

CENTRAL EUROPEAN UNIVERSITY

**Kantian Ius Gentium Idea of International Right Applied to the Case
of the European Union**

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ABSTRACT

The research aims to investigate Immanuel Kant's idea of international right towards the achievement of perpetual peace among nations. The important issues that will be discussed are the relevance of Kant's sovereignty dilemma from the current perspective and examples from the empirical world and his major worries towards the interaction between states in the process of peace-building among them. The project aims to question Kant's normative ideas regarding the national sovereignty. The latest will be tested on the importance of common identity which although not directly elaborated in Kant's writings, can be extracted from his thoughts over the relationship between the state and its citizens. On an empirical level, Kant's worries will be applied to the organization of the European Union in order to test to what extent his assumptions remain valid. Thus, the research methodology comprises two parts- normative and empirical one. What is more, the research concludes that Kant's worries and reasons for rejecting coercive international institutions tell us something about such institutions and their legitimacy and these worries are likely to be faced today in the case of the European Union.

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LIST OF ABBREVIATIONS

EU- European Union

EC- European Community

EP-European Parliament

ECJ- European Court of Justice

ECHR- European Court of Human Rights

ECSC- European Coal and Steel Community

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INTRODUCTION

Research Question:

The Kantian idea of international right is widely debated in academia with the attempt to be better interpreted and applied to the international arena. How should we interpret his idea of perpetual peace? As a good prescription for how to achieve peace and a functioning international organization or as a controversial idea that is not applicable today? There is no single answer provided and it seems that further investigation is needed. A sovereignty dilemma¹ which comes from the conceptual idea that national sovereignty should be indivisible (which converge with the Kant's view) and any supranational coercive organization that might put national states into an inferior position should not exist. On the other hand it concerns the idea of perpetual peace and to what extent it can be achieved if the outcome is purely voluntary organization (as Kant's recommends) because long lasting peace might demand a more coercive organization which requires part of the national sovereignty. A challenging aspect is whether the sovereignty dilemma can be resolved. Is it possible to save both- the right of the state to preserve its national sovereignty and the international right that guaranties peace? The research puzzle still remains unsolved. The project aims to question Kantian normative ideas emphasizing the importance of national sovereignty. This will be done on the important issue of

¹ Flikschuh, K. 'Kant's Sovereignty Dilemma: A Contemporary Analysis', The Journal of Political Philosophy Vol. 18 (4), 2010:469-493

identity which although not directly elaborated by Kant in the chapter of “Perpetual peace” and his “doctrine of right” can be extracted from his thoughts over the relationship between the state and its citizens. Thus, Kant’s ideas will be applied to the organization of the EU in order to test empirically to what extent his theoretical assumptions remain valid. What is more, the research aims to see whether Kant’s worries and reasons for rejecting coercive international institutions tell us something about such institutions and whether these worries are likely to be met today. The major aspects of these worries will be presented in chapter one which is devoted to Kant’s theoretical assumptions.

Overall, the plan that this project will follow is firstly presenting Kant’s main worry which is conceptual one that gives us reasons to think that Kant’s conceptual dilemma is not as insurmountable as Kant thinks because Kant is too optimistic that the state can solve the problem of rights. Given the points of several criticisms in Chapter III, it is necessary to investigate Kant’s other, normative worries about coercive international institution with a case study about the EU concerning the issue of European identity. It would make sense to look at the normative concerns he has because even if we could solve the normative worries, international coercive institutions would still be impossible because of the sovereignty dilemma. It might be the case as Thomas Pogge, Otfried Hoeffe, and Jurgen Habermas argued that Kant’s sovereignty dilemma rests on the unrealistic assumption that the state is the optional instrument to settle conclusively all questions about rights. In Chapter IV, the case of the European Union will be investigated to see whether Kant worries for coercive organization are faced today. Evaluation of the main findings will be presented in the last chapter.

Filling a research gap:

There are several authors who discussed Kant's sovereignty dilemma and other aspects of his theory. However, to my knowledge no one has investigated Kant's normative theory of perpetual peace applied to the case of the EU with emphasizes on the important issue of identity, which comes through interpretation of Kant's ideas following from the doctrine of right and perpetual peace. I will make reference to some of Kant's main points in support that it is relevant to look at the issue of identity as an important factor of Kant's doctrine of right and in the empirical world today looking through the prism of the EU. The research question presents a challenging puzzle. It is worthy to be further investigated to what extent Kant's theory of perpetual peace can be considered as relevant today towards its application to the case of the EU which is one of the biggest institutional experiments nowadays.

Methodological design:

The project's methodology comprises several parts. The *first one* will exhibit the *normative framework* in accordance with which the research will operate. From the normative point of view, this section elaborates on the key Kantian ideas which present the two pillars of the sovereignty dilemma and important ideas that will help us to understand why identity has place in Kant's theoretical framework. As an opposition to Kant's view, I consider for relevant to introduce the contrary opinion of the discussion in light of Pogge's, Habermas and Hoeffe. Such supplementary information will expand the debate and create a more complete pattern useful for an accurate interpretation. Thus, the theoretical foundation of the project is based on both: Kant's theory of perpetual peace and doctrine of right.

Case study selection:

The *second part* contains the *empirical aspect* that includes case investigation of the EU. In relation to the case selection process, I decided to explore the EU concerning several criteria that overlap with Kant's theory.

Firstly, although Kant's is not talking about the importance of identity, from his thoughts it is directly concerned. For instance, Kant talks about certain duties that citizens have towards each other and in Kant's view what is right depends on what our duty is.² Another point that presupposes identity that Kant makes is those that Pogge emphasizes that "public laws and international law might together lead to the idea of public laws of peoples".³ This statement also indirectly refers to the fact that in order for people to come together with certain common legislation and to agree on their constitutional essentials, they have to be interested in such kind of issues that directly will make them part of certain common identity in relation to the principles that all of them share within this legislation. Another important quote from Kant's "Doctrine of right" says that "only the general united will of people can be legislative."⁴ Thus, it seems that "general will" requires serious involvement from citizens in order to agree on important issues over the legislation. However, they have to share common identity for being part of such a will in order this will to present the views of different individuals. However, it is doubtful to what extent legislation would be normatively legitimate, if there is lack of identity and the idea of a "general will" is not shared by the citizen's that form it. If we define identity as a bunch of shared values

² Kant, I. 'Perpetual Peace-A Philosophical Sketch' in *Political Writings*(Cambridge: CUP, 2007), p. 109 and p. 111

³ Thomas Pogge. 'Kant's Vision of a Just World Order', Pogge, T. 'Kant's Vision of a Just World Order' in Hill, T. (ed.) *The Blackwell Guide to Kant's Ethics* (Oxford: Wiley-Blackwell, 2009) p.206

⁴ Kant, I. "Metaphysics of Morals" (trans. Gregor, M.) (Cambridge: CUP, 1996), p.125 (314)

that people recognize by themselves, this is what is needed for the presence of a “general will” as well. Another passage that I consider relevant for identity within Kant’s thoughts is expressed in Kant’s “Metaphysics of Morals”, where he argues that “the act by which a people forms itself into a state is the original contract. In accordance, with the original contract, everyone within a people gives up his external freedom in order to take up again immediately as a member of a commonwealth”.⁵ The latest passage also is connected to the issue of what is needed to have in a first place when commonwealth is concerned. It can be seen that Kant’s requirement outlines bottom-top process, in which citizens giving up their external freedom and become part of the community. This implies again that certain identity and feeling to enter into certain community is present and this bottom- top process will be discussed later in the case of the EU.

Secondly, the EU is a coercive international institution of the kind that Kant rules out in his “Perpetual Peace”. It can be classified as such because it enforces directly laws over the states and makes them inferiors. An example can be given with the ECJ and its legislation which has both: direct effect and primacy over the national one.⁶ Yet another problematic aspect is that, the laws that come from the EP are also directly implemented into the national legislation. In Chapter IV these issues will be discussed in detail.

As such, it is an organization that according to Kant’s sovereignty dilemma should not exist. As it was shown earlier and in the following Chapter II, the issue of identity might be considered as relevant for having common legislation which can be

⁵ Immanuel Kant. “*Metaphysics of Morals*” p. 127 (316)

⁶ The direct effect of the European law has been enshrined by the Court of Justice in the judgement of Van Gend en Loos of 5 February 1963 and the Declaration concerning primacy of the European law is implemented through Declaration 17, Consolidated EU Treaties.

evaluated as normatively legitimate. Although, Kant does not discuss particularly, the issue of identity importance, from his ideas coming from the doctrine of right and advises of how international peace can be constructed, I think that it makes sense to look at this specific point of identity because it will give us some useful implications of what components one legislation should have and what makes it legitimate. On that ground, I will draw several ideas from Kant's theory that will show, why indeed the presence of a common identity in order legislation to be enforced might be needed. In many cases, constitutional establishment and different kinds of regulation requires state level legislation in which nation building process has taken a lot of time and effort. The issue of identity will be examined in the case of the EU.

Thirdly, Kant's idea refers to the formation of a universal monarchy⁷, however I would like to see whether indeed such worries also became real when taking into consideration a continental (not global) coercive institution. In fact, the EU is not such a state, but there are some features that make it similar enough (maintaining peace among nations on the Continent, implementing coercive legislation, having supranational character) in order to test Kant's worries which will be discuss in the next chapter. What is more, Kant idea of cosmopolitan right refers to the world state establishment which says that "a constitution based on cosmopolitan right, in so far as individuals and states, coexisting in an external relationship of mutual influences may be regarded as citizens of a universal state of mankind"⁸, but on the other hand, Kant talks also about "constitution based on the international right of states in their

⁷ Immanuel Kant. *'Perpetual Peace'* p. 105

⁸ *ibid* -p. 98-99

relationship to one another”⁹ which seems to be applied to the case of the EU. This international right entails Kant’s ius gentium idea which this research uses.

Formulation of the hypothesis:

As a theoretical basis, the research will present Kant’s ideas for constructing and keeping an international peace stable. But still, a purely voluntary association of states does not allow us to assure peace because as Thomas Pogge and Hoeffe claim, there is no one to judge who is right in case of inter-state conflict. Yet, in the chapter of “Perpetual Peace”, Kant states that states should establish

“a federation of peoples, but a federation of this sort would not be the same thing as an international state. For this idea of an international state is contradictory, since every state involves a relationship between a superior (the legislator) and the inferior (the people obeying the laws), whereas a number of nations forming one state would constitute a single nation. And this contradicts our initial assumption, as we are here considering the right of nations in relation to one another insofar as they are group of separate states which are not to be welded together as unit.”¹⁰

It seems that in order to talk about the single nation, the common identity which citizens share is needed. Although Kant does not discuss identity, it seems to be connected with the national sovereignty and state formation as a consequence of logical development following from the doctrine of right, the relationship between property and state, and the construction of the perpetual peace. Thus, any coercive

⁹ *ibid*- p. 98

¹⁰ *ibid*- p. 102

organization might not be able to exist because it will contradict the initial theoretical conditions of state creation and cannot be normatively legitimate without having constructed identity as well.

The research will test a hypothesis in the case of the EU in attempt to see how Kant's idea of indivisible sovereignty and the important identity problem (which I consider that strives directly from it) are faced in the empirical case of the EU. Moreover, the identity which citizens seem to share in Kant's sovereign state is still not entirely achieved on the European level. That is why, the research poses the question if we have both: on one hand a coercive international organization and on the other lack of identity, can any legislation indeed be normatively legitimate? The research major hypothesis is that common identity is still not achieved within the EU and on that ground Kant might be right in his views of what kind of legislation must be considered to be legitimate with the conclusion that the coercive legislation within the EU and the lack of identity cannot be considered entirely as normatively legitimate.

1.5. *Inferences*: The *third part* of the project will contain an *evaluation* of the main findings of the research in attempt to connect *ex ante* evaluation (which looks at the theoretical implications that lead to certain conclusions) with *ex post* evaluation (which ascertain to what extent the main findings of the research support initial theory).

