

EU Identity in a Westphalian and Multicultural Context*

Identidad de la Unión Europea en un contexto multicultural y de Westphalia

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Summary: I. Introduction.—II. Framework of European Identity: normative power.—III. EU identity inside the European Union. 1. Solidarity. 2. Human Rights. 3. Multiculturalism.—IV. Migration and Greece.—V. EU identity considering solidarity, human rights and multiculturalism in a post-Westphalian context.—VI. Conclusion

Abstract: The development of an EU identity should be supported by a legal framework to be able to justify its legitimation. Following the work of Ian Manners on normative power, this paper discusses the links between key aspects of EU values such as solidarity and human rights in a context where supporters of nation-states and Westphalian views of states have recently dominated European politics. This has had a direct impact (or lack of) on the promotion of multiculturalism. This paper takes Greece as an example of how the EU's approach towards this country could have been a display of solidarity and promotion of human rights but it missed the opportunity. One of the reasons for favouring a more utilitarian approach could be linked to the lack of sense and belonging to the EU society as a consequence of the barriers created by strong feelings of nationalism attached to European states and nations together with a lack of promotion of multiculturalism. It is argued that a more multicultural society could benefit from the creation of an EU identity and consequently, the creation of an EU society, EU policies, and potentially, the avoidance of future European crisis such as the one created with Brexit.

Keywords: EU identity, multiculturalism, Solidarity, Human Rights, Greece

Resumen: *El desarrollo de la identidad de la Unión Europea debería estar defendido por un marco legal para poder justificar su defensa. A través del trabajo de Ian Manners con «normative power» este artículo desarrolla una conexión entre aspectos claves de algunos de los valores de la Unión Europea como son solidaridad y derechos humanos, en un contexto donde los estados-nación y los defensores de Westphalia han dominado la política europea. Esto ha influenciado*

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en la (o la falta de) promoción de multiculturalismo. Este artículo toma como ejemplo de las acciones de la Unión Europea a Grecia en lo que podría haber sido una muestra de su solidaridad y respeto por los derechos humanos, pero la Unión perdió su oportunidad. Una de las razones de favorecer acciones utilitarias podría estar unida a la falta de sentido y de pertenencia a la sociedad de la Unión como consecuencia de las barreras creadas por fuertes sentimientos de nacionalismo unidos a países y naciones europeos a la vez que por la falta de promoción de multiculturalismo. Se argumenta que una sociedad multicultural podría beneficiar a la creación de una identidad de Unión Europea y como consecuencia una sociedad y políticas a nivel de Unión Europea y evitar futuras crisis como la que se ha creado con el Brexit.

Palabras claves: *Identidad de Unión Europea, multiculturalismo, solidaridad, derechos humanos, Grecia.*

I. Introduction

The development of the integration project that the European Union (EU) is today, could be described as uneven, if attention is paid to the degree of integration among different sectors and countries. In relation to the latter, there are countries who decided to share the same currency with all the economic and financial interdependence that it creates. The uneven integration in relation to sectors can be seen with the creation of the common market while avoiding the same level of integration in the area of social policies and welfare states.

The argument of creating similar social policies could potentially help to create a sense of solidarity among countries, and it could help to promote the idea that equal treatment of EU citizens is needed to improve the value of EU citizenship. Miller discussed the negative impact that having different cultures across countries has on the development of genuine social solidarity¹. “Empirical studies have shown a strong correlation between social homogeneity and generous redistributive welfare policies². (...) The duties

¹ David Miller, *On Nationality* (Oxford: Clarendon 1995); Peter O’Brien, *The Muslim Question in Europe: Political Controversies and Public Philosophies* (Philadelphia: Temple University Press 2016).

² O’Brien, *The Muslim Question in Europe...*,46; Alberto Alesina and Edward Glaeser, *Fighting Poverty in the US and Europe: A World of Difference* (New York: Oxford University Press 2006) and Robert Putnam, “E Pluribus Unum: Diversity and Community in the Twenty-first Century.” *Scandinavian Political Studies*, 30 n.º2 (2007): 137–74.

we owe to our fellow nationals are different from, and more extensive than, the duties we owe to humans as such”³.

