts. In this paper it is argued, following Simmons (1999), that these are distinct normative concepts, of which the EU needs to achieve both. The argument follows that a justified and legitimate EU requires a holistic concept of European identification that takes into account various levels of identity.

A recent conversation with a friend brought these questions from the lofty realm of political theory into the daily deliberations of euroscepticism. She asked: 'So tell me – what has the European Union ever done for us Scots? Why should we be part of it?' My answer, and the main argument of this paper, examines this very question as well as the feelings of identity implied within it.

I argue that an evaluation of the EU requires a revision of conceptions of justification and legitimacy. As judgements that in some respects presuppose 'nationhood' and 'statehood' they are often inadequate to normatively assess the EU. Instead, it is necessary to redefine

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justification in terms of giving good or just reason for the existence and outputs of a polity and democratic legitimacy in terms of the consensual relationship between the governed and governing (see Simmons (1999). To achieve these criteria, it is possible to argue that the EU requires a form of European identification. Rather than focusing principally on a single European identity, I suggest European identification needs to be considered holistically, incorporating national and local levels of identity. In this way political identity is conceived of as fluid and multi-focused rather than monolithic. This identity needs to be 'thick' enough to bound the EU in a way that allows for its legitimation and justification *as a coherent polity*, yet not so thick as to become a form of 'ethnic' or undesirably exclusive identity, evoking images of a 'fortress Europe'.

This argument is presented in four sections. Section 1 outlines the importance of justifying and legitimating a polity and the role of political identity. Section 2 looks specifically at justifying the EU and explores what kind of European identity this necessitates. It is argued that both contractarian and universal approaches to justification presume a 'thin' European or cosmopolitan identity. This section concludes with two main propositions; firstly, that neither particular nor universal justification are sufficient alone, and secondly, that justification in general is not sufficient as a normative evaluation of the EU because it does not provide an underlying moral reasoning as to what should bind citizens to the EU. Section 3 looks at the role of legitimacy in explaining what morally ties EU citizens specifically to its institutions. Traditional nation-state definitions of legitimacy imply the necessity of a European identity and community that is too 'thick' and exclusive, while post-national conceptions favour an identity that is too 'thin' and purely civic. Section 4 seeks a two-part solution to the problems of how best to normatively assess the EU and what identity is required. Legitimacy and justification are redefined to allow for a fairer assessment of the EU and a shift of focus is proposed - away from a singular European identity and towards European identification conceived more holistically.

Justification, legitimacy and political identity

As Schmitter (2001: 79) has argued, legitimacy becomes the focus of attention particularly where it is considered lacking. In this way, the debate on the EU's 'democratic deficit' often finds itself centring on the perception of a lack of legitimacy (Nentwich and Weale 1998: 3), with the finger pointed at a lack of a cohesive European 'we-feeling' as the root of the problem. The importance vested in legitimacy is a reflection of the entrenchment of enlightenment ideals and democratic values in contemporary political theory and practice. The power of political elites cannot be arbitrary, or merely justified by appeals to higher powers or expertise. An assumption of 'rule by the people' brings with it the need to justify power to them. There is a perception that the rights and obligations of citizenship need to be held up by democratic processes of consent-formation, hence the call for referenda on the Constitutional Treaty in several member states.

However the concepts of justifying and legitimating a polity are particularly nebulous. This is further complicated by the way in which the two terms are used interchangeably, with both referring to the rightfulness or 'justness' of a polity or government. The definitions and usages differ widely on how, by what criteria, and by whom these judgements are supposed to be made. For some, such as Rawls (1971), a justified polity is one that adheres to the just principles that would be decided on by its citizens in a thought experiment. For some, justification needs to be objective and universal (see Simmons 1999), and yet others consider justification – through the 'performance' of a polity – as just one of the requisites, along with common identity or legality, of state legitimacy (Beetham and Lord 1998: 32; Føllesdal 2006: 157).

There are two main difficulties in applying some of these criteria to the evaluation of the EU. Firstly, as Simmons (2001) argues, the interchangeable usage of legitimacy and justification means the loss of an important tool of evaluation. He offers a definition of these as separate concepts to normatively evaluate aspects of a polity. For him, justification aims to find the

just or good reason for a polity's very existence, while legitimacy refers to the particular moral relationship between a polity and the people under its jurisdiction. This conceptual distinction allows for clarity of meaning and for the possibility of discussing how a polity can be either of these separately. For discussions of the EU this distinction is particularly pertinent as it allows for a separation of the cacophony of voices in the debate on the EU's 'democracy deficit' or legitimacy crisis. Some of these debates can be distilled down to whether the EU needs to show direct legitimacy - a moral connection to the people of Europe – or can rely on only being justified by means of its favourable outputs alone.