CHAPTER I: THEORETICAL IMPLICATIONS. KANT'S NORMATIVE THEORY OF INDIVISIBLE SOVEREIGNTY

1.1 Doctrine of right as an explanation of indivisible sovereignty and the necessity for identity

The *first pillar in the biggest dilemma* in the Kantian project which this research deals with comes from the point that the only way through which a state can implement legislation defining what is good and right is that it must not be subject to anyone. State sovereignty must be indivisible in order to guarantee people's rights unconditionally. What is Kant's theory of right and how it is related to the identity issue? The Doctrine of right is very important in order to understand why state sovereignty must be indivisible and why common identity is necessary in order certain laws to be enforced. It traces the relationship between what is private and what is public and poses the main characteristics necessary for the juridical state and people's basic rights.¹¹

First of all, the important distinction between what Kant calls "doctrine of right" and "doctrine of virtue" has to be introduced. Here, Kant makes the difference between our political rights and on the other hand those rights and duties that follow from moral point of view. Kant defines right as an act that has direct or indirect impact on other people which are external to us. What is more, "right" does not imply that one act responds to the exact wishes of other people, but implies that it definitely limits

¹¹ Immanuel Kant. "Metaphysics of Morals", p 55 (229)

their options because one's right of something that is external limits the options for those that have the same right to things that are external to them as well.¹²

What is of greater importance is the freedom of the individuals and even something might be beneficial to them, if they do not give freely their approval it cannot be considered as right.¹³ Thus, citizen's approval for defining what can be considered as "right" is necessary, but in the first place, in order people agree what is "right", they have to share certain common conception of it and exactly here the questions of identity appears.

Kant says that we have one natural right which is freedom defined as "independence from being constrained by another's choice, insofar as it can coexist with the freedom of everyone else in accordance with a universal law"¹⁴. It seems that the idea of innate right of freedom follows from those of a universal law. This right entails that one has the full right on her body and everyone can defend themselves if it is necessary to preserve the physical integrity on their bodies. Right outlines the distinction between the internal world (our bodies) and the external one (those of others). In addition, there is a universal law of right which says "act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law."¹⁵ Thus, our freedom requires different choices, but the state must secure options for everyone. As we are physical beings in a physical world, we need to exercise our freedom and choice. But it matters what our choice does to others and how it limits them in a certain way. That is why, others must have choices too and the state must secure these options for everyone through justification of our choices to others which is the matter of right and it is coercively enforceable. In

¹² *ibid*-p.56 (230)

¹³ *ibid*-p.56 (230)

¹⁴ *ibid*-p.63(238)

¹⁵ *ibid*- p.56(231)

order citizens to be part of a “general will” they have to achieve certain agreement over constitutional principles (agreement on these principles requires certain common identity and shared values), otherwise implemented legislation cannot be declared for being normatively legitimate. Thus, any coercive organization that aims to implement laws over citizens who did not participate in a first place and from which the legislation derives, is not allowed. This seems to be the biggest worry for Kant that starts from the “Doctrine of right” and continue in the “Perpetual Peace”.

Although people have one innate right of freedom in the state of nature, their conclusive rights with respect to things external to them come with the existence of the state and hence shared identity in order further legislation to be implemented. In comparison to John Locke’s view, who states that the role of the state is to protect people’s rights that they already have from the state of nature¹⁶. In Kant’s view, most of the rights do not exist in the state of nature (at least those that are external to us), their appearance come with state establishment. Political power of the state is exercised by laws. In order these laws to be enforced a sovereign is needed, otherwise we remain in the state of nature. What is more, the problem is mainly with the limited authority of unilateral will in the absence of an authority that can conclusively bind all subjects.¹⁷ I consider the importance of unilateral (one-sided) and later omnilateral will (omnis= all persons) as key towards necessity of identity. Laws must be enforced over the citizens, but in such a way that they secure freedom of all the people that are bounded by them. The appearance of political authority comes with the property acquisition, but it concerns political authority as a whole including law-making process within the state and the enforcement of these laws as

¹⁶ Locke, J. *Two Treatise of Government* (Cambridge: CUP, 1988), Book II, Chapters 1-5

¹⁷ Immanuel Kant. “*Metaphysics of Morals* “ p. 72, (250)

well. Personal acquisition of property is associated with the unilateral (one-sided) claim. However, the problem is that as it is unilateral claim, it is related to one's freedom and such a claim is not binding for others. In order one person to own something, she has to have right and what is more, everyone has to accept this right. The latest is possible only with the creation of the "omnilateral will", in order a "unilateral claim" to be bounding for others. On that ground, it seems that common identity is necessary for making such a binding decision that would be accepted by all people. What is more, this initial process of binding decisions lays the foundation of the political authority and laws implementation which should be recognized and shared by citizens. Overall, laws are very important for Kant's theory when constituting society and state and their institutional setting derives from people in order to be normatively legitimate.

Although in many theories the state is discussed as limiting individual freedom, Kant states that exactly individual freedom can be achieved only through the state. Only state can preserve people's freedom and property and impose certain rights and duties that should be observed. We can be entirely free only if we can impose certain laws over our actions. Although freedom is the most essential justification of state emergence, it is not the only one.

In his "Theory and practice"(290), Kant lists other principles that are extremely important as well. These are: equality between citizens and the independence of every man as a citizen. Equality is important requirement in terms of equal status before the law and shared rights and duties towards each other. The third requirement is those of independence which implies that citizens should participate independently in the law-making process and they have to agree in order certain law to be introduced because they are the source of power that produces state

legislation. That is why, it can be concluded that both: indivisible sovereignty of the state and citizen's common identity (based on the shared and recognized principles of freedom, equality and independence) is necessary in order people's rights to be preserved in a legislation which after being normatively legitimate can be enforced by the state in order citizen's freedom to be secured.

1.1-1 The idea of property as a main justification of the state

Kantian basic idea of property as a main justification of the state is the foundation that justifies the rights that state should have. This idea designates that something which is external can be conclusively acquired only in accordance with the idea of civic condition. As it was discussed, civic condition seems to require certain common identity in terms of acknowledging certain principles that constitute rights and duties between citizens.

Property is very important for Kant because through it the individual freedom can be expressed. It is defined as something "with which I am so connected that another's use of it without my consent would wrong me"¹⁸. Kant poses certain requirements of what should be admitted as rightful possession.¹⁹ As no one person must endanger the freedom of others, a kind of contract between individuals is necessary in which everyone will respect the possession of others and will not affect their freedom to use them as it is expected²⁰. This is possible to be done with the formation of the "general will" which is the only source of legitimate legislation. On the other hand, general will

¹⁸ *ibid*- p. 68(245)

¹⁹ *ibid*- p. 68(246)

²⁰ *ibid*- p. 69(247)

seems to be possible only when common values and identity have been already shared in the framework of the state through which citizens express their agreement to respect other's property and freedom. The state is a necessary environment in which these agreements must be observed and through which an equal conformity with the legislation do be implemented.

In comparison to Locke's idea of property acquisition (mixing labour with the land and increase its productivity), the Kantian one differs in terms of the way in which property rights appear. Kant's expresses this idea in a different way. He states that we only have to respect someone's claim to property if that claim has been vindicated or established by some institution that has the authority to bind us. And such authority does not reside in unilateral wills. The source of the property title is crucial for Kant and the only source that can bind us is the general will.

Here are the rights to external objects that Kant lists²¹:

The right to a thing	•This right comprises right to land, animals, production, tools
The right against others	•Right to enforce someone to keep its initial contract
The right to a person asking to a right to a thing.	•Some of the contracts give the opportunity one to rule not only the decisions of the others, but their body as well(children)

Table 2

People do not have to consent in order to become members in this general will. Given the importance of solving the property question, we can be forced to join. The state is necessary to guarantee people's property. Individual property means that normatively others people are excluded to use it. If we do not have a state, we do

²¹ *ibid*-p.69(247-248)

not have rights, because there would be no assurance that the “general will” will be enforced through state legislation and secure freedom for everyone. Only a state can assure that people own something and pose what is right and wrong what is yours and mine. Thus, on a first place and of biggest importance seems to be the “omnilateral will” which definitely requires identity in terms of acknowledging the major principles in accordance to which society would function. It can be seen that for Kant property helps people to exercise their freedom. However, both of them can be realized only through the state and its sovereignty independence.²² That is why, for Kant any coercive international law organization is not desirable and this is his next worry that comes from the importance that property has in the state building process.

1.2 Kantian *Ius Gentium* idea of international right

1.2-1. Conceptual difficulties facing the presence of international interventionist organization.

The *second pillar* is Kantian idea of perpetual peace which outlines the importance of the establishment of an international organization in order to guarantee peace among states. Thus, states need to form voluntary organization in which certain norms should be observed through a constitution based on the international right of states and their relationships. Each constitution must observe three main principles- freedom for all of the members, principle of common legislation, and the principle of legal equality for everyone.²³ The scope of right and justice is conceptually global, since the problem is that “even if (the problem of acquiring things) is solved through

²² *ibid*- “ p. 69(247)

²³ Immanuel Kant. ‘*Perpetual Peace*’- p. 99

an original contract, such acquisition will always remain only provisional unless this contract extends to the entire human race”²⁴. There are three parts of Kant’s concept of right:

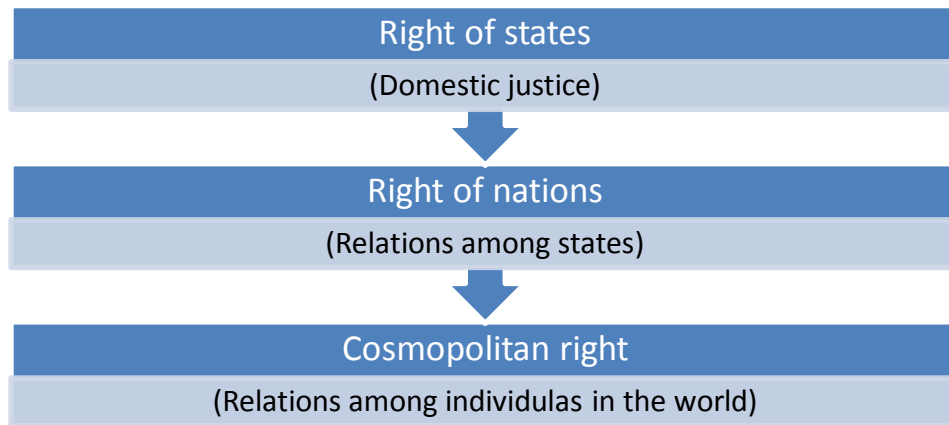


Table 3

The idea of a coercive international state is contradictory in terms of the superior-inferior relationship - those are state laws and citizens that must observe these laws. From this point of view, international right is the right of different nations, but not of universal one. As a voluntary organization Kant understands an organization in which every state freely agree to enter and no legislation could follow from it which is coercively implemented in the state. Following this logic, Kant recommends an international organization which resembles a particular kind of league- so called pacific federation which definitely reflects the assumptions that Kant makes in the “Doctrine of Right”. Such kind of federation should not pretend to have power which is typical for every national state, but to guarantee freedom and peace for its member states.²⁵ Moreover, Kant argues that it is not likely for a voluntary international state to be established because this is not what states want. They would prefer their

²⁴ Immanuel Kant. “*Metaphysics of Morals* “ p.86 (266)

²⁵ Immanuel Kant. ‘*Perpetual Peace*’- p. 104

national sovereignty and primary domestic legislation.²⁶ The latest seems to emphasize the importance of the “general will”, which cannot be replaced and which gets into conflict if any kind of non- recognized legislation by the citizens coming from outside is implemented on the national level. On the other hand, if all citizens in the world agreed to acknowledge certain legislation, the desirable word republic for Kant would be achieved. Here again comes the question of identity necessary for the construction of the “general will” in order certain laws to be implemented. Thus, states would not want to exchange people’s identity and rights and duties between them which are expressed through state legislation. Kant writes that a state might say that “there shall be no war between myself and other states, although I do not recognize any supreme legislative power which could secure my rights and whose rights I should in turn secure”.²⁷ This quote describes a voluntary association and that states have a duty to secure rights of their citizens and their domestic legislation which express them entirely. The latest implies that common identity is shared within this state and its legislation and it cannot be exchanged easily. Another argument that Kant makes in the chapter of “ Perpetual Peace” states that “ no independently existing state whether it be large or small may be acquired by another state”, because “ it is a society of men, which no one than itself can command or dispose of like a tree, it has its own roots”²⁸. From this passage clearly can be seen that Kant talks for certain common principles and values that come from a long evolution that govern this society. What is more, it is not only the practical part of the argument of identity for a voluntary international organization, but the moral one as well. A global state would turn into a universal monarchy: cultural differences would become leveled (creating a despotic order) and enormous power would be shared by one or

²⁶ *ibid*- p. 105

²⁷ *ibid*- p. 104

²⁸ *ibid*- p. 94

few persons.²⁹ This is another worry that Kant faces in his theory of “Perpetual Peace”. Overall, perpetual peace has to be in accordance with the individual freedom which can be expressed only through the indivisible authority of the state and hence people’s shared identity towards it.