Part of the discussion around multiculturalism in academia relates to human rights and social equality and how, together, they can actually improve the solidarity among EU members better than through discourse on nationalism i.e Britishness⁴. Consequently, this paper discusses to what extent the development of an EU identity within a multicultural society based on the promotion of human rights and social equality fits better within the EU project considering the goal of an “ever closer” Union and the EU’s motto: “united in diversity”. This argument is developed also as a way of dealing with the ghost of conflicts, wars and nationalism associated with the history of the continent. The potential for a successful European society, and therefore, identity is “despite its increasing multiculturality”⁵ based on four elements:

“First is the political drive towards greater union, through the single market, the common currency and constant rhetoric about Europeanness, reinforced by financial incentives in many subregions. Second is the effective acceptance in all member states (including Britain) that some sovereign powers have been definitively conceded to a European entity. Third is the heightened social mobility that has been in evidence in Europe in the last two decades, facilitated by cheap air travel, legal freedoms of movement and the variability of national labour markets. Fourth is the impact of immigration from outside the EU, which has greatly increased the diversity of European societies, some of which had remained demographically stable for centuries. This has overshadowed the sense of the major fissures in Europe being between separate nations and/or nation-states”⁶.

The examples applied in this paper attempt to demonstrate the existence of obstacles to the last element mainly but also to some aspects of element 1 and 2.

The rest of the paper is divided into three sections. The first one will discuss the theoretical framework that heavily relies on Ian Manners exceptional work on EU normative power. The second section will test the

³ O’Brien *The Muslim Question in Europe...*, 46; David Miller, *Citizenship and National Identity* (Cambridge: Polity 2000), 27.

⁴ Mike O’Donnell, “Review Debate: We need human rights not nationalism ‘lite’ Globalization and British solidarity” *Ethnicities* 7, n.º2 (2007): 248-259.

⁵ Lisbeth Aggestam & Christopher Hill, “The challenge of multiculturalism in European foreign policy International Affairs”, *The Royal Institute of International Affairs* 84, n.º1 (2008): 97–114.

⁶ *Ibidem*, 16.

social solidarity and the promotion of human rights considering the bailouts of Greece. The third section will discuss the degree of social solidarity with EU countries dealing on a daily basis with the consequences of the migration crisis in the Mediterranean as it is the case of Greece. And the last section will discuss one of the main obstacles for the creation of an EU society and therefore identity, and the promotion of Westphalia nation-states by some sectors of the society.

II. Framework of European Identity: normative power

The wish to create a unified Europe is certainly not new, and perhaps the reasons for that aim could be associated with the perception of a shared destiny and identity. As Viviane Reding, the then Vice-president of the European Commission explained quoting Victor Hugo's discourse at the Paris Peace Congress: "A day will come when you — France, Russia, Italy, England, Germany — all you nations of the continent will merge, without losing your distinct qualities and your glorious individuality, in a close and higher unity to form a European brotherhood (...) A day will come when bullets and bombs will be replaced by votes, by universal suffrage of the peoples, by the venerable arbitration of a great sovereign senate which will be to Europe what Parliament is to England, [...] what the Legislative Assembly is to France"⁷.

The then Vice-president explained the connection between Victor Hugo's discourse and the European Motto "United in diversity": "he specifically mentions a fundamental concern rooted deep in European history, one that colours every debate about closer integration in Europe and one that is especially close to my heart: *he wanted the nations of Europe to come together in a higher community, a great brotherhood, without losing their distinct qualities and their glorious individuality*⁸. 'United in diversity' – the European motto, explicitly incorporated in the 2003 Constitutional Treaty for Europe, can be traced back to Victor Hugo"⁹. The EU motto, is discussed in the literature on multiculturalism. "The EU is founded on the inherently multicultural idea of 'unity in diversity', which

⁷ European Commission Press Release SPEECH-12-796_EN Centrum für Europarecht an der University Passau / Passau 8 November 2012 Viviane Reding Vice-President of the European Commission *Why we need a United States of Europe now*. Last update 19 February 2018 http://europa.eu/rapid/press-release_SPEECH-12-796_en.htm

⁸ Highlighted by the author.

⁹ European Commission Press Release.... http://europa.eu/rapid/press-release_SPEECH-12-796_en.htm

posits that the EU shall promote the cultural diversity of its member states, yet also advance a set of values common to all. Prominent among the latter are the ideals of democracy, tolerance and respect for human rights, which both internally and externally have become key identity markers of the EU as a would-be carrier of universal values”¹⁰.