The second problem faced by many definitions and criteria of legitimacy and justifiability is that they are based on assumptions of nation-states and their histories, democratic systems and collective identities. Beetham and Lord (2001: 443), for example, argue the same broad criteria of state legitimacy – performance, identity and democracy – should be applied to an evaluation of the EU. However if these criteria are too closely based on nation-state formats it becomes difficult for the EU to ever fulfil them. Some theorists have attempted to avert this problem by claiming the EU does not require the same normative evaluation. An EU envisioned as a super-state, a federation or an intergovernmental organisation, for example, implies different reaches and mechanisms of power and entails different requirements of justification and legitimacy. Moravcsik (2002), for example, argues that the EU may not need democratic control in all areas of its competence. Instead he suggests that EU decision-making may be more justified, effective, representative, and impartial, and may protect minorities from the 'tyranny of the majority' (Moravcsik 2002: 614) with some competences under the control of technocrats or semi-autonomous judges. Any type of direct legitimacy required of the EU would be fulfilled by the requirement of transparency of decision-making procedures and institutions (Beetham and Lord 2001: 450). Similarly, conceived of as an intergovernmental organisation, it could be argued, indirect legitimation, through its constituent member states, is enough for the EU; however, as a majoritarian super-state direct legitimacy would be required. It is possible to argue that a simplified 'barebones' conception of legitimacy and justification, in line with Simmons' concepts, provide a framework that can be applied more readily to a range of polities.

Thus it is important to firstly clarify what empirical assumptions are made about the EU and what values, as argued for in this article, it should aspire to. The basic assumption is of the EU as a complex system of governance with different legislation-making foci (Weale 2005: 11). Its key characteristics are a form of democratic governance based on a system of subsidiarity and sharing of competences at different levels. Rather than allowing them to emerge implicitly throughout my argument I will highlight the values I consider central in a desirable EU: namely; democracy, respect for diverse cultural identities, human rights, and a conception of social justice. Along with definitions of legitimacy and justification that are appropriate, this will lead to the argument for a type of European identity that is, it is claimed, necessary to sustain these values.

Political identity often enters into the debate around legitimacy without explanation, simply as an assumed requisite of a justified or legitimate polity. Without satisfying the 'congruence criterion', where a community sees its political institutions as 'theirs' (Dobson and Weale 2004: 161), political systems are assessed as lacking legitimacy. Political identity is related to, but separate from, citizenship – the *formal* relationship between an individual and political community (Wiener and Della Sala 1997: 601). Political identity, rather, refers to individuals sharing and recognising a common sense of belonging to political communities and structures (Bruter 2005: 1). This sense of identity should not be conceived of as static, but rather is constantly recreated socially, and filled with meaning by each individual.

Controversies on European identity centre both on what role it should play in fostering a public sphere or effective democratic governance, as highlighted above, and on what form it should take. Debates on the form of a European identity often mirror discussions of the civic versus ethnic forms of national identity. From this discussion it is important to note that in

contrast to the 'civic-ethnic divide' depicted by some as an essential difference[1] - between an 'ethnic', violent, emotive phenomenon - and a 'civic', rational and patriotic one, a sense of national identity should be seen as a single phenomenon. In this way I assume that a sense of collective political identity always serves to delineate one grouping from another (Jenkins 1996: 114), although its form may show different emphasis on common ethnicity, history, social or political culture and different 'thickness' or 'thinness' in terms of its ability to produce social solidarity. A political association such as the EU needs a common identification that is both normatively desirable in its form and 'works' to give the EU a justification and legitimacy.

Justifying the European Union

Public justification – the recognition of a polity as reasonable, just or good from 'every individual's point of view' – is at the heart of liberal-democratic thought (Stanford Encyclopaedia of Philosophy 2007). However, the project of seeking the conditions for a justified EU requires a few prior clarifications. Firstly there is the question of who should be justifying the EU - whose values and norms should count. Secondly, it needs to be asked whether the very existence of a polity such as the EU is to be justified or whether its particular form, outputs, laws and organisation are to be judged. The question at the heart of the following discussion is not so much what the actual sphere and focus of justification *is* but what it ideally *should* be when evaluating the EU. It considers different realms of justification and what kind of common identity they presume to be necessary of EU citizens. While some (e.g. Rawls) consider justification to be centred on giving good reasons for the form of a polity to those living within its bounds, in a 'closed system' (Benhabib 2002: 102), others (Simmons 1999; Dobson 2006) have critiqued this, suggesting that under liberal assumptions of universal rights and rationality the correct community of justification should be universal.

Simmons' (1999) Lockean conception of justification can be seen as assuming such a universal sphere, where a true appeal to justification should involve principles that all rational humans would be able to accept. He stakes out this view in opposition to a more particularistic Kantian one, which he criticises for being 'doubly relativised' (1999: 759). He strips away this relativity by assuming two basic premises. Firstly, he argues, the very existence of a polity should be justified. As Dobson (2006: 517) has suggested, a scheme of particularistic justification rests on the assumption of an existing community. Thus its very existence cannot be justified within the same framework. In contrast the concept of a universal justification should show how the existence of a polity is preferable to a situation in which it would not exist at all (Simmons 1999: 758). Secondly, Simmons assumes that a justification should show how a polity is 'morally acceptable and a good bargain *simpliciter*' (1999: 758). This implies that the standards by which the EU is deemed justified are assumed to be objective and not culturally specified.