1.2-2 Practical difficulties facing the presence of international interventionist organization

On the other hand, it is not only the normative obstacle towards international state, but the practical one as well. It is very difficult to imagine that citizens would have a common identity to place themselves together with other nations under common legislation. That is why, the project aims to investigate to what extent these practical difficulties of establishing common identity have been overcome on the European level.

Kant’s has this worry that “the laws progressively lose their impact as the government increases its range” and that the laws “impact would be insufficient to secure domains of external freedom”³⁰ This is another practical problem that arises and it can be taken as an obstacle towards the establishment of a world state. When the range of the government gets bigger, there would be inefficient implementation of the laws. It might be very difficult such a big administration to work efficiently. This issue will be further elaborated in the next section.

In this section, I would like to emphasize the distinction between two types of legitimacy that the research uses. The first type is the normative aspect of it, which concerns Kant’s idea of a “general will” of the people. However, despite the fact that

²⁹ *ibid*- p.107

³⁰ *ibid*- p.113

this kind of legitimacy might be found on the European level as well, how we can actually understand that there is a “general will” within the EU. That is why, I decided to look at the descriptive legitimacy as well, which will show us what people think about their identity as Europeans. Thus, the two types of legitimacy will be connected following the structure of the thesis when moving from the theoretical issues towards the empirical ones.

CHAPTER II: CRITIQUES TO KANT'S THEORY

2-1. Thomas Pogge's critique about "Kant's vision of a just world order"

Thomas Pogge provides an alternative explanation to Kant's idea of perpetual peace showing that the sovereignty dilemma cannot be considered indeed as dilemma (at least it should not be so important) because Kant did not take into consideration many aspects which might avoid this dichotomous framework within which his theory operates.

Pogge's strongest point comes from the practical world saying that "the experience of the last 200 years shows conclusively that what does not work in (Kant's) theory may work quite well in practice."³¹ The precise examples which Pogge's provides concern the effective vertical separation of powers (USA) which can prove better the protection of the external freedom than sovereign states. On that ground, the example of the EU also can well fit in this category. The EU is effectively functioning organization in which we have a vertical distribution of power which arranges collaboration with other similar organizations. Thus, the only possible way peace among nations to be guaranteed is not only through world republic or pacific league of sovereign states, but also through active check and balances between these institutions. In the history, it can be seen that exactly such a voluntary association that had the purpose to secure peace among nations as the League of Nations (1920-1946) failed. Indeed, Pogge is making a very accurate claim that responds to the current international situation. In this respect we have different regional

³¹ Thomas Pogge. *'Kant's Vision of a Just World Order'*, p.205

associations like the African Union, the Association of Southeast Asian Nations and etc. which have approximately common values making their collaboration to maintain peace possible. It seems that Kant misses that certain intermediate forms of cooperation among states are possible and we do not have only this binary structure.³² The point that Pogge makes is important because the EU is often classified with “sui generis” institutional structure with no traditional mechanisms that uses in order to assure peace (ex. co-decision process between institutions which outlines different power division in comparison to the national state).

Yet another important criticism towards the sovereignty dilemma is provided by Jurgen Habermas. In his “Kant’s idea of perpetual peace, with the benefit of two hundred year’s hindsight”, he criticizes Kant from the time perspective through evaluation of his ideas towards ages.³³ Thus, Habermas claims that Kant’s ideas face conceptual difficulties and from the standpoint of new generations and the historical experiences are no longer acceptable.

Indeed, Kant prefers world state because it is the first best option peace to be secured, but on the other hand he also argues that “since it is not the will of the nations, according to their present conception of international right, the positive ideal of a world republic cannot be realized”.³⁴ That is why, the second best option of pacific league is preferable. However, another issue seems also important to be discussed here. It still might be the case that nations want voluntary to place themselves not under world governance, but under common coercive organization as the EU is because this might benefit them. In this respect, we might claim that Kant’s sovereign dilemma might not be of great importance because the implementation of

³² Ibid -p. 202

³³ Bohman, J. and Lutz-Bachmann, M. “*Essays on Kant’s Cosmopolitan Ideal*”(The MIT Press Cambridge, Massachusetts, London”, p. 114

³⁴ Immanuel Kant. ‘*Perpetual Peace*’- p. 105

common laws and certain identity creation is possible and is present in the practice. However, the conceptual point about indivisible sovereignty might still apply.

Secondly, Pogge questions Kant's point that "the laws progressively lose their impact as the government increases its range" and that the laws "impact would be insufficient to secure domains of external freedom"³⁵. Pogge supports his thesis with empirical examples stating that "the last 200-plus years have greatly expanded our historical experience relevant to this question, have vastly improved our social theorizing, especially in economics and political science, and have brought new technologies (such as computers) that critically enhance our capacity for the uniform administration of large areas and populations under the rule of law"³⁶. His point does not say that the establishment of world state is entirely possible, there might be many other difficulties towards it. However, we cannot regret the importance of the technological development nowadays, which makes possible certain cosmopolitan values to be shared exactly through the technological improvement.

Another criticism coming from J. Habermas *regards the importance of a transparent public sphere* (a discursive space where people can discuss freely essential matters and this discussion to provide certain feedback to politicians) which for Kant is possible to be created through the national state. In this light, Habermas says that there is still no global public sphere, but there is a European one. This statement implies that there might be a European identity that is created within this public sphere.

Thirdly, Pogge emphasizes that in order to abandon the state of war Kant argues that states have the right to compel one another to avoid it and look for a constitution

³⁵ Thomas Pogge. 'Kant's Vision of a Just World Order', p. 201

³⁶ *ibid*- p. 201

that will guarantee long lasting peace. Thus, it might not be the case that perpetual peace has to be voluntarily constructed and some enforceable mechanisms might be implemented³⁷. On this base, even a despotic universal monarchy, which does not respond to Kant's criteria for juridical state is better than the international state of nature. On this second point, I cannot agree with Pogge because again Kant's preference for voluntary pacific league is coming from the point that no other state can use enforceable mechanism to put another one in non-voluntary organization. While individuals have a duty to form a state and exercise their rights through its existence in order state sovereignty to be established, no one can use force to neglect this sovereignty which does not belong to any other state, but to its citizens and Kant might still have right to claim that such a legislation would be normatively illegitimate. Kant warns of a soulless despotism that such a universal monarchy would have to turn into.

Another important remark that Pogge highlighted concerns the decision-making mechanism in the state. Pogge writes that "the most prominent presupposition for Kant is that there must be a recognized way of producing authoritative interpretations and justifications of the laws."³⁸ He argues that each state's body of law is not entirely complete in terms that even the most arbitrary power of sovereign poses questions about who should be rightful sovereign, people cannot distinguish between the existing political authorities because it is doubtful which they are. Pogge's challenges Kant with the remark that the decision-making mechanism in the state might presupposes not complete state's body of law in terms that even the most arbitrary power of sovereign poses questions about who should be rightful sovereign,

³⁷ *ibid*- p. 200

³⁸ *ibid*- p. 203

people cannot distinguish between the existing political authorities because it is doubtful which they are.

Finally, another important criticism concerns the institution of a central international court which aims to resolve certain disputes among the states. Pogge argues that “instituting a central international court to adjudicate such disputes about international law is no solution because there may then still be disputes over whether some particular dispute falls under the jurisdiction of this international court or under that of some national political authority. A fully juridical condition could be achieved, if the international court were decisive in such meta-disputes. But this court could then overrule any (contested) decision by any national political authority...and annihilate the sovereignty of states”.³⁹ This point is very crucial because it emphasizes the fact that in many cases in order peace to be sustained, a coercive institution that has to settle the debates and the controversial points that states have is needed. I agree with Pogge’s view, but it seems that certain preconditions have to be fulfilled and directly citizens to be involved in order to make coercive institution normatively legitimate. This implies that first of all, before constructing common will, common identity has to be present. Similar aspect towards Kant’s sovereignty dilemma is emphasized by J. Habermas who argues that in order long lasting peace to be achieved, the kind of pacific league that Kant envisions is not the right choice. Perpetual peace can be established only through an organization in which each member state would have the real duty to subordinate its own national interest to this goal. This can happen with the presence of proper juridical regulation which must decide conflicts among states in a bounding way in order the old war mechanism for conflict resolution to be abandoned forever. The ECHR is exactly such an

³⁹ *ibid*- p. 198

organization. Only voluntary moral self-binding between states is not enough. Thus, a pacific league cannot provide an assurance that state would observe their self-binding towards perpetual peace.⁴⁰ The problem is chiefly conceptual. This point which Habermas made is crucial. It means that states must be inferiors to some coercive power that enforces rules of justice on them and this is the criterion regarding which assurance for peace can be provided. Finally, Habermas argues that as for Kant national sovereignty is insurmountable, he wants cosmopolitan community which consists of states, but not of citizens. However, the individual freedom is of the most importance and the idea of perpetual peace is in perfect accordance with it. The autonomy of citizens must be emphasized and they should not be restricted by the sovereignty of states. What is more, Kant states that in order to have cosmopolitan community each citizen has to agree to be part of it. There seems to be no division of citizens and states because they are almost the same with the difference that the state should accumulate and implement laws and rights of its citizens.

2-2. Otfried Hoeffe's critique of Kant's idea of perpetual peace

In his "Peace: Federation of People or World Republic?"⁴¹ Otfried Hoeffe emphasizes the importance of what we have to understand under Kant's idea of "right of nations". Although in Latin "ius gentium" can be translated as "gentes" that literally means ethnically homogeneous groups, Kant has completely different usage of it identifying "nations as states". What has to be considered here is that indeed

⁴⁰ Bohman, J. and Lutz-Bachmann, M. "Essays on Kant's Cosmopolitan Ideal", p. 117

⁴¹ Höeffe, O. "Kant's Cosmopolitan Theory of Law and Peace"(Cambridge: CUP, 2006), Chapter 6., p. 190

Kant uses this concept as right of citizens that set constitutional principles in order to govern their behavior within the national state. This point is extremely relevant for the issue of identity because it emphasizes that exactly citizens are those that set constitutional principles and only when following this procedure, the constitutional principles can be considered as normatively legitimate.