The idea of the protection of minorities has been relevant when developing a common EU policy in the area of migration by giving “equal rights (legal, economic, social and cultural) without being expected to give up their cultural distinctiveness”¹¹. Moreover, the discussion of a European identity has been affected also by international issues such as the process of globalization, different types of migration including illegal immigration and other issues¹². “Contemporary communitarianism maintains, however, that each bona fide community ought to be able to preserve and practice the norms and values that make it distinct regardless of where the physical frontiers of nation-states fall”¹³. The perception of the EU’s identity created by multiple identities¹⁴ could be seen as a response to the recent history of the continent association with extreme views on nationalism and conflict¹⁵. Whitman¹⁶ explains following the work of Manners¹⁷ that both the nature of the European Union and its identity serve as a way of moving away from the “state as the centre of concern”. Discussions of civilian power refer to “Westphalian cultururation”¹⁸.

The development of EU normative power associated with the creation on an identity based on values and ideas started mainly with the work of Ian Manners¹⁹. The list of normative principles that Manners created include: “sustainable peace, freedom, democracy, human rights, rule of law, equality, social solidarity, sustainable development and good

¹⁰ Aggestam and Hill, “The challenge of multiculturalism ...”, 99.

¹¹ *Ibidem*, 99.

¹² *Ibidem*

¹³ O’Brien, *The Muslim Question in Europe...*, 47; Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books 1983), 314

¹⁴ Ian Manners “Normative Power Europe: A Contradiction in Terms?” *Journal of Common Market Studies* 40 (2002): 235-258. And Ian Manners, “Normative power Europe reconsidered: beyond the crossroads”, *Journal of European Public Policy* 13, n.º2 (2006): 182-199, DOI: 10.1080/13501760500451600 taken from Richard G. Whitman, ed., *Norms, Power and Europe: A New Agenda for Study of the EU and International Relations* (London: Palgrave Studies in European Union Politics Palgrave Macmillan 2011), 178.

¹⁵ Whitman. *Norms, Power...*178.

¹⁶ *Ibidem*

¹⁷ Manners, “Normative Power Europe: A Contradiction in Terms”, 236.

¹⁸ Manners, “Normative Power Europe reconsidered...”, taken from Whitman *Norms, Power...*,176.

¹⁹ Manners, “Normative Power Europe: A Contradiction in Terms”, 236.

governance”²⁰. This paper is going to test the EU’s solidarity and respect for human rights considering the Unions’ actions in relation to Greece internally and externally. “Social solidarity”, according to Manners, includes the following points which emanated from Article 3-3 Reform Treaty 2007:

1) “The extensive understanding of social solidarity becomes clear in references in the objectives of the draft Reform Treaty to ‘balanced economic growth’, ‘social market economy’, ‘full employment’ and combating ‘social exclusion’, as well as promoting ‘social justice and protection’, intergenerational solidarity, and *social solidarity among (and between) member states*”^{21,22}.

The way the European Union has dealt with the Eurocrisis after suffering the financial crisis could be seen as a prioritization of an economic argument in detriment of a social one. The bailouts emphasised an agenda: countries that are part of the Eurozone and could have a negative impact on the Euro had to accept austerity measures for several years decided by other countries in a wealthier position. This approach could affect the defence of an EU’s identity that includes social solidarity broadly understood. The real EU identity —like any other identity— can be best tested in times of crisis, including a financial crisis. The Eurocrisis also brought an increase in the movement of workers from those countries suffering high levels of unemployment as well as the consequences of the bailouts. This was perceived in some European countries like the UK with mixed views which could affect the aim of a real multicultural continent.

2) “The principle of social solidarity goes beyond intra-EU relations to inform and shape EU development and trade policies, as the draft treaty suggests with its references to the Union’s contribution to ‘*solidarity and mutual respect among peoples*’²³, free and fair trade, eradication of poverty”²⁴.

The second aspect of Manners principle of solidarity refers to EU’s actions beyond the continent. The existence of this value will be tested through the analysis of the Union’s reaction to the migration crisis in the

²⁰ Ian Manners, “The normative ethics of the European Union”, *International Affairs* 46 (2008): 84.

²¹ Highlighted by the author.

²² Manners “The normative ethics...”, 53

²³ Highlighted by the author.

²⁴ Manners “The normative ethics...”, 53

Mediterranean. The perception of a “Fortress Europe” questions to some extent the idea of solidarity as a priority of the Union’s identity.

“Associative human rights” is the second principle that this paper will analyse to understand European Union’s identity and its link with multiculturalism. As in the case of solidarity, Manners elaborates further this idea that emanates from the Treaties. For this discussion the following ones are especially relevant:

1) “Associative human rights include both individual human rights and collective human rights. (...) The associative nature of EU human rights has developed *since the 1973 Declaration on European Identity*²⁵ through the 1986 Declaration of Foreign Ministers of the Community on Human Rights and the 1991 Resolution of the Council on Human Rights, Democracy and Development. All of these documents emphasize the universality and indivisibility of these associative human rights with consensual democracy, the supranational rule of law and social solidarity”.