While this framework of justification could apply to the normative assessment of all political systems it is particularly appropriate when applied to the EU. Seeking to justify the EU's very existence is both more easily imagined and arguably more necessary than it would be for an established nation state. As an 'emergent polity', its alternative – a world with no EU – is not only more plausible, but its actual existence and the justifications for its continuation are far from entrenched in the popular consciousness. Furthermore, it is questionable whether there can be said to be a pre-existing community for justification at the EU level. Universal justification serves to more realistically capture the fact that social co-operation and the outputs of political systems are not strictly bounded in 'sealed' communities (Dobson 2006: 521). Not only is universal justification thus desirable, but as Dobson (2006: 522) has argued, it may also be necessary, if European liberal values of universal equal moral worth and freedom are to be consistently applied.

[1] See Kohn (1945) for an example of a protagonist of the civic versus ethnic debate.

If a justification of the EU needs to be acceptable universally this presumes a certain set of basic characteristics or 'thin cosmopolitan identity' of those involved in the justificatory process. They would need to share the ability to be moral and rational, recognise each other as such, and share a basic set of common values sufficient to agree on relevant justificatory procedures (Morgan 2005: 32). These would be the universal 'public values' needed as the essential basis of a presupposed level of social cooperation (Morgan 2005: 34). Given the vast cultural and individual disparity in values and morality within the EU today, such universal public values would need to be very basic and culturally unspecified. 'Freedom' and 'well-being' may be examples of such values (Gewirth in Dobson 2006: 11). Supposedly universally shared values would also determine a set of universally valued 'goods' necessary for human well-being, such as those laid out in the Universal Declaration of Human Rights. The EU would then need to be evaluated according to its deliverance of these 'goods'.

While this universalistic account of justification of the EU is necessary for favourable normative assessment, the exercise of justification itself and the identity presumed by it are not sufficient. Firstly, the justificatory process determines whether the EU's existence is justified based on the values and interests of all humanity. This unbounded justification does not reflect the actual bounded nature of the primary functions of a EU, no matter what its particular form. EU legislation, policies, rights and obligations, although they may have far-reaching affects outside the EU, are primarily binding on those within its limits. A universal justification – by treating all those involved in the justificatory project as the same – does not distinguish the interests of those most directly affected by EU outputs. If value were placed on individual autonomy, it presumably would follow that the views of those affected most directly should have more weight, wherever they are. In this way, a universal justification does not adequately reflect the European Union's function of legislating for and representing primarily those within its jurisdiction.

Furthermore, the thin cosmopolitan identity presumed necessary by this justificatory process requires of fellow Europeans no stronger (imagined or real) ties than would be shared with any other human. It does not presume that values of Europeans may be distinct, simply by virtue of their being in a bounded territory and polity and sharing a 'common fate'. With only such an identity requirement it is difficult to envisage why individual Europeans would feel a sustained commitment or moral tie to Europe beyond one that was purely rational, expressed in interest-based decisions.[2] This would perhaps be a sufficient identity in a world where individuals could choose commitment and attachment to a polity based on rational decisions, but less so in a world where thick local and national identities abound.

It thus may be necessary to return to a bounded form of justification that assumes the existence of a polity and justifies its particular outputs or organisation, within a given community and relative to that community's particular ethos. Evaluating the EU in this way would require that all citizens could consider its outputs reasonable and consistent with their values. Such a justification of the EU might be formulated in the following way: Europeans have good reason to accept the EU as it is vital in providing outputs or goods that benefit their welfare, understood as, for instance, the 'necessaries and conveniences of life' (Morgan 2005: 88). As Morgan outlines, this would not mean all Europeans need to actually accept this justification, but simply that, an imagined *bare citizen* who holds certain values (equality, liberty…etc), would have good reason to accept it (Morgan 2005: 86).

In this way the EU's justifiability could be seen to rest on its problem-solving capacity, and its successes in achieving objectives such as welfare, a single market or maintaining peace and stability, which could not be gained without European integration (Føllesdal 2006: 158). There are different arguments put forth to suggest that the EU can rely purely on being justified in this way. Scharpf (1999: 11-12), for example, has argued that the lack of a thick common identity at the EU level means it cannot attain 'input-legitimacy' and must instead rely on 'output legitimacy', derived from EU outputs that are in the common interest.

[2] An exception would be if individuals in a hypothetical situation justified the EU on the basis of it being an expression of an already existing feeling of European identity.

Intergovernmentalists also deny the need for direct legitimacy linking individuals and the EU. They argue the EU is primarily a forum of states and as such is legitimate by virtue of being the sum of legitimate Member States. These arguments and the assumptions made, however, serve to illustrate precisely why justification alone is not sufficient as a normative judgement of the EU.

The supposition of indirect legitimacy assumes that Member States can somehow embody and act on the will of their citizens and be responsible for decisions made at the EU level (Obradovic 1996: 201). Whereas, European integration could actually be said to have weakened Member States' direct authority as many economic controls are now beyond any individual state's direct rule. The increasingly far-reaching role of EU legislation on citizens' lives further undermines arguments posited by intergovernmentalists. As Beetham and Lord point out, the EU has final law-making authority, makes choices on behalf of citizens and influences state provision of goods and services (2001: 445). As the EU has taken on such a powerful role in policy-making, it raises the question of whether a purely 'justified' technocratic and indirectly legitimate system of governance should continue without having institutionalised modes of consent giving. Especially if further political and social integration is sought, a mere appeal to justification may not be enough to sustain the personal or economic sacrifices and level of cooperation required (Hersom 2004: 38).