Hoeffe has very strong point claiming that Kant's perpetual peace can be considered as duty which states have towards each other in order international state of nature to be surmounted⁴². Kant claims that states may "demand" from each other to leave the international state of nature. Despite the fact that purely voluntary organization must be achieved, it is true that certain kind of minimal state organization has to be present. What is more, having this analogy between states and separate individuals that Kant makes is quite problematic. This is due to the fact that individuals who exercise their freedom enter into a legal society and similarly such a legal community might be established if each of the state gives part of its sovereignty. Following this logic, it might be concluded that in order individuals or states to create something beneficial for all of them, they have to give up certain part of their own freedom which has been voluntary given to the community. Otherwise Hoeffe claims that "since public laws are lacking, the pacific federation turns out to be a "free federalism" that would be well advised to "accommodate itself to public coercive laws" and thus to become a world republic"⁴³. This point again emphasized the necessity of coercive laws and mechanism through which peace can be achieve if following the optimal most desirable option of "world republic" which Kant recommends. On that base, the lack of public force may be welcomed by the

⁴² *ibid*- p. 194

⁴³ *ibid*- p. 190

individual states in their attempts to guard their sovereignty. But as a solution to the problem of legal security, it contradicts the fundamental thesis of Kant ethics of the state that “legal disputes are to be settled by an impartial and sufficiently powerful third party”.⁴⁴ Here, O. Hoeffe as the previous criticisms shares that certain international court that should resolve the debates that appear among states is necessary and desirable, otherwise indeed peace cannot be achieved.

It seems that Kant poses the question in dichotomous framework- having either full sovereignty or none. But does not take into consideration that there is no gap between the two and some intermediate stages might exist as well. In these terms, Hoeffe also admits that states might have multilayered sovereignty and there may be other membership scenarios.⁴⁵ The latest point is exactly the case of the European Union. In addition, as the whole power comes from the citizens to form a state, thus the states like have a right to choose their political future aspects. In this context, states have more responsibilities that are expected to be fulfilled in comparison to the so called “minimal world state” to which a small range of responsibilities are delegated. However, it has to be clarified that the “minimal world state” is not the right solution for Kant and many controversial aspects in his theory follow from here. If we have “minimal world state”, part of the national sovereignty is given to this supranational organization. Thus, part of citizen’s freedom is also given to it. But the problem is that, there would not be an international organization that can enforce even minimal laws over the citizens if these laws are not recognized and produce by

⁴⁴ *ibid*- p. 195

⁴⁵ *ibid*- p. 197

the citizens. A kind of “minimal state” means that states are subjects to each other losing to exercise part of the freedom when decisions are made.

In conclusion, although the sovereignty dilemma is the crucial one to Kant, people like Pogge, Habermas, and Hoeffe make us wonder whether Kant’s case for the dilemma is as strong as Kant thinks. Pogge’s criticisms shows that there might be examples which can illustrate that in many cases it is not so important and in the case of the European Union this is relevant to a great extent as well. Thus, following from the conceptual part of the sovereignty dilemma, if we admit that it is not entirely important as Kant states, some practical questions as the identity building seem possible to be achieved.

Ultimately, from the theoretical part that was presented can be concluded that Kant’s worries about the coercive institution are still important. From the conceptual point of view, we can see that many of them have been debunked from the history itself. However, from practical point of view as the issue of identity is, there seems to be strong arguments that Kant might be still right regarding some of the criteria for legitimacy that appear especially those of the “general will” establishment which requires certain identity if we are looking at the doctrine of right. On the other hand, from the “Perpetual Peace” can be seen that for Kant states will not agree to give up from their sovereignty. This implies that they would not exchange people’s rights and identity in the international arena. My assumption that the issue of identity matters for Kant, relies on these two basic pillars in Kant’s thoughts. On that ground, the next chapter will test the fundamental requirement for normative legitimacy - those of common identity and see to what extent Kant might be right for the necessity of certain initial conditions that define what legitimate legislation is and what is not. As

the normative type of legitimacy is difficult to be measured, the next chapter will investigate in the descriptive one.

CHAPTER III: EMPIRICAL OPERATIONALIZATION OF THE THEORY AND EVALUATION IN THE CASE OF THE EUROPEAN UNION. THE ISSUE OF IDENTITY

In his “Perpetual Peace” Kant gives a detailed description of how a pacific league should be organized. However, in this volume is not possible to look at all of his recommendations and see to what extent they are realized on the European level. That is why, I decided to concentrate the research on one aspect of it- common identity, which as it was shown is indirectly extractable as a concern from Kant’s theoretical assumptions for the recipe of “perpetual peace”.

Kant talks about the importance of culture and the latest is important to the identity-building process. Kant states that “nature wills it otherwise and uses two means to separate the nations and prevent them from intermingling- linguistic and religious.”⁴⁶ Later, following the same line he says that if cultural evolution reaches a stage in which agreement between cultures over principles is achieved, certain convergence of cultures would be possible. But this has to happen gradually, not coercively. A concrete aspect that this paper will discuss as a supplement of the European identity issue is the presence of significant democratic deficit in the EU. However, it seems to me that although so many difficulties exist a big step towards the construction of the European identity is done through all of the laws and dominant principles that citizens within the EU share, but is it enough to declare that it is present on the European level. Indeed, it might not be possible and desirable to exchange a Bulgarian, Croatian etc. for purely European one. But it might be possible for us to acknowledge the central importance of certain values that we share

⁴⁶ Immanuel Kant. ‘*Perpetual Peace*’- p. 113-114

in Europe, but are not that prevalent within Arabic World for example (issues as rule of law, democracy, equality of the sexes, freedom of religion, separation of church and state). People's identity is not only national given that nation states are also an artificial and very recent invention in the course of human history. Practically, we all have multi-layered identities as members of our families, cities, regions, countries. Why not accept another layer as Europeans? However, even if a European identity would be realizable in such a modest way, Kant might still have a point by saying that as long as there is no such minimal common European identity, coercive EU rules are not normatively legitimate. So, either we have to create identity or we cannot enforce such laws as people will feel unjustly regulated by them. A coercive, non-accepted political union might also lose the support of its citizens. This seems to be what we witness right in many countries.

3.1 Common European identity or constructing Europe without Europeans

Before testing the question of whether European identity is present in Europe. I would like to define the subject of identity. In his article "Cultural Convergence and Cultural Diversity as factors in the European identity", Karlheinz Reif argues that there are several characteristics through which we can measure the European identity and which might serve as definitional pillars for this notion.⁴⁷ These are: certain fundamental values which might be in general support or not towards the European integration (benefits that the integration provides). The second category comprises socio-cultural trends of the citizens and to what extent they might

⁴⁷ Reif, K. "Cultural Convergence and Cultural Diversity as Factors in European Identity" in Soledad Garcia. "European Identity and the Search for Legitimacy" (Pinter Publishers, London and New York 1993), p. 5

⁴⁷ The data is from Eurobarometer, The report "New Europeans" published in April 2011

converge. The third one is the idea of mutual trust among nations and finally the definition of the European identity in contrast with the national one. Another definition of the European identity is provided by Soledad Garcia which says that “traditions are often invented, and the construction and re-creation of myths is part of the making of a collective consciousness.”⁴⁸ Although identity in the academic literature can be defined in different terms, from the statistical data presented it can be concluded that citizens have their different scale of issues that make them feel Europeans.

The latest investigation that Eurobarometer has conducted published in 2011 under the title “New Europeans” comprises both parts of identity- national and European one.⁴⁹ First of all, the results of the European identity will be presented. The overall percentage of the investigation is 58% with answer that being European matters to the respondents, whereas for 40% it does not matter. In comparison to the latest similar survey in the spring of 2009 the proportion of those to whom being European matters increased from 15 % to 18% compared to those to whom matters “somewhat”, which declined from 43% to 40%. However, the proportion of citizens saying that it does not matter to them “at all” increased from 13% to 15%. Overall, the results seem to be more polarized than in June 2009.⁵⁰ *Figure 1*⁵¹ presents the results in accordance to the percentages which are situated in the inner pie and the outer pie. The possible answers of the questions are listed below:

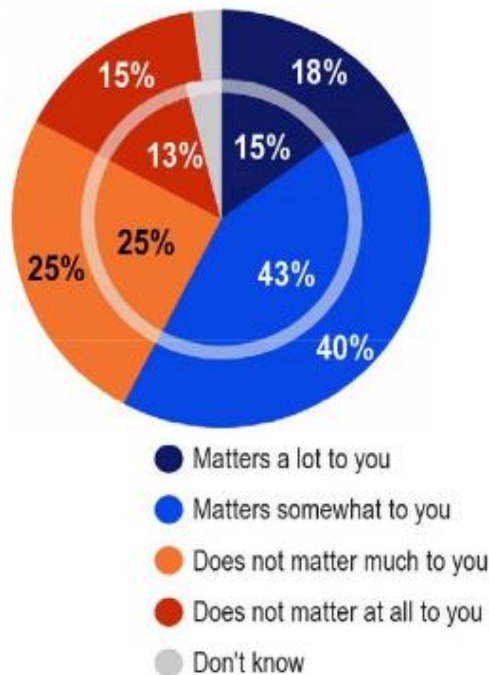
⁴⁸ Soledad Garcia “*European Identity and the Search for Legitimacy*”, p.135-140

⁴⁹ The data is from Eurobarometer, The report “New Europeans” published in April 2011

⁵⁰ The exact question of the survey is “How important is being European to you personally?”

⁵¹ The data and figures which concern the European and national identities are taken from the report “New Europeans”, published in April 2011 by Eurobarometer-
http://ec.europa.eu/public_opinion/archives/ebs/ebs_346_en.pdf

QB3. Thinking now about the fact that you are European, how important is being European to you personally? Being European...



Inner pie : EB71.3 June 2009
Outer pie : EB73.3 March 2010

EU27

Figure 1

Looking at the statistical data on the national level which is presented in *Figure 2*, the highest number of the respondents which says that the status European matters are found in Italy (82%), Hungary (76%), Luxembourg (74%), the Czech Republic (73%), Slovakia (73%), Austria (72%), and Finland (70%). The lowest numbers are registered in the UK (34%) and Latvia (39%). On the other hand, in comparison to the previous investigation in 2009 seventeen member states experienced decline in the value of being European in Denmark from 75% to 56%, Cyprus (64% to 48% and Slovenia (74% to 58%).

From the data presented can be concluded that the significance for being European is decreasing in the recent years. In fact, the level of the European identity is not so different in the 1990 where 48% of the people that feel attached to the EC.⁵²

Table 8.3 Feeling attached to a place (1990)

Question: People may feel different degrees of attachment to their town or village, to their region, to their country, to the EC or to Europe as a whole. Please tell me how attached you feel to . . . ?