Respect for human rights is a value associated with the European Union as it would be expected of any democratic state; a different debate would be in relation to how far they are willing to go defending them. However, the direct link with social solidarity is not discussed extensively.

2) “The article of the Reform Treaty dealing with fundamental rights, article 6, illustrates the way in which human rights developments within the Union contribute to its external actions. The first aspect of this is the inclusion of human rights as general principles of the Union’s law, (...) The third aspect is the extent to which human rights provisions are promoted through the interdependent external actions of trade and aid, humanitarian and *migration*²⁶ issues²⁷.”

The notion that where the EU goes, EU law goes with it, is, to some extent debatable in relation to the refugee crisis. Moreover, solidarity has to be discussed considering different perspectives, including refugees’ perception which it does not seem to be the case. Multiculturalism it not only the tolerance or acceptance of other cultures, but the recognition of equal treatments of other cultures and communities.

This identity is not just about *what the Union says it is*, but also about *what it does*. Therefore, the rest of the paper will focus on EU’s actions

²⁵ Highlighted by the author.

²⁶ Highlighted by the author.

²⁷ Manners “The normative ethics...”, 53.

and/or inactions instead of their discourses on identities. Also, this paper will discuss on the extent to which the official discourse of EU values, ideas and consequently identity, is demonstrated through actions. For that to happen, a clear demonstration of social solidarity across states and cultures will have to be present.

III. EU identity inside the European Union

This section will analyse to what extent EU actions reflect a real solidarity and promotion of human rights in relation to Greece within the context of the Greek financial crisis. It will focus on the different types of solidarity (economic, social and cultural), and cultural solidarity, and on its consequences for the promotion and respect of human rights.

Since 2010, Greece has on several occasions received financial assistance by different institutions including the European Commission and the European Central Bank. The EU facilitated this funding through the European Financial Stability Facility (EFSF) before the creation of the European Stability Mechanism (ESM), and the bailouts were linked to specific policies tied to public expenditure.

1. *Solidarity*

In December 2011, the Head of states of the European Union with the exception of the UK tried to adopt fiscal measures that would help to combat the public debt of countries belonging to the Eurozone²⁸. The UK, in fact, veto the potential creation of those measures as a European Union Treaty. But by the end of January of 2012, 25 member states agreed to have the adoption of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union as an International Treaty, even though it required only the ratification of 12 countries for its implementation²⁹ and a year later, in January 2013, it was implemented³⁰.

A few years later, the UK again demonstrated a different perception of EU solidarity. In 2015, the then Prime Minister of the UK Cameron announced the end of the European Financial Stabilisation Mechanism

²⁸ House of Commons Library 2012.

²⁹ House of Commons Library 2012.

³⁰ EU-Lex 2014 Treaty on Stability, Coordination and Governance (TSCG) of 2 March 2012 – not published in the Official Journal., Last update 10.03.2014, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=URISERV%3A1403_3

(EFSM), through which EU countries helped with bailouts. However, the Commission relaunched that fund to help with the financial Greek crisis³¹. Since that mechanism requires Qualified Majority Voting (QMV) and the Eurozone countries together achieve a majority through this voting mechanism, the UK could not impede that decision³². In July 2015, a discussion over the participation of non-Eurozone countries in those bailouts took place, but David Cameron only achieved a promise to change legislation³³. The ESM “is based on the new provision (a paragraph 3) inserted into Article 136 TFEU by a decision adopted on 25 March 2011 by the European Council³⁴ allowing the establishment of a permanent financial assistance mechanism in order to ensure the stability of the Eurozone (...). The insertion of Article 136(3) TFEU was seen as way to circumvent the ‘no bailout’ clause of Article 125 TFEU which prohibits the debts of the EU Member States from being assumed either by the Union itself or by any other Member State³⁵”³⁶. Cameron’s solidarity with other countries can be questioned. And the discussion, vote and negotiations on Brexit are directly link to the rejection of a EU society where solidarity is key. However, there is not enough space in this article to discuss the case of the UK. Moreover, if other EU countries were not part (or aspire to be part) of the Eurozone, then it would easier to question their degree of solidarity in relation to this Treaty.

2. Human Rights

The Committee on Economic, Social, and Cultural Rights explained that the policies linked to the bailouts had a negative impact on the promotion of human rights by Greece³⁷.