The European identity presumed by a justificatory exercise is one that is too 'thin' and unstable. Using Easton's (1975) distinction between 'specific' and 'diffuse' support of a political system, such an identity could arguably give rise to 'specific' support based on political outputs fulfilling citizen's specific demands, rather than a more sustainable, diffuse support. This sense of identity may be fatally influenced by 'cycles of enthusiasm and disenchantment' and dependent on short-term cost-benefit calculations (Kostakopoulou 2001: 34). It may ultimately give way to what is considered to be in the national interest.

Normatively, then, justification is not sufficient as an evaluative tool in a number of ways. Firstly, some form of common sphere and internal legitimacy is needed in order to define by what standards the EU's outputs are to be judged (Bellamy and Castiglione 2004: 12). Secondly, justification alone does not illuminate the moral character of EU power over its citizens. Justification may tell us why the EU should exist or why it is 'good' or 'effective' but, as Simmons (1999) has argued, this does little to tell us why (EU) citizens should be morally obliged to follow its laws rather than those of any other similarly 'good' or 'just' arrangement. In this way justification alone simply does not do the work required in 'bounding' those in the EU. Both a universal and particular justification assumes only a thin cosmopolitan 'identity' of EU citizens. While particular justification aligns the values in the justificatory process with those values in the specific 'ethos' of EU citizens, as outlined above, this identity is still too thin. Furthermore, a hypothetical justificatory thought experiment might result in the assumption that a value such as security (see Morgan 2005: 19) or welfare enhancement would be a value acceptable to all Europeans for justifying the EU's existence. But, however watertight the argumentation may be, it could not establish whether such a justification is actually acceptable to all Europeans; surely direct democratic procedures of accountability, representation and participation would be necessary to ascertain this? In summary, a merely justified EU alone does not take into account the intrinsic value of such democratic processes at the EU level (Nicolaidis 2001: 462).

Legitimating the European Union

A justification of the EU thus falls short, in our quest for normative affirmation. It is therefore useful to turn to legitimacy as an evaluation of the specific moral relationship between EU citizens and institutions. As outlined above, there is much debate about the definition of legitimacy and criteria for its attainment. However, the underlying consensus is that if power is legitimate it is seen as a 'rightful authority'. The disagreements lie in the conditions necessary for making a democratic authority rightful. Some arguments centre on social conditions, consent, support and the perception of legitimacy by citizens. Others argue for

certain qualities of the polity, such as political, legal or institutional conditions that create legitimacy.

All the accounts in question focus on democratic legitimacy and thus make inherent assumptions about the value of democratic procedures. However, there are stronger and weaker views on the need for consent. While for some a tacit consent, merely suggested by a perceived support or loyalty is sufficient, others, such as Simmons (1999), call for actual consent giving. The difference between these two accounts may not initially seem stark, but their relations to common identity differ in important ways. As Simmons (1999: 748) outlines, an attitudinal (Weberian) account of legitimacy rests on the assumption that a state is legitimate if its citizens believe it to be lawful, rightful or morally acceptable. In this way a sense of common identity or attachment to a regime could directly be said to increase legitimacy. This account however suffers from vital oversights. As Simmons argues, with attitudinal legitimacy the moral judgement becomes more about the citizens and their beliefs than the moral quality of the state (Simmons 1999: 749). Furthermore, he argues, in this framework a state could be considered legitimate if it brainwashed or otherwise manipulated its citizens (Simmons 1999: 750). In contrast, a Lockean conception of legitimacy requires citizens to give actual, free and informed consent to be governed, collated through democratic processes. In this framework then, a sense of identity or attachment does not directly imply legitimacy; rather, it can be one of the many motivations for consent giving as well as an element in effective democracy.

When specifically applied to the EU, the assumption of a common identity as a prerequisite or necessary element of democratic legitimacy is prevalent. There are however different rationales for this and varying ways in which such an identity is envisioned. A somewhat crude distinction can be made between theories presuming a pre-defined, thick, 'national' kind of identity to be necessary and those proposing a more post-national and abstract legally mediated identity.

The national conceptions of legitimacy arise from the notion of a democratic state mapped onto a homogenous national community or 'demos'. In this way an assumption of common identity is imbedded in the concept of democracy. Ultimate authority rests in 'a people' seen as a pre-existing community. Their collective fate is determined in a unified public sphere by a process of will formation. Those in power, in turn, are required to act in the common good of the people. Their 'rightfulness' as rulers rests on this, and the fact that they are considered 'one of us'. Within this lies an assumption of self-determination and common identity, where it is not rule by just any people but rule by 'our people' that counts.

Not only is a common identity tacitly assumed in definitions of democratic legitimacy, a demos is seen as a prerequisite for a working democracy. Theorists such as David Miller (1997) consider a certain level of common trust necessary to sustain democracy. This trust is fostered in the 'imagined community' of modern nationalism and its cultural practices of common language, beliefs and affective identity. Others argue that working democracies need to have an identity strong enough to withstand constructive conflicts of interest. Effective majority rule, where a minority is able to accept the outcome of elections and of redistribution policies is seen to require a level of societal cohesion. However, Obradovic (1996) considers a 'thicker' identity grounded in a common history and traditions to be necessary. This identity is then based on 'deeply embedded myths' of common origin and originality. Whilst for some the myth of common origin and history is intertwined with ethnicity or religion, for those who describe themselves as 'civic nationalists' an identity would instead be expressed linguistically, culturally and in political traditions (Nicolaidis 2003: 141).