	B	DK	G		GR	E	F	IRL	I	L	NL	P	UK	EC12	EC12
			West		East										
Town/Village															
Very attached	49	56	60	60	56	81	73	40	60	59	48	28	75	42	54
Fairly attached	33	28	27	29	33	12	20	41	29	29	33	36	19	38	31
Not very attached	10	11	10	10	8	5	5	10	8	7	11	27	4	14	10
Not at all attached	5	2	1	1	1	2	1	8	1	4	5	8	1	6	4
Don't know	3	3	1	1	1	0	2	1	1	0	4	1	2	0	1
TOTAL	100	100	99	101	99	100	101	100	99	99	101	100	101	100	100
Region															
Very attached	41	67	62	62	62	87	71	41	62	50	52	34	69	56	55
Fairly attached	40	25	32	31	31	10	23	40	27	36	28	39	22	32	32
Not very attached	11	4	4	4	4	2	4	6	7	7	5	19	4	10	7
Not at all attached	5	1	0	0	1	1	1	3	1	3	3	5	1	3	2
Don't know	3	2	2	2	3	0	1	11	3	3	13	3	3	2	4
TOTAL	100	99	100	99	101	100	100	101	100	99	101	101	99	101	100
(OUR COUNTRY)															
Very attached	30	84	47	47	45	86	62	46	72	55	60	40	70	58	54
Fairly attached	44	14	40	40	40	11	27	44	23	34	32	41	24	31	35
Not very attached	17	2	10	10	11	3	6	5	4	7	4	14	4	8	8
Not at all attached	7	0	1	1	2	0	3	3	0	3	2	4	0	2	2
Don't know	2	1	3	3	2	0	3	2	1	1	3	0	2	0	1
TOTAL	100	101	100	101	100	100	101	100	100	100	101	99	100	100	100
The EC															
Very attached	13	9	9	9	8	15	18	12	9	18	16	4	11	6	12
Fairly attached	34	33	35	33	27	34	40	42	27	43	39	24	36	29	36
Not very attached	28	36	37	38	42	28	26	24	34	17	26	50	36	35	30
Not at all attached	19	19	14	14	15	19	10	14	27	13	12	19	11	27	16
Don't know	7	2	6	7	8	5	5	9	3	10	7	3	7	2	7
TOTAL	101	101	101	101	100	101	101	100	100	100	101	99	100	99	100
Europe as a whole															
Very attached	11	15	11	11	11	16	18	10	8	19	15	5	8	8	12
Fairly attached	36	46	35	35	31	36	34	40	26	40	37	26	33	29	35
Not very attached	27	27	34	34	36	25	28	24	32	16	25	46	31	32	28
Not at all attached	20	10	13	13	15	20	13	16	28	14	15	20	22	29	18
Don't know	6	2	6	7	8	4	7	11	6	10	8	3	6	3	7
TOTAL	100	100	100	100	101	101	100	101	100	99	100	100	100	101	100

⁵² Soledad Garcia "European Identity and the Search for Legitimacy"- p.139

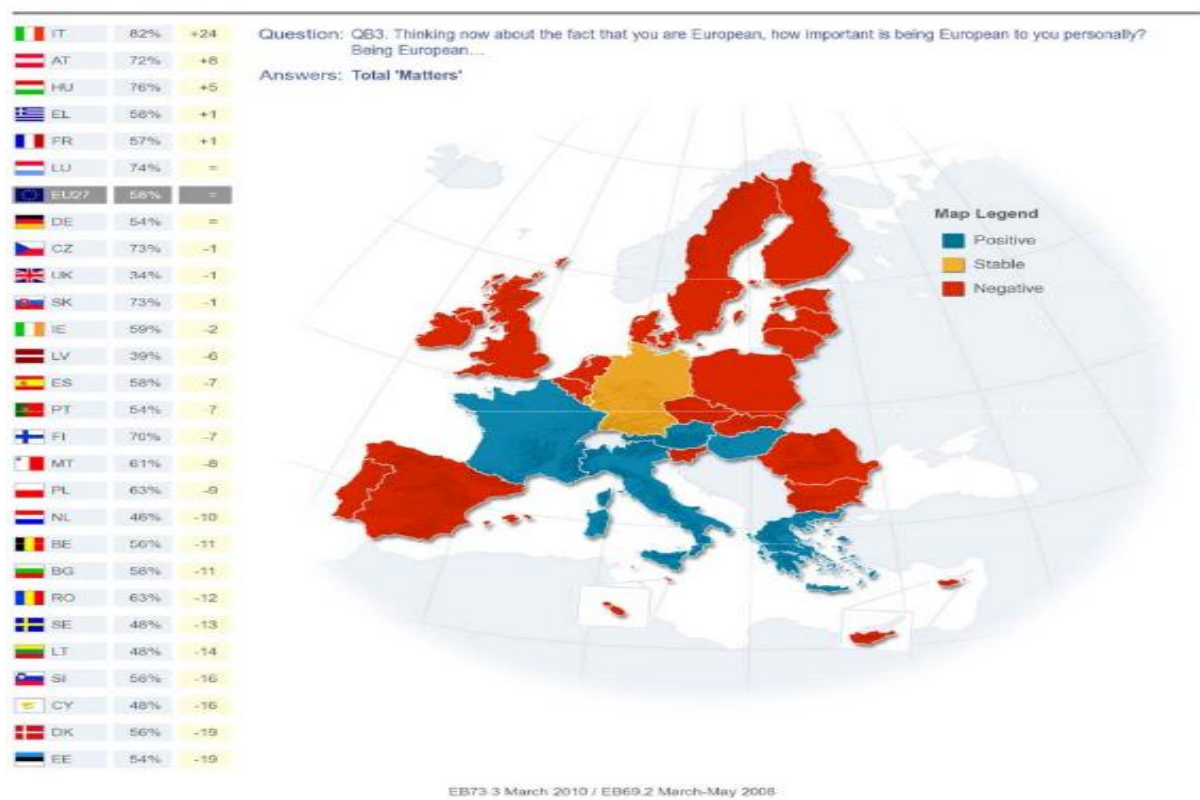


Figure 2

It seems that the number of 58% is not enough to declare that the European identity is present within the Europe. In addition, the registered decrease (in 17 member states) in the support for the European values is very significant. This drop of the percentages during the recent years and the slight progress during the decades turns the level of Europeaness into a very changeable factor. In relation to the previous idea of how European identity can be defined, the best definition of it can be extracted from the citizens' opinion and the specific components that they choose when defining what it means for them. The data explores the elements of the European identity which are presented in *Figure 3 and 4*. From this statistical data, more than 53% of the participants say that they feel attached to the EU. The survey also tests what are the main aspects of the European identity that citizens consider to

important.⁵³ The elements that matter for the Europeans are the euro (36%) and democratic values (32%). The following elements are: geography and common culture (each with 22%), common history (17%), the high level of social protection (13%) and by symbols –flag, hymn and motto” unity in diversity” (11%). In the data can be seen that only a small minority listed a common religious heritage (5%).

QB2. In your opinion, which of the following are the two most important elements that go to make up a European identity?

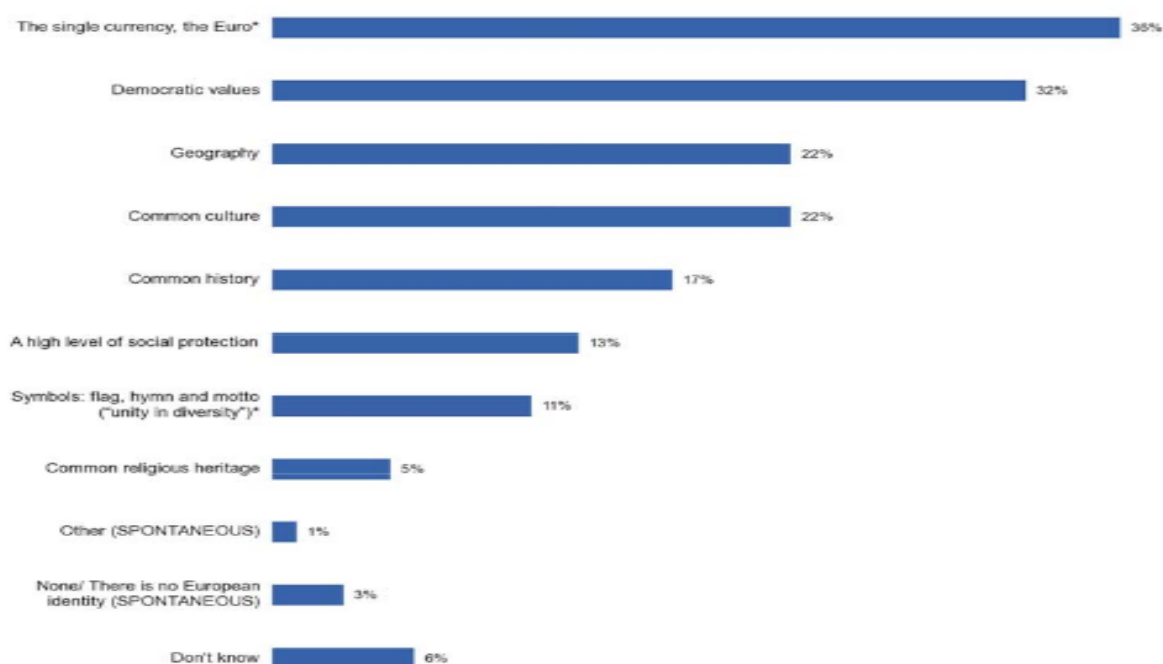


Figure 3

QB2 In your opinion, which of the following are the two most important elements that go to make up a European identity? (ROTATE – MAX. 2 ANSWERS)

	The single currency, the Euro	Democratic values	Geography	Common culture	Common history
EU27	36%	32%	22%	22%	17%
EU accession date					
EU15	39%	34%	22%	22%	16%
NMS12	25%	24%	23%	22%	22%
Using the European single currency					
Euro zone	46%	34%	22%	22%	16%
Non euro zone	18%	28%	24%	23%	19%

Figure 4

⁵³ The exact question is “In your opinion, which of the following are the most important elements that go to make up a European identity?”

In comparison to the same research conducted in 2009, the leading elements there were democratic values followed by four elements: geography, high level of social protection, common history a common culture. Overall, the results show that the euro is the most important characteristic in 17 Member States and is not important in UK (12%), Sweden (17%), Hungary and Denmark (18%), and all of the countries that are out of the euro zone.

After presenting the data, I would like to discuss several issues which seem to be important. First of all, from the two surveys it can be seen that the percentage of how much “being European matters to you” and whether European citizens feel attached to the EU the percentage vary from 58 to 53% which means that despite the fact that the results were conducted in the same time-framework, the percentage still vary which does not provide evidence for stability of the public opinion. Secondly, the exact formulation of the question which aims to measure the European identity seems to be a little bit tricky. Let remember that the exact question is “How important is being European to you personally?” Such a type of question does not show the exact meaning of the survey with reference whether a European identity is created. The positive answer of the question does not directly imply that of being European somehow matters, this lead to the conclusion that the European identity is shared. In this sense, I define the European identity as a convincing feeling of Europeaness, it is not enough people to consider only one part of their identity as European. It does not mean that citizens should not feel primary their national identities, but that the European one should be on a similar level. My proposition would be the question to be directly posed when concerning the European identity. Yet another problematic aspect is that if we look at the pie chart we can see that the greater percentage from the respondents answer the question with the answer of “matters somewhat to me”

which might assure significant instability of the obtained results. Finally, the ranking of the elements that make citizens share a common identity is those of the euro. The latest seems also to be problematic, because the European identity seems to be constructed primary on economic instruments and cooperation based on certain democratic values which make possible such kind of cooperation. However, the common European cultural values and traditions as well as historical precedents are not of primary significance for the identity creation. This point contradicts many definitions of identity as a whole which lies on certain level of shared cultural and historical values. From this point of view, it can be concluded that either the European identity provides a new definition of how we can define the concept of identity or the European identity does not follow the common understanding of what identity is.

The results from the survey which measures the European identity within the European Union shows approximately all of the respondents feel more affixed to their national country. What is more, they feel attached not only to their country, but to their region as well. That is why, the second part of this investigation traces what respondents think over the main characteristics of sharing national identity.

The results (*Figure 5*) show that approximately half of the respondents consider that to be born in a certain country is an essential feature when defining the national feelings. The percentage is 49%. The following features are mastering a country's national language (34%), feeling of that nationality (32%), sharing cultural traditions (33%) and exercising citizens' rights (33%), been brought up in certain country (28%), having at least one parent of that nationality has 18%, being a Christian with 9 % and activism in various associations and organizations within the country (3%).