³¹ Helen Thompson, “Inevitability and contingency: The political economy of Brexit” *The British Journal of Politics and International Relations* 19, n.º3 (2017): 434–449.

³² *Ibidem*.

³³ *Ibidem*.

³⁴ In this regard see: Decision 2011/199/EU of the European Council amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, (OJ L 91, 6 April 2011), 1.

³⁵ In this regard see: Jean-Victor Louis, «The No Bail-out Clause and Rescue Packages», *Common Market Law Review* 47, n° 4 (2010): 971-986.

³⁶ Olivier De Schutter, “The Implementation of the Charter of Fundamental Rights in the EU institutional framework”, *European Parliament Study for the AFCO Committee* (2016), accessed 21 March 2018,

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU\(2016\)571397_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU(2016)571397_EN.pdf)

³⁷ *Ibidem*.

It has been argued that the application of the Charter of Fundamental Rights should be included in the conditionality applied to the lending of the ESM and the EFSF³⁸. In the case of Greece, the UN Human Rights Council appointed Juan Pablo Bohoslavsky as an expert to report on the consequences of foreign aid and foreign debt and explained the following: “the Commission remains bound by the full extent of European Union laws, the Charter of Fundamental Rights and has to protect and respect human rights enumerated therein also when it acts on the basis of the treaty establishing the European Stability Mechanism (ESM). In addition, the ESM itself has to protect and respect the human rights enumerated in the Charter of Fundamental Rights given that, despite having a legal basis separate from the treaties, it constitutes a vehicle for the exercise of public authority in the framework of the Eurozone as referred to in Art. 136(3) of the Treaty on the Functioning of EU”³⁹.

The impact of these policies and/or adjustment programmes are considerable in relation to the decrease of human rights. The National Ombudsman explained that “the drastic adjustments imposed on the Greek economy and society as a whole have had dramatic consequences on citizens, while vulnerable groups increase and multiply”⁴⁰. Furthermore, the National Human Rights Commission explained that “a rapid deterioration in living standards coupled with the dismantling of the welfare State and the adoption of measures incompatible with social justice, which are undermining social cohesion and democracy”⁴¹. The Independent Expert from the United Nations urged to Greece and European Institutions that further austerity measures should not come at the cost of human

³⁸ *Ibidem*.

³⁹ *Ibidem*, 33 and see: “Report of the Independent Expert on the effects of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece” February (2016), presented to the thirty-first session of the Human Rights Council, A/HRC/31/60/Add.2 accessed 21, March 2018

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx>

⁴⁰ “Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephass Lumina”, 27 March 2014 Greek Ombudsman, A/HRC/25/50/Add.1, accessed 21 March 2018 <http://www.undocs.org/A/HRC/25/50/Add.1> and see “Annual Report” (2011) 4, accessed 21 March 2018 www.synigoros.gr/resources/ee2011-english_translation-final.pdf

⁴¹ *Ibidem*, and see: National Commission for Human Rights, Annual Report (2011) 71-72, accessed 21, March 2018

<http://www.rwi.lu.se/NHRIDB/Europe/Greece/NationalCommissionforHumanRightsAnnualReport2011.pdf>

<http://www.undocs.org/A/HRC/25/50/Add.1>

rights, expressing concern that some of them could be incompatible with international human rights law.⁴²

3. *Multiculturalism*

The rise in xenophobic violence was also noticed in Greece. Part of the recommendations were related to the need to take measures to fight violent extremism considering international law in the area of human rights⁴³. There is a link between the refugee crisis and the financial constraints of Greece, the promotion of human rights and the (lack of) respect of multiculturalism: “The Greek State has provided aid and encouraged solidarity and support by the local population. There have been also positive developments in relation to the Greek Government policy towards refugees and irregular migrants, including a reduction of administrative detention”⁴⁴. But there are financial problems linked to their own financial situation. “Owing to austerity and the economic crisis, the Greek State is in a difficult position to respond adequately to the refugee crisis without additional European and international aid”⁴⁵. This helps to demonstrate first, the overlapping of internal and external issues when EU actions, and consequently the display of its identity as only possible taking into consideration both aspects. The next section elaborates this further.

IV. Migration and Greece

The concept of Normative Power Europe (NPE) discussed by Manners is directly linked to its identity. But, “the Union can only achieve the leadership role to which it aspires through the example it sets”⁴⁶. Moreover, “if the EU is normative power, hypocrisy and window dressing⁴⁷ would be a real contradiction with the NPE”⁴⁸.