Applied to the political integration of Europe, the assumption of a demos as a prerequisite for democracy and legitimacy can lead to two opposing considerations or the 'two sides of one coin' (Nicolaidis 2003: 143). The first is the belief that the EU can and must instil a European quasi-national identity in order to be legitimate. De Beus (2001) argues a democratic Europe needs a supranational European identity that goes further than a mere

feeling of shared citizenship and the 'common belief about the sources and principles of legitimate authority' (2001: 305). This identity would rest on a shared social and political culture. De Beus comments that European democracy and identity are deeply linked. A thick common identity reinforces the democratic value of equal citizenship and engenders support and participation in democratic processes. Constructivists further argue that such a demos could be fostered through the very processes of political, cultural and economic integration. For Schmitter (2003: 31) it is the 'daily practice of open, free and competitive politics' itself that could create such a European demos.

On the opposite side of the coin lies the 'no-demos' thesis. This posits that the EU should not and cannot attempt to create such an identity as the linguistic and cultural diversity inherent in Europe mean its citizens cannot make up a coherent demos, nor the common political sphere of communication needed for democratic will formation. A circular problem is identified, where functions of a state[3] would not work at the EU level without a common European identity, but such an identity may not emerge unless these functions are in place. Moravcsik (2002: 616), for example, considers there might be no prospect of a common identity unless citizens feel they 'have a stake in it' in terms of a common system of redistribution. The proponents of the 'no demos' thesis tend to conclude that the nation-state is the most efficient and natural sphere of legitimate political association. With no prospect or desire for a European identity or demos, they turn to the ideas outlined above, of an EU that is purely justified. On the face of it these arguments answer the dilemma of the moral relationship between the EU and its citizens put forth in Section 1. In these accounts a common identity is the 'tie that binds' and fosters the consensual relationship between the governed and governing, facilitated by democratic processes.

There are however several problems with the premises underlying both sides of the quasi-national European identity debate. Firstly, the assumption that the EU's legitimacy can be derived from a sense of 'us' ruling 'us', is based on a Weberian assumption of legitimacy. As outlined above, by resting only on the attitudes of EU citizens, such an account does not take seriously the need for their actual free and informed consent.[4] Furthermore, the very assumption that the EU requires a thick or a unified identity to be truly legitimate rests on a definition of legitimacy that is based on a national framework. Thus any attempt to show how the EU, which is not a nation-state and currently without a thick identity or demos, could or should be legitimate, is stillborn. The assumption of a necessary thick identity is not just problematic for the EU but is perhaps questionable at a national level too. It would presume that a political identity is mapped seamlessly onto a fixed, cultural, 'original' or exclusive single identity that does not take into account the actual plurality of overlapping identities (Gillespie and Laffan 2006: 139). Elements of this kind of thick identity are inherently undesirable, as they assume that there is such a thing as a truly unified will or 'national interest'. In some respects they are exclusionary as membership is based ultimately on immutable notions of common history, descent or ethnicity.

It is therefore worth turning to post-national conceptions of European identity to explore whether these are more desirable and appropriate. These conceptions take what Kuper (2000: 164) calls a 'double conceptual disengagement', where both political identity and democracy are no longer based on assumptions of the nation-state. While there are different strands of post-national thought on European identity – one of the most prominent being Habermas's notion of constitutional patriotism (Habermas 1996: 465) - there is general consensus that EU citizens would not require a thick identity based on a cultural or historical unity. Instead they argue for an identity that is reflective and an 'abstract and legally mediated solidarity amongst strangers' (Habermas 1995: 305). Such an identity would be

[3] Such as redistribution, protection and representation.

[4] Consent is commonly seen as a prerequisite for the constitution of a political authority. Both Hobbes and Locke for example, consider consent as central in turning power into rightful authority. "The Right of all Sovereigns," says Hobbes in *Leviathan* (chap. 42) "is derived originally from the consent of everyone of those that are to be governed." (Hobbes, Leviathan Chap. 42). And Locke (Second Treatise § 95): "Men being … by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent." See http://plato.stanford.edu/entries/legal-obligation/#5.

centred on the common aims and institutions of integration. Europeans would hold shared liberal values and ideals of democracy, equality, liberty or the more specific endeavour of maintaining a particular form of 'social Europe'. EU legitimacy would be derived from the consent given by European peoples to their common democratic institutions. This view of identity comes closer to the purely 'cosmopolitan' identity deemed necessary for universal justification. However, it differs in one important way, in that it describes a population bound to the EU by specific attachment and consent giving to its institutions.