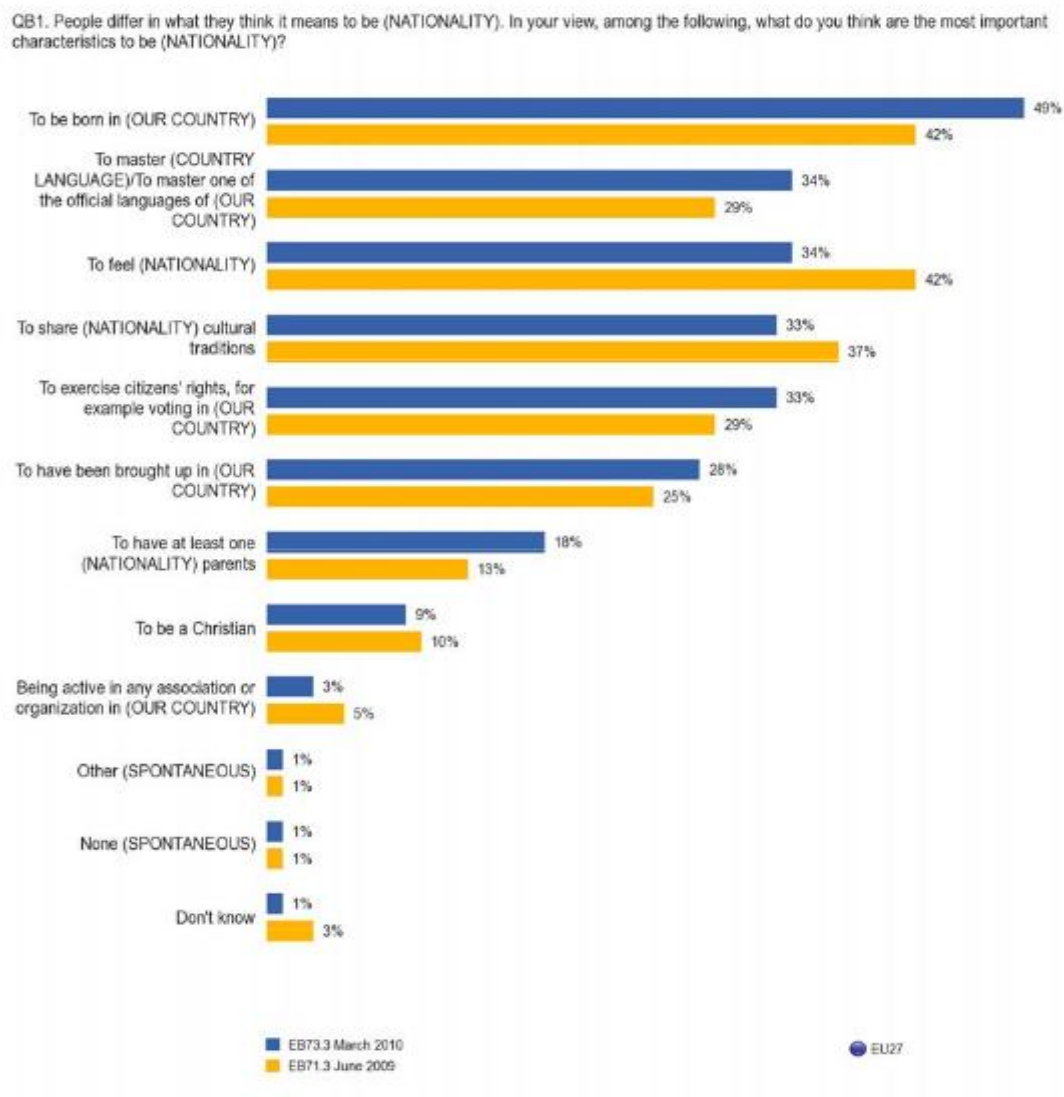


Figure 5

In relation to the results for the different countries, the characteristic of being born in a certain country is classified as the most important one in 13 countries within the Union. There are: Portugal (69%), Malta (68%), Ireland (65%), Cyprus (64%), Spain (63%), Romania (63%), Bulgaria (58%), the Czech Republic (56%), the United Kingdom (55%), Italy (53%), Greece (51%), Belgium (50%) and Poland (45%). On the other hand, it is least important in Sweden (22%) and Denmark (25%). The percentages for each of the characteristics can be seen in *Figure 6*.

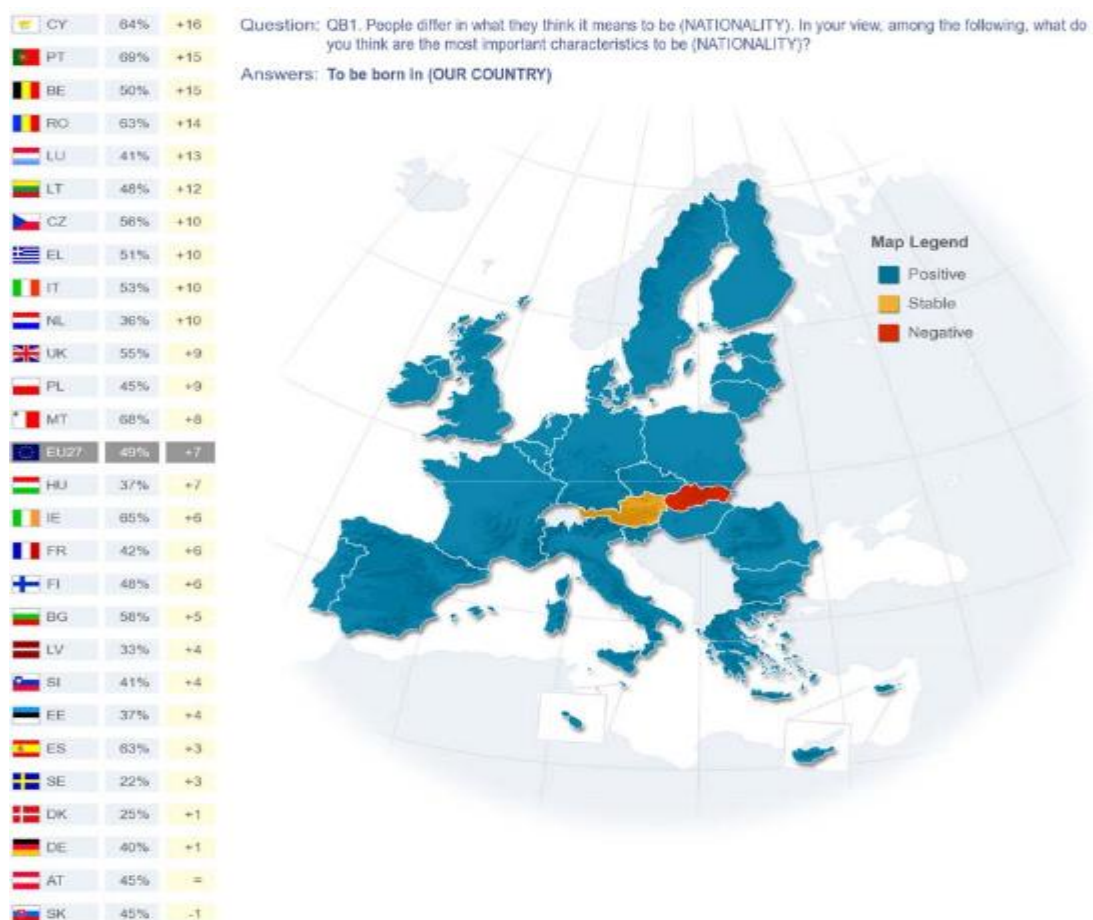


Figure 6

Indeed, it can be confirmed by the data that for many of the European citizens still the national affiliation is dominant and the identity of greater extent is defined by the framework of the national state. This data poses many questions in relation to what needs to be done in order European identity to have more defined aspects towards which citizens to declare their attachment to the EC.

3.2 Criteria for defining what is necessary for identity following Kant's ideas

The first criteria for achieving identity that can be assumed from Kant's idea is that public laws and international law might together lead to the idea of public law of peoples.⁵⁴ The idea that Kant expresses is essential in terms of necessary coherence between citizen's general will and the implemented public laws. Such a kind of relationship is important because this seems to be the only right solution to the problem of the European identity. The expression of the common will of the Europeans over important issues which directly concern them through the national legislation will influence their self-determination as a consequence of direct participation of the decision making process. The latest implies more direct democracy on a European level.

Although such a measure has been undertaken with the direct voting for the EP elections, the EU is a sui generis organization with institutional structure that does not follow the national model of institutional building. This means that the decisions that can be enforced in the national legislation has not one institutional source which is elected by citizens, but others as well- Council of Ministers, the European Council, co-decision process in the decision making process between the European Commission and the EP as well. If citizens agree over the appointed officials, there might be possibility that the problem will be overcome. However, the EU is one of the most densely institutionalized organizations in the world with a great number of institutions and structures. That is why, the EU requires high level of transparency among all the institutional levels.

⁵⁴ Thomas Pogge. *'Kant's Vision of a Just World Order'*, p. 206

It seems to me that the lack of the public laws of people in the EU is related to one of the major aspect which Graham Smith defined as the first good of the democratic institutions on an analytical level- the criterion of inclusiveness.⁵⁵ More precisely, this criterion emphasizes what the voter's turnout is and whether the decision-making procedures are open to citizen's participation. However, it the idea of inclusiveness and the presence of identity cannot be understood as positively correlated. It seems that this criterion indeed might be an indication for identity establishment, but it cannot be accepted as a necessary condition in order people to have European identity.

In relation to the idea of inclusiveness, the most important and accurate indicator seems to be the level of voter turnout in the elections for the EP.

The latest election turnout can be seen in the bar chart below.⁵⁶

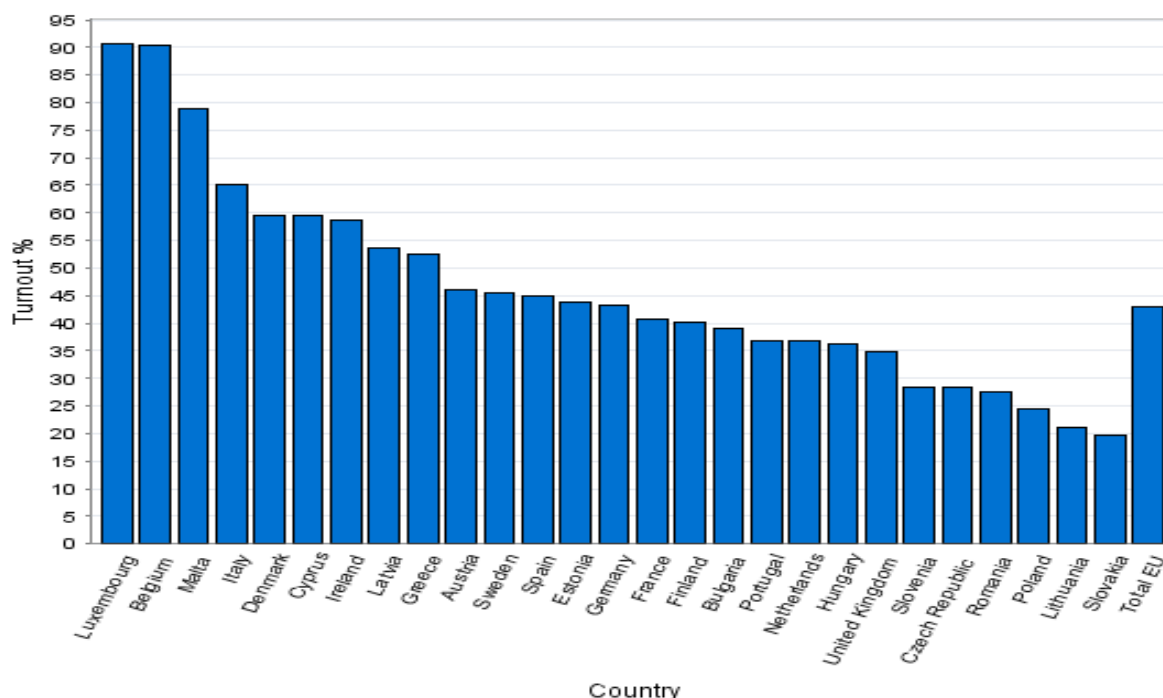


Table 1

⁵⁵ Smith, Graham "Studying Democratic Innovations: An Analytical Framework" in "*Democratic innovations*". *Designing Institutions for Citizen's Participation* (Cambridge University Press, Cambridge 2009)

⁵⁶ European Election Database- http://www.nsd.uib.no/european_election_database/election_types/ep_elections/

The turnout in the 2009 elections was the lowest ever since direct elections for the EP have started. Slovakia is the country which has the lowest result for a second time considering the previous elections as well. In percentages the results of the overall turn out is 43 % in comparison to those in 2004 which is 45.47%. Only 19.6 % of the Slovaks voted in the elections, but in 2004 they drop to the lowest ever score in the EU's history at 17%. Lithuania had a turnout of 20.9%. From the data can be seen that the level of voter's turnout is insufficient to say that the elections for the EP observe the criteria of inclusiveness, which will make possible Kant's idea that public laws and international law might together lead to the idea of public laws of peoples.