⁴² United Nations Human Rights Office of the High Commissioner Media Statement, “Not at the cost of human rights” – UN expert warns against more austerity measures for Greece” 15 July 2015, accessed 21 March 2018

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16238&LangID=E>

⁴³ “Report...” A/HRC/31/60/Add.2.

⁴⁴ *Ibidem.* 6.

⁴⁵ *Ibidem.*

⁴⁶ Philip Alston and J. H. H. Weiler, “An ‘ever closer Union’ in need of human rights policy: the European Union and human rights”, in *The EU and Human Rights*, ed. by Philip Alston (Oxford: Oxford University Press, 1999), 4–5, taken from Whitman, *Norms, Power, ...*

⁴⁷ Erik O. Eriksen ‘The EU – A Cosmopolitan Polity?’ *Journal of European Public Policy*, 13, n.º2, (2006):266, taken from Whitman, *Norms, Power, ..., 13*.

⁴⁸ Whitman, *Norms, Power, ...*

In relation to the EU and its Mediterranean partners, before the migration crisis, the Union was already behaving in ways that demonstrated to some extent a contradiction in their normative power discourse when compared with their actions. Noutcheva explains how the EU does not reflect on its behaviour and demonstrates a very Eurocentric view, being more inclined to behave following the rational ideas of the EU members than following other values-based principles such as fairness and justice⁴⁹. It seems there is an issue of coherence between external and internal policies⁵⁰ which could be linked to the different perceptions from a normative point of view among EU states⁵¹.

In the last few decades the large influx of irregular migrants at the southern borders of Europe have shown the challenges that the EU's approach is facing due to the inadequacies of their policies. A study by Last and Spijkerboer collected the numbers on border deaths between from 1988 to 2014 between Spain and North Africa following different sources and the number of fatalities reached the 4 digits numbers, with one of the sources counting over 3.000 deaths⁵².

The perception of the European Union as 'Fortress Europe' had become a fact by the early 1990s and Europe was portrayed as a region that looked a migration as an external threat⁵³. On the opposite side, the development of the single market and also of the Schengen agreement created the perception of the promotion of freedom⁵⁴ and even solidarity among EU countries. This type of double standards is crucial to understand the type of real solidarity that the EU displays. Considering the consequences of the implementation of migration policies in general and asylum and migration in particular, there is room to question the promotion of human rights in

⁴⁹ Gergana Noutcheva, "Fake, Partial and Imposed Compliance: The Limits of the EU's Normative Power in the Western Balkans", *Journal of European Public Policy* 16, n.º7 (2009): 1081, taken from Whitman, *Norms, Power,...*

⁵⁰ Uwe Puetter and Antje Wiener, "Accommodating Normative Divergence in European Foreign Policy Co-ordination: The Example of the Iraq Crisis", (2007):1085, *SSRN eLibrary*: accessed 21 March 218 http://papers.ssrn.com/sol3/papers.cfm?a#bstract_id=1029794, taken from Whitman *Norms, Power,....*

⁵¹ Whitman *Norms, Power,...*

⁵² Tamara Last and Thomas Spijkerboer. "Tracking deaths in the Mediterranean.", in *Fatal Journeys: Tracking Lives Lost during Migration*, ed. by Tara

Brian and Frank Laczko, (Geneva: International Organisation of Migration, 2014)

⁵³ See Russell King, Gabriella Lazaridis and Charalambos Tsardanidis, eds., *Eldorado or Fortress? Migration in Southern Europe* (UK: Palgrave: 2000).

⁵⁴ Arantza Gomez Arana and Scarlett McArdle, eds., "The EU and the Migration Crisis: reinforcing a security based approach to Migration?" in *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis. Legality, Rule of Law and Fundamental Rights Reconsidered*, ed. by Juan Santos Vara, Sergio Carrera and Tineke Strik (Edwar Elgar Publishing, forthcoming 2018).

this area if it clashes with other political agendas such as the defence of ‘Fortress Europe’.

The Council has prioritised the decrease of irregular migration as it has been seen at their 1999 Tampere conclusions and the same approach continued through different Treaties including the Treaty of Lisbon⁵⁵. In 2014, five Member States dealt with 72% of applications EU-wide⁵⁶. Even though the current regulation has been criticised and helped to create Dublin IV, the responsibility and the right to address who enters their country stays at the state level⁵⁷. However, the word “solidarity” has been included if attention is paid to article 80 of the Treaty on the Functioning of the European Union (TFEU): “the principle of solidarity and fair sharing of responsibility, including its financial implications” govern all policies enacted under Articles 77 through 79 (concerning border checks, asylum and immigration)⁵⁸.