While in many ways the rational, reflective, post-national conceptions of European identity are more desirable than the thick, overarching national versions, there remain several criticisms. In some respects such an identity overshoots the quasi-national type of identity and becomes too thin. In doing so, it goes back to the problems associated with a purely justified EU and lacks an account of why citizens would choose to consent to the EU. The conception of rational consent giving conjures up an image of a world where people freely choose which polity they wish to belong to based on a match between their rational or ideological preferences and the offerings of a political arrangement. It is a notion better suited to a world without nations or the existence of emotive political identities. It fails to show why there would be a stable consent that is not entirely based on changing preferences and policies.

Furthermore, the interplay between a sense of political affect and effective democratic processes is not emphasised in such post-national accounts of identity. It would, for instance, be difficult to see how such a rationalistic identity could sustain stable common action and redistributive policies, particularly where strong emotive identities are present at the local and national level. Beetham and Lord (1998) focus on this dilemma when they ask which level of authority would be considered more legitimate in the case of a conflict between levels of identification. It could be easily imagined how perceived 'national interests' induced by a thicker national identity could subsume the interests evoked by a thin post-national European identity.

In contrast, Kraus (2003: 670) criticises the post-national form of identity as he feels it is neither desirable nor viable. He is concerned that the promotion of a thin 'civic' European identity may ignore or override national or local cultural differences rather than supporting or fostering them. However, he is sceptical that such a concept of identity even holds. He claims identity cannot entirely be only either cultural or civic as; 'civic commitments are not developed in a cultural vacuum'.

In this way, both post-national and quasi-national conceptions of European identity still centre too much on the production of a singular overarching European identity at the cost of alienating or conflicting with national ones. Theorists such as Nicolaidis (2003) for example, have therefore questioned the need for a singular overarching common identity at the European level. She has argued European identification should be a process of sharing multiple identities and focusing on European projects- not so much 'who Europeans are but what they do in common' (Nicolaidis 2003: 144). Similarly, Kraus calls for a pluralistic European identity, which would have cultural diversity institutionally protected through the principle of subsidiarity (Nicolaidis 2003: 679).

It is questionable to what extent a sustained attachment to Europe could be maintained simply by the process of 'what they do in common' rather than 'who they are', as Nicolaidis professes. Just as Kraus argues that civic commitments and cultural attachments cannot necessarily be separated, it could be considered that 'doing in common' would need to go hand-in-hand with a sense of common identity. The next section will, however, explore further Nicolaidis' suggested need to focus also on sub-European identities, rather than merely seeking a single over-arching European identity.

Synthesis: Through Thick and Thin

The question of what kind of European identity the EU requires to be justified and legitimate has been approached from two sides: (1) that of a thin cosmopolitan and (2) that of a thick quasi-national identity. Neither, it is argued, 'work' to create a healthy democratic EU with central values of social justice, human rights and respect for cultural diversity. This calls for a proposal of a form of EU identification that does not require an overarching European identity and deals with the potential problem of conflicting identities at different levels. The proposed framework involves two elements. The first is a structure of normative evaluation that does not create the foregone conclusion that the EU must be like a nation in order to be justified and legitimate. The second element is a European identification that takes into account local and national levels of identity, 'works' empirically and is normatively acceptable.

In section 1, neither 'universal justification' nor 'particular justification' alone, were shown to be sufficient as normative evaluations of the EU and a two-levelled justification was proposed. There is no reason why normative theory should not follow the practice of multiple sites or layers of authority and accountability split at different levels or sites of jurisdiction. Both a universal justification of the EU and a more particular justification need to be sought for the EU to be truly justified. A basic universal or 'objective' justification is necessary if one is to stay true to liberal assumptions of universal rationality and equality and if the reality of the EU's widespread influence is to be captured. The identity compatible with this is a thin universal common identification of individuals as equals, respecting requirements of basic human rights, we might think of this as a form of 'universal morality'. However, as I argued in section I, this thin identity alone is not sufficient to justify particular laws that are binding only to those within the EU, and begs the need for more particular justification, based on a more particularistic 'ethos'. Just as Habermas (2001: 117) argues that the universal principles of a democratic constitution are compatible with the culturally and historically specific interpretations of these, there is no reason a 'universal' and a 'particular' layer of justification could not be compatible.[5]

In the same way as justification needs to be taken away from the idea of a single unified political sphere such as the state, the concept of legitimacy, needs to evaluate the relationship between EU citizens and their institutions by taking into account the complex interaction of levels and forms of decision-making. The model of a majority in a unified nation electing its representatives in a parliamentary or presidential democracy is not directly transferable to the EU. Therefore the direct requirement of a unified 'thick' or even unified 'thin' identity for legitimacy appears redundant. An evaluation of the EU's legitimacy requires a more appropriate concept if it is not to remain forever in a 'crisis of legitimacy'. In line with Simmons' (2001) Lockean conception, legitimacy should be seen to rest in the first instance on freely given consent, aggregated by democratic institutions.[6] Identity or a system of identification is then a secondary requirement of legitimacy that feeds into the need for bounding and differentiating the polity, producing stable consent and democratic institutions that 'work'.[7] This concept of legitimacy is flexible enough to incorporate changing sites and types of identity in changing political orders.