The second criterion that is essential for constructing common identity is expressed in Kant's "Metaphysics of Morals" where he states that "the act by which a people forms itself into a state is the original contract. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the normative legitimacy of a state. In accordance, with the original contract, everyone within a people gives up his external freedom in order to take up again immediately as a member of a commonwealth".⁵⁷ It seems that this idea that Kant expresses that is really essential for creation of the feeling that one is part of the commonwealth and contributes to it.

On the other hand, if we look at the EC establishment, we can see that in 1951 the Treaty of Paris launched the Community through the creation of the ECSC, which aim is primary to assure further collaboration between France and Germany. The creation of the EC starts on a purely intergovernmental principle in which head of the state and political elites are the contracting parties, without the inclusion of people themselves. It seems to be not problematic, until the creation of the two institutions-

⁵⁷ Immanuel Kant. "Metaphysics of Morals" p. 127 (316)

the ECHR and the EJC quite quickly after launching the Community. These are the ECHR and the ECJ established in 1952 and 1957 respectively. Thus, at this stage of development we can see that the EC has its own coercive laws towards the Member states, but has not the original contract of people which makes the implementation of these laws normatively legitimate.

Here, comes the last criterion which is perfectly compatible with the previous one. Kant argues that “only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general will of the people, can be legislative”.⁵⁸ As a supplement to the upper chronology of the EC development, the EP was founded in 1979. This points that for a period of 27 years if counting from the ECJ and 22 years from the establishment of the ECHR there was applied legislation without any kind of citizens’ involvement. On that ground, it can be said that the European identity is lawfully constructed, without direct input that comes from the citizen’s themselves for many years. However, it from the previous chapter the data from Eurobarometer shows that there is serious lack of identity for so many years with potential to drop further. That is why, identity which is lawfully constructed without citizens’ inclusion might not be really legitimate. Identity seems to be first of all socially constructed in order later legislation to be imposed and this is needed for legitimate governance.

The process that Kant seems to suggest would follow the next logic in order to be normatively legitimate (see Figure 1). It can be seen that the process starts with the Community of Citizens in support of the legislation. Then this support is expressed through voting for representatives on a European level and finally the produced laws by the Parliament could be enforced over the citizens.

⁵⁸ *ibid*- p. 125 (314)

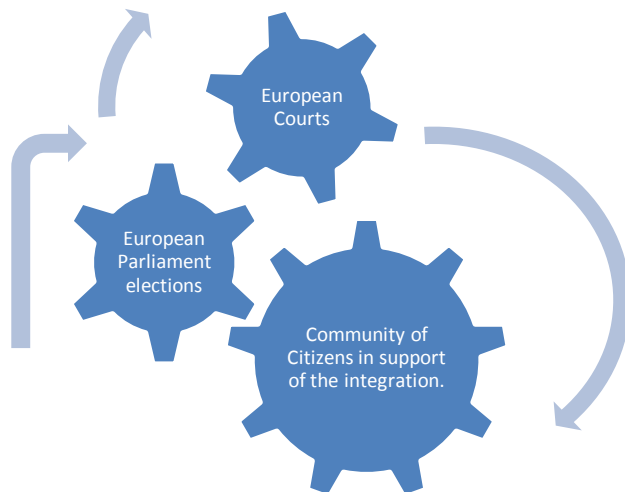


Figure 1

On the other hand, figure 2 will present how the process of the EC has started. It started with negotiations between head of the states and elites, without any kind of citizen's involvement. Then, comes the creation of the European Courts which implemented the produced legislation between the elites and finally the EP was created where citizens were involved in the decision-making process.

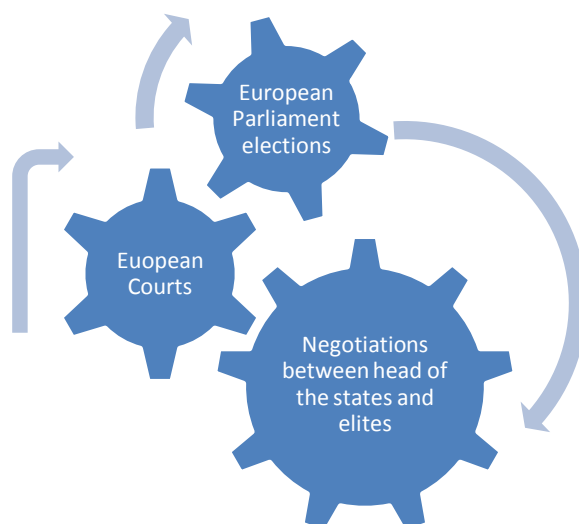


Figure 2

3.3 The problem of the democratic deficit in the European Union

The problem of the democratic deficit in the EU is widely debated in the academia. A vast number of scholars have attained the view that the EU experience serious democratic deficit. However, there are a small number of scholars that think that indeed the EU does not deal with such a problem. Giandomedico Majone emphasizes the idea of “non-majoritarian institutions” that exist because the states have delegated certain responsibilities and this turns the EU into a so called “regulatory state”.⁵⁹ Exactly the act of delegation provides the key towards the descriptive legitimacy of the legislation on the European level. The other author that has a great influence regarding the problem of the democratic deficit is Andrew Moravcsik, who considers that the key for descriptive legitimacy is hidden in the check and balances among different institutions which assure that the EU is not different in comparison to other democracies and their decision-making process.⁶⁰

However, the descriptive legitimacy of a political system cannot be present without citizens’ input in the system, transparency in the decision-making process, and evidence for proper implementation of certain decision. Although, the EU is a “sui generis” organization, and we cannot classify it into certain typology among any of the institutional structures that we know from domestic institutional settings, it seems that the EU can be classified as a political system in which certain processes like input in the decision making process, the exact decision-making process and the output of it are fixed. As the research aims to investigate in the European identity issue, which directly strives from the national one as certain values which are

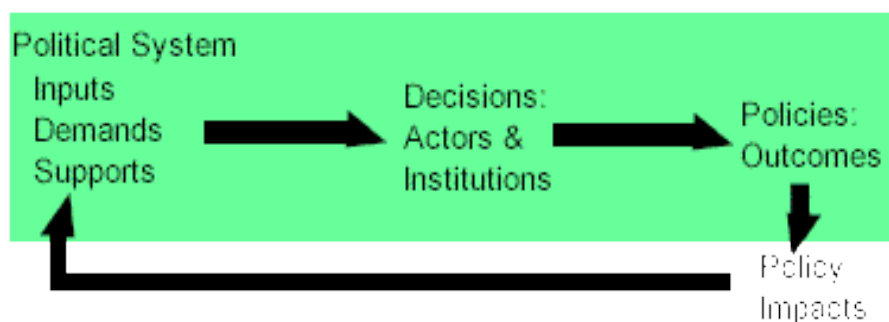
⁵⁹ Majone, G. “Europe’s Democratic Deficit”, *European Law Journal* 4, no.1 (1998), p. 5-28

⁶⁰ Moravcsik, A. “Reassessing Legitimacy in the European Union”, *Journal of Common Market Studies* 40, no.4 (2002), p. 603-24

important in order to define it and measure it, I consider that indeed the EU cannot be accepted as institution that operates as those on a national level. More precisely, it is not a European state. That is why, another similarities and common denominator between the two is needed in order relevant comparison between them to be done. It seems that both can be classified as political systems. In order to define certain criteria through which each political system should operate, I will implement those that David Easton uses in his political system model.⁶¹ This model was chosen in attempt to outline the major criteria for legitimacy that Kant seems to use as well.

Fig. 1.2 The Easton Political System Model

Task Environment



Source: David Easton, "An Approach to the Analysis of Political Systems," *World Politics* 9 (April 1957): p. 384

Figure 1

It seems to me worth investigating in the inputs, decision-making process and policy outcomes in order to understand where the problem of the democratic deficit occurs. As far as the "inputs" on the European level is concerned, the issues that should be discussed are: the electoral process which aims to represent citizen's preferences over different policy areas. On that ground, I would like to emphasize several issues that directly concern the democratic deficit within the EU. First of all, from the *Table 1* which shows the voter's turnout in the latest elections for EP is quite low 43%. This low turnout definitely questions the legitimacy of the produced

⁶¹ Easton, D. "A System Analysis of Political Life" (New York: Wiley, 1965)

legislation and shows that citizen's participation in the European elections is not very enthusiastic. The next problematic issue in the "inputs" category concerns the problem of monitoring that citizen's might exercise over their representatives. Definitely, the elections are the most powerful instrument for monitoring by citizens over their officials, but are there other mechanisms on the European level that might be used? In the political system of the EU, there is not possibility citizen's for citizens to demonstrate a motion of no confidence for certain government and to express their satisfaction or not with the implemented policies. However, it seems to me that the opportunity for monitoring officials is categorized as the first step towards accountability in a political system. This point emphasized the degree to which citizens' have an impact on the decision-making process- problem definition, option analysis, option selection, and implementation. An investigation that measures trust in the EU (Eurobarometer 2010) shows that 47% of the Europeans tend not to trust the EU, 42% tend to trust and 11% do not know.⁶² Thus, the majority of citizens do not trust in the European institutions and this increases the problem with the democratic deficit as well. Another problem is that the parties on a European level remain weak and not recognizable to their citizens. The problem is that parties needs direct relationship with its voters or certain membership in them, but on the EU this is absent. The latest investigation of Eurobarometer regarding the attitudes and the knowledge of citizen's about the EP shows that the level of knowledge regarding the EP among citizens is low (see *Figure 2 and 3*)⁶³. Measuring through the scale of 1 to 10, the knowledge about the EP's role within the Union is 3.7 and the knowledge about its members is even lower – 3.3. This data demonstrates that the general

⁶² http://ec.europa.eu/public_opinion/archives/eb/eb73/eb73_first_en.pdf - p. 15

⁶³ http://ec.europa.eu/public_opinion/archives/ebs/ebs_288_en.pdf - p. 23, 24, 25, 27

public is very bad informed and moreover it is relevant for all of the member countries.

QB5 On the following scale, where '1' means that "you know nothing at all" and '10' means that "you know a great deal", how would you assess your knowledge of the European Parliament with regards to...?

	EU27	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV
Its role within the European Union (average)	3,7	3,7	3,5	3,7	4,4	3,9	3,6	4	3,5	3,3	3,8	3,6	4	3,6
Its members, the MEPs (Members of the European Parliament) (average)	3,3	3,3	3,2	3,6	3,9	3,5	3,4	3,5	3,3	3,2	3,6	3,2	3,8	3,1

	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
Its role within the European Union (average)	3,6	4,6	4	3,7	4,4	4,2	3,9	3,7	4,1	4,3	4,1	4,3	3,7	3,1
Its members, the MEPs (Members of the European Parliament) (average)	3,3	4,3	4,2	3,7	3,7	3,6	3,4	3,4	3,4	4	3,8	4,3	3	2,8

Figure 2

Question: QB4. In general, do you consider that you are very well, fairly well, fairly badly or very badly informed about the European Parliament's activities?