As the work of Hathaway and Gammeltoft-Hansen⁵⁹ demonstrates, in the last 30 years we have seen how powerful countries committed to protect refugees, while at the same time working towards policies of “non-entrée” which includes maritime interception, to avoid refugees entering their territory and avoiding the application of refugee law. In fact, “the appeal of such non-entrée policies was thought to be the promise of insulating developed countries from de facto compliance with the duty of non-refoulement even as they left the duty itself intact. Non-entrée allows wealthier states to insist upon the importance of refugee protection as a matter of international legal obligation, knowing full well that they themselves will largely be spared its burdens.⁶⁰” Non-entrée mechanisms seems to be very effective since developed countries only protect around 20% of the refugees⁶¹.

⁵⁵ *Ibidem*.

⁵⁶ European Commission, “The European Agenda on Migration. Glossary, Facts and Figures”, accessed 21 March 2018 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/glossary_for_the_european_agenda_on_migration_en.pdf

⁵⁷ Gomez Arana and McArdle “The EU and the Migration Crisis...”

⁵⁸ Paul McDonough and Evangelia Lilian Tsourdi, “The “Other” Greek Crisis: Asylum and EU Solidarity”, *Refugee Survey Quarterly* 31, n.º4, (2012):69, <https://doi.org/10.1093/rsq/hds019>

⁵⁹ James C. Hathaway and Thomas Gammeltoft-Hansen, «Non-Refoulement in a World of Cooperative Deterrence», *Law & Economics Working Papers* (2014) Paper 106, http://repository.law.umich.edu/law_econ_current/106

⁶⁰ *Ibidem*, 7.

⁶¹ Volker Türk, “Address to the 60th Meeting of the UNHCR Standing Committee,” U.N. Doc. EC/65/SC/CRP.101 (1 July 2014), taken from Hathaway and Gammeltoft-Hansen “Non-Refoulement...”, accessed 21 March 2018, <http://www.unhcr.org/admin/dipstatements/576d41877/66th-meeting-standing-committee-executive-committee-high-commissioners.html>,

In the case of Greece, austerity measures affected their capabilities to look after refugees⁶². The amount of investment required to deal with this particular migration crisis is substantial and funds from the bailouts could have been used to fund the needed infrastructure to deal with refugee's related issues⁶³.

V. EU identity: solidarity, human rights and multiculturalism in a post-Westphalian context?

After such a long period of Westphalian approaches in Europe, a legacy has been created that could be seen as a barrier for an EU identity. Most of the countries in the EU are largely culturally homogeneous, at around 85% on average, and this does not seem to be a natural outcome, but the result of the use of political power by the elite⁶⁴. Within this context, if the creation of a EU identity is *seen* as a “war” of cultures, in the long term it will be difficult not only the defence of a EU identity, but the sustainability of the EU integration project altogether. The EU will not be able to progress if it does not manage to create some sort of shared community for those living inside the Union⁶⁵. The acceptance of multiculturalism as part of the EU identity should consider not only the tolerance or acceptance of other cultures, but the pursuing of equal treatment of cultures within that society. However, it is difficult to find policies at the national level that support multiculturalism⁶⁶, and that will have an impact on the promotion of similar policies at EU level. Considering how different the policies are related to citizenship and multiculturalism across the EU countries⁶⁷ it is difficult to expect a unique approach anytime soon. If Westphalian approaches do not fit with the integration of the EU, other pathways should be used to understand the different EU identities⁶⁸.

At political level, at the same time, the EU promotes an “ever closer union”, which has a direct impact on Westphalian ideas. In fact, there seems to be a contradiction between sovereignty, the EU EMU (Economic Monetary Union) and mass politics according to Rodrik's paradox: “The

⁶² McDonough, and Tsourdi, “The “Other” Greek Crisis...”

⁶³ “Report...” A/HRC/31/60/Add.2.

⁶⁴ *Ibidem*.

⁶⁵ Aggestam and Hill, “The challenge of multiculturalism ...”, 97.

⁶⁶ *Ibidem*.

⁶⁷ *Ibidem*.