Similarly, in Habermas's concept of constitutional patriotism, 'freely given consent' is a requisite of a legitimate EU. However the level of identity assumed necessary in constitutional patriotism does not go beyond an 'abstract, legally mediated solidarity', and as argued before, it is unclear how this is to produce the consent and the cohesion in the

[5] For further discussion on the compatibility of a particularistic 'ethos' and universalistic 'morality', see Dobson (2006a: 144).
[6] There is much debate on how, empirically, consent is to be sought. Particularly in the case of the EU, this is an interesting question for further consideration elsewhere.
[7] This is not to say that identity is necessarily of secondary importance, but rather, that legitimacy should in the first instance rest on consent giving by citizens. In this view of the concept, a common identity is thus not a *direct* requirement of legitimacy, though an identity may play a very significant role in securing consent and thus legitimacy.

common public sphere deemed necessary. A stronger concept of European identity is needed to sustain this consent. Also rather than view a European identity as a single entity, I argue the concept of European identification needs to be approached holistically, incorporating other sites of political identity such as the nation, region or locality. Nicolaidis (2004: 103), for example, describes the identity, in what she calls a 'European democracy', as resting on the 'mutual recognition of many European identities, not on their merger'.

However, European identities themselves are not immutable. Identities change over time and with context and within any individual they are not placed as sealed layers over one another, but are constantly renegotiated and intermingling. With this view of political identities it becomes easier to conceive of the problem of conflicting identities as not inevitable, but rather, dependent on the kind of identities involved. Certain forms of national identity could hinder the EU from gaining consent and, by extension, legitimacy. National political spheres and identities might be exclusive, inward-looking and thick with a myth of a unified 'national interest' as a firm central value. In such a case a European identity that is too thin or rests too much on outputs evaluated from the point of view of national interests, would easily become unstable or overridden.

It is equally possible, however, that national identities become compatible with, and even constitutive of, a European-level identification. There has been a growth in recent debate and empirical research on the Europeanization of national identities (de Beus 2001: 294; Soysal 2003; Seidendorf 2003). Hoppe (2005: 20) has, for example, shown how some sub-state nationalist parties such as the Scottish National Party have promoted a European angle to their national identity by adopting firmly pro-European stances. Europeanised national identities need not imply that all member state identities would become merged into one identity, but rather that 'Europeanness' becomes an inherent aspect of a national identity. Distinct identities, cultural and linguistic differences remain unique while the exclusive or aggressive elements and the myth of the primacy of 'national interests' are eroded. The 'otherness' of different national identities become less 'other' in recognition of their common Europeanness. In this constructivist view, the conflict between national and European interests is no longer significant if European interests and national interests converge. Similarly, being European becomes an intrinsic aspect of being Dutch or Latvian, and through mutual recognition a Spaniard can also identify somewhat with being Italian or British when travelling outside the Union (Nicolaidis 2004: 102).

An institutional expression of this system of identification could be seen in the concept of subsidiarity. According to Kraus (2003: 683), the focus on decision-making at different levels recognises the importance of different foci of identity in a heterogeneous EU. On this reading, there is no over-ruling level of authority and consequently no need for a unitary, overarching European-level identity. It could be considered that subsidiarity goes against the very grain of European integration defined as a shift of power from the nations to European central decision-making. However, Wyatt (2003: 93) argues, subsidiarity may be necessary to retain legitimacy if interest groups, parties and regions are considered the legislative level that is most efficient and closest to the citizens.

An entrenchment of the idea of subsidiarity might not just reflect an individual's identification with different realms of decision-making; it may also further a form of political process that is highly desirable. Political representation and governance can occur across the concentric circles of the local, national and European in cross-boundary sectoral or interest-based representation. In this respect different identities and attachments would not be viewed as hierarchical and national interests would be given their equal space in line with European, sectoral or local interests. Conflicts between these seats of identification would not constitute a legitimacy crisis but would be an inherent aspect of a 'deliberative' model of democracy. In a system where individuals simultaneously held various identities and participated in several avenues of representation it would be harder for one seat of identity (i.e. the nation) to always trump the other (i.e. Europe). Furthermore, the perception of efficiency and decision-making 'close to its citizens' may further participation, effective citizenship and legitimacy on all levels. The democracies of Member States may also be

enhanced by giving an added 'check' on power that arises with additional layers of representation (Kostakopoulou 2001: 21).

The concomitant form of identification is one that not only 'works' but also is desirable of its own accord. Having a political vehicle for the overlapping spheres of belonging and multiple identities held by each individual would make it more difficult for a single identity to become exclusionary or aggressive (Holmes and Murray 1999: 14). Furthermore, the concept of identification proposed is one that does not require the artificial splitting of cultural and civic forms of identification, does not over-ride cultural identities, and allows for an attachment to Europe that is not too abstract and thin. The identification's substance is the diverse sum of its parts, where diverse cultural practices and artefacts may all be considered European. Equally, 'being European' would entail unique symbols, artefacts and culture that were inherently European and thus would become part of the national.

Unavoidably being European would, in some respects, be set in contrast to being 'other', or non-European. This is where an element of risk might appear in the possible development of a sense of exclusivity or xenophobia in being European. Such an undesirable form of identification would, however, not work to create a 'universally' justified EU. Under the requirement of universal justification the EU's existence and outputs would need to be justifiable to all rational individuals in the world. This sphere of justification would be unlikely to accept an EU which fostered or maintained a xenophobic European identity.

Conceivably however, such a form of identification could 'work' in providing the basis for consent required for a legitimate EU. Xenophobic Europeans, it could be argued, may just as readily consent to EU authority. However, such an identity would not fulfil the criteria laid out previously – of an identity that is normatively desirable in its form. Neither would it sit well with the values I assumed to be desirable for the EU, in particular - respect for diverse cultural identities and human rights. Furthermore, a xenophobic EU citizen would not be likely to consent to an EU in which concepts of respect for diversity and human rights are embedded. Arguably too, such an identity would be less likely to emerge in a context of Europeanised national identities and multiple overlapping identities.

A critique that could be made of the Europeanization of national identities, however, is that it places no value on retaining national identities as they are. Nevertheless, I would tend to agree with Morgan (2005:19) when he argues that it is difficult to consider ethno-cultural diversity as such a public value. While respect for diversity and non-discrimination are public values, it is difficult to place a value on any given identity itself, as it is not fixed in form, over time or space. It would be hard to define what substantially makes a national identity valuable. Thus it is more appropriate to place value on the fact of having and being able to express diverse identities.

There is, however, a final cause for prudence. Empirically it is not known whether a Europeanised identification of this sort could exist and have strong enough ties to maintain EU stability, trust and legitimacy. Furthermore as Marcussen *et al.* (2000: 103) found in research on the Europeanization of French, German and British identities, identities are 'sticky' and not prone to constant change. They argue change is possible at the right time – a 'critical juncture' – where an aspect of national identity shows a weakness. Thus for example 'elites [could] promote new ideas about identity when old ones are failing or becoming irrelevant' (Marcussen *et al.* 2000: 103). Increased integration and the growth of a common public sphere could be the catalyst for this kind of change. The funding of initiatives like European exchange programmes are an example of a way in which European elites could give this process a helping hand.

However, whether or not such a form of identification is considered desirable in theory or workable in practice it must be asked whether it is right for the promotion of such an identity to be undertaken without the consent of the people of Europe. In the past decades there have been more and less explicit attempts at fostering European-wide identities from above through the implementation of European citizenship and initiatives such as 'a People's

Europe' (Hersom 2004: 40). As Hersom (2004: 71) argues the Danish 'no vote' in the referendum of the Maastricht Treaty shows that European citizenship does not necessarily 'constitute the will of the people' nor did it arise at their request. It could be imagined too that an elite-led transformation of identities may backfire and arouse discontent (Abromeit and Wolf 2005: 3). However, the Europeanization of national identities need not be elite-led. It could imaginably - as Seidendorf (2003: 2) has argued – arise almost 'naturally' from the influence of deepened integration on discourse in public spheres.

Conclusion

The deepening and widening of European integration has reached a point beyond 'permissive consensus'. The people of Europe want and need to hear a convincing argument for a more politically integrated European Union. As my friend did, they are asking; 'what does the EU ever do for us?' In a sense I have evaded this task by not providing a direct answer to this question, but rather the questions that rest behind it. I have attempted to give an elucidation of the process of normative evaluation appropriate to the EU and the role of a European identification.

This article has questioned the very framework in which my friend asked her question. I have argued that the EU requires more than a justification in terms of its just or good outputs evaluated by the peoples of Europe ('what has it done for us?'). Rather, a truly liberal view of humanity and a realistic take on the worldwide influence of the EU requires a universal realm of justification. The EU's very existence and its outputs need to be justified to all rational humans, requiring of them a thin cosmopolitan identity and a shared conception of basic principles such as universal human rights. However this type of justification, while necessary, does not match the aims of a bounded polity such as the EU. The identity it presumes is only an 'identity' in the loosest sense of the word. As it is too thin to match the requirements of maintaining the EU as a bounded polity, an additional particularistic layer must be added to the justificatory debate, where the outputs and aims of the EU are justified primarily to those within its jurisdiction.

A justification of the EU does not answer the question implicit in my friend's scepticism: why should we be a part of the EU? I have argued that the additional and separate concept of legitimacy is needed to evaluate the specific moral tie between the EU and its citizens. Nation-based concepts of legitimacy, however, lead to the proposition that the EU requires a unified 'demos' in order to be democratically legitimate, and in turn must foster a common identity that is quasi-national. I have argued this type of identity risks becoming too 'thick', exclusive and undesirable. Instead of a direct requirement of identity for legitimacy, I argue for a model of legitimacy that primarily requires freely given consent and democratic institutions, with common identity as a secondary condition facilitating such stable consent and participation.

Accounts of a 'civic' post-national identity based on a shared future and shared democratic procedures still focus on a single over-arching European identity at the risk of overriding cultural aspects of national identity and arousing possibilities for conflicting legitimacy. A view of European identification that works and is desirable needs to take into account sub-European identities. I have proposed that Europeanised national and local identities and the ensuing converging of European and national interests could solve this problem. The concomitant recognition of different levels of decision-making through the principle of subsidiarity promotes and recognises these different seats of identity. Regardless of the desirability of such Europeanised national identities in theory, however, continued empirical research is needed to evaluate how these could develop over time.

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