⁶⁸ Peter A. Kraus, “Cultural Pluralism and European Polity-Building: Neither Westphalia nor Cosmopolis”, *Journal of Common Market Studies* 41, n.º4 (2003): 665–86

logic of EMU is incompatible with sovereignty and mass politics—only two of the three can coexist. (...) long-term plans for a genuine EMU envisage the strengthening of integration and moving the locus of democracy to the EU level, while weakening sovereignty. This analysis carries implications. If national courts insist on sovereignty and democracy, the likely consequence is an unworkable EMU, damaging the output legitimacy of the EU. The model adopted in the crisis reinforces the elite nature of the EU, undermines democracy at the national level and may bolster political extremism. This leaves the task of building the preconditions for democracy at the European level”⁶⁹. This statement demonstrates how important is to develop an EU identity in order to defend a democratic process at the supranational level which will facilitate the delegation of power and loss of sovereignty. The rejection of an EU identity will bring a rejection of EU solidarity among other values, and those political decisions taken at the supranational level might be rejected by some members of the society creating the perfect scenario for the increase of national extremism as we have seen across Europe in recent years.

Moreover, the fact that market integration is taking place while social and welfare policies do not have the same approach makes it difficult to defend an EU identity based on solidarity and the promotion of human rights⁷⁰. The lack of strong socio-cultural and political identities that do not rely on nation-states is still the barrier for the creation of democratic integration⁷¹.

As was explained in the introduction, there are four factors that make possible to create an European society “despite its increasing multiculturalism”⁷².

“First is the political drive towards greater union through the single market, the common currency and constant rhetoric about Europeanness, reinforced by financial incentives in many subregions”⁷³. This aspect could be seen as a type of utilitarian identity since it focuses on the same financial goals. But there is room for solidarity among states considering that subregions receiving financial incentives. “Second is the effective acceptance in all member states (including Britain) that some sovereign powers have been definitively conceded to a European entity”⁷⁴. This aspect

⁶⁹ Jukka Snell, “The Trilemma of European Economic and Monetary Integration, and Its Consequences”, *European Law Journal* 22 (2016): 157, doi: 10.1111/eulj.12165

⁷⁰ Kraus “Cultural Pluralism...”

⁷¹ *Ibidem*.

⁷² Aggestam and Hill, “The challenge of multiculturalism...”, 97.

⁷³ *Ibidem*.

⁷⁴ *Ibidem*.

is more important for some countries than for others, as can be seen in the current negotiations of the exit of the UK from the EU.

“Third is the heightened social mobility that has been in evidence in Europe in the last two decades, facilitated by cheap air travel, legal freedoms of movement and the variability of national labour markets”⁷⁵. An identity that facilitates social mobility is linked to solidarity and to some extent the EU is an example. However, the degree of positive integration in relation to welfare policies and social policies is debatable. The creation of a common market that includes freedom of movement, should not be mistaken with an active promotion of multiculturalism.

“Fourth is the impact of immigration from outside the EU, which has greatly increased the diversity of European societies, some of which had remained demographically stable for centuries. This has overshadowed the sense of the major fissures in Europe being between separate nations and/or nation-states”⁷⁶. This point is especially interesting. Through multiculturalism and through immigration in particular, the EU could actually move towards the creation of its own identity by gradually neutralising the importance of nation-states. However, it seems that the migration crisis has demonstrated both internally and externally that the EU is not using this opportunity to demonstrate its solidarity and respect for human rights as well as the defence of multiculturalism.

VI. Conclusion

This article has attempted to deconstruct the different aspects of what can be considered part of the EU identity: Social solidarity, respect for human rights and multiculturalism. The conceptual framework came from the discussion in the literature of the definition of EU normative power developed by Ian Manners in 2002, and debated intensively in academia since. The main characteristics of the type of normative power that Manners discusses are extracted from the EU treaties, which to some extent legitimate these expectations.

However, when the actions of the EU are taken into consideration, even though there is some room for a discussion over social solidarity and respect for human rights, the real commitment to those values is unclear. The bailouts could be interpreted as a display of solidarity, however, the measures that were attached to the loans place Greece in a difficult

⁷⁵ *Ibidem.*

⁷⁶ *Ibidem.*

position that had a direct impact on the promotion of human rights in the Greek society. Greece also suffered a lack of European solidarity when the migration crisis took place.

However, it is with the creation of multicultural societies through migration that current identities associated with nation-states will be easier to manage facilitating the creation of a European identity. In that context, it could be easier politically and socially to legitimate the values that the EU defend in their Treaties across the continent. The creation of an identity from a legal point of view might not be accepted automatically, politically and socially speaking. And therefore, the degree of EU integration will have to improve considerably in those areas to be able to sustain the identity created with the Treaties.

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