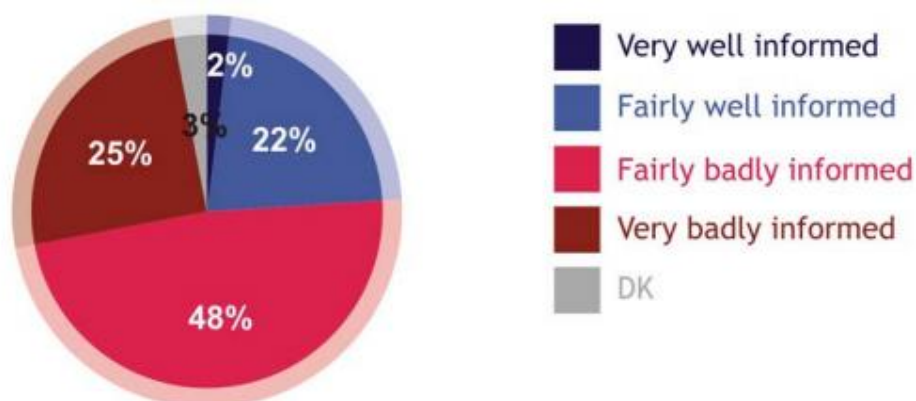


Figure 3

The latest point concerns the problem with the European public sphere which seems not to be present yet. In the same survey, media coverage over European issues is investigated and it can be seen that only 42 % of respondents say that they have read, seen or heard something about the EP in the media, 54 % who did not and 4 % did not reply (*Figure 4*). One very important aspect regarding the “inputs” category is those whether the EP is listening to its citizens (*Figure 5*). The survey shows that the results vary from country to country, but the strange fact is that in those countries where the negative answers dominate are long-standing members of the Union. This means that the identity building process is not only question that requires time, but exactly long-standing members are more skeptical towards the EP because its role for years seems to be not convincing in the eyes of the citizens. This fact also contributes to the problem of identity and more listening to the European citizens might be a solution of overcoming the problem of democratic deficit and turn the identity into more stable factor.

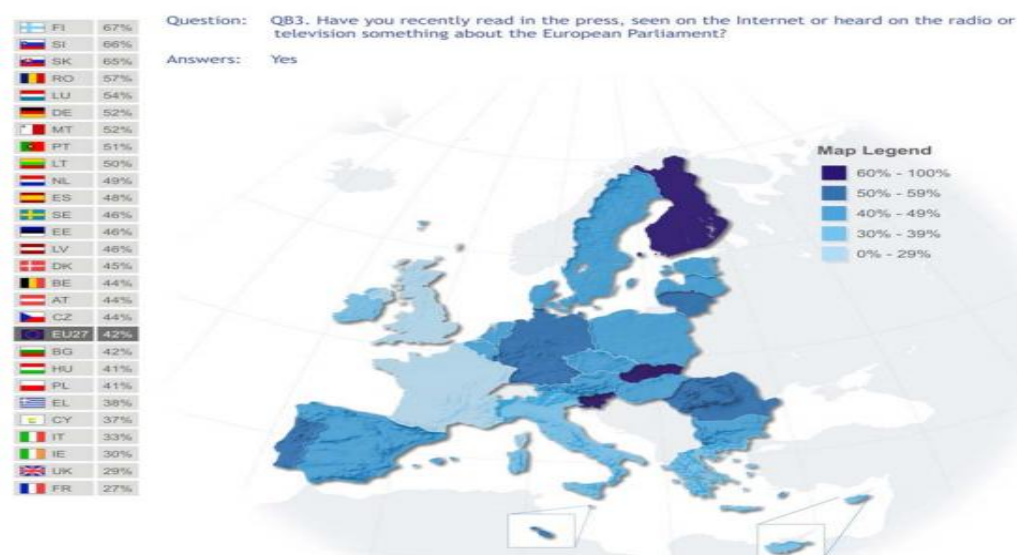


Figure 4

QB12: Please tell me for each of the following words/expressions whether it describes very well, fairly well, fairly badly or very badly your perception of the European parliament.
3. Listening to European citizens

	Describes well	Describes badly	Difference
Malta	67%	16%	+51
Romania	54%	12%	+42
Bulgaria	50%	10%	+40
Poland	60%	21%	+39
Cyprus	55%	20%	+35
Lithuania	54%	21%	+33
Hungary	62%	30%	+32
Estonia	55%	24%	+31
Slovakia	59%	32%	+27
Slovenia	58%	32%	+26
Spain	50%	25%	+25
Latvia	47%	26%	+21
Ireland	43%	26%	+17
Greece	57%	43%	+14
Denmark	53%	40%	+13
Portugal	38%	36%	+2
Italy	41%	39%	+2
Czech Republic	46%	45%	+1
Belgium	45%	48%	-3
United Kingdom	34%	42%	-8
Luxembourg	39%	48%	-9
Sweden	41%	51%	-10
France	35%	49%	-14
Austria	29%	57%	-28
Finland	34%	62%	-28
Germany	31%	60%	-29
The Netherlands	32%	62%	-30

Figure 5

The next important aspect of the political system is those of the decision-making process itself. David Easton defines it as a “black box” in which decisions are made.
⁶⁴ The major problem here is that more transparency is needed in order this democratic deficit to be removed. This means that procedures and meetings are open to the public. Although, the EU started initiative to open some of the meetings, most of them still remain closed.

As the EU is open to many of special interest-based organizations that play a significant role in the decision-making process, citizens remain unaware of these organizations. Yet another problem that concerns this stage of the political system is those of the unique co-decision procedure through which legislation is produced.

⁶⁴ David Easton “A System Analysis of Political Life”, p. 384

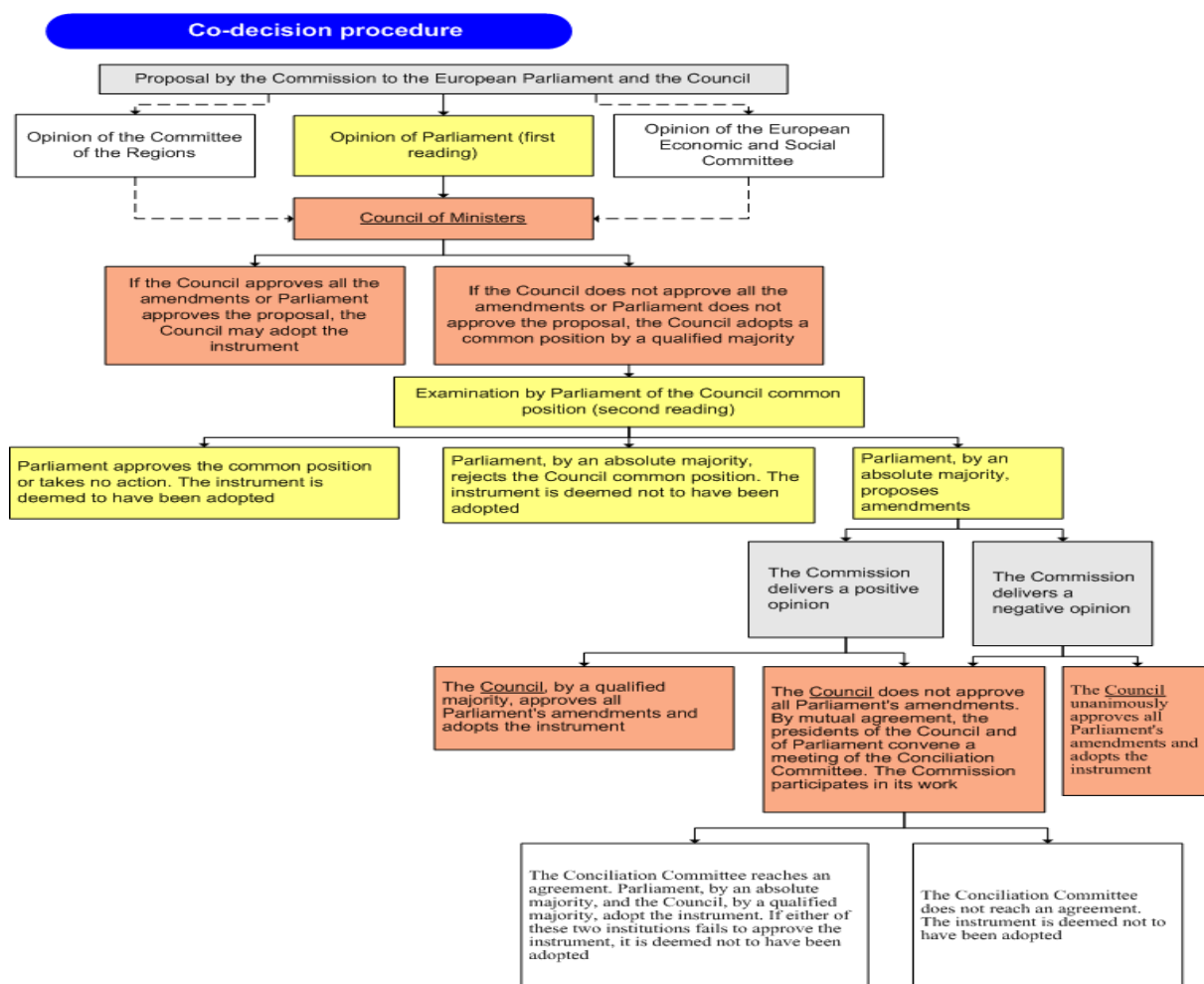


Figure 6

It can be seen from *Figure 6*, the process requires collaboration between the European Parliament, the Council of the EU, and the European Commission. Although the EP is directly appointed, the other institutions are not. This procedure is problematic in terms of citizen's vote that might be replaced by other institutions and special interested groups which are not directly appointed by them.

Ultimately, the latest phase in the political system process concerns the output of policy outcomes. The major problem here is that legislation is produced through directly elected institution of the EP which is not so familiar to the citizens and especially their representatives and two not directly elected institutions and

implemented through the ECJ and national Courts as well. Thus, it seems that being European is not understood in terms of how European citizens actually participate in the decision-making process, but the feeling of Europeaness comes from the point that the EU itself is enforcing decisions over a united group of citizens. Such a conclusion tends to confirm Kant's worries about the presence of international coercive organization which enforces laws over its citizens. If practically, each citizen gives her consent and agrees voluntarily to participate and observe such legislation, the identity will be present because all citizens within the Union will follow equal principles and laws voluntarily. But the latter seems practically difficult to be achieved and the problem with the law's descriptive legitimacy still remains unsolved. On that ground, this section concludes that the lack of identity within the EU and the significant presence of democratic deficit in its political system support Kant's thesis that any international coercive legislation that is enforced over the citizens cannot be considered as normatively legitimate without their direct involvement in the formation of a "general will".

CHAPTER IV: EVALUATION OF THE MAIN RESEARCH FINDINGS

Kant wants to maintain the sovereignty of states completely. However, it seems that the EU is only able to function and to integrate its members because its member states have agreed to transfer some of its sovereignty to EU institutions. Would it ever be possible that the EU member states all agree on one law if there wouldn't be binding procedures that would force them to accept certain results that they don't like? I doubt that the EU could function on a purely voluntary basis and I think it is doubtful that Kant's argument for a voluntary federation of states could give us a model for how to reform the union. However, it is very important to take into consideration Kant's worries that coercive international organization that implement laws over its citizens might undermine the normative legitimacy of such an organization if this is not the will of the "general public". Thus, the question of the sovereignty dilemma in the context of the EU could be taken as a practical example of the significance of the dilemma. The sovereignty dilemma is not insurmountable and there are other normative worries that Kant mentions regarding the coercive international organization. The identity problem that was investigated shows that Kant's normative concerns are still valid even if we dismiss the problem of the sovereignty dilemma. The real point is that, descriptive legitimacy within the EU is not still achieved and the data that were presented reveals that the feeling to be attached to the EC is very flexible during the years and demonstrates slight progress during the decades.

On that ground, the specific problem of the democratic deficit is one of the major explanations of why such an uncertainty exists. The core of the problem is that the EU is investing a great amount of money in the national parties in order to make

campaigns and to present their candidates and ideas clearly to the public. This is a good solution to the problem because people will be more exposed to the issues concerning the EP as a whole. However, the EU does not control how these national party administrations spend the money and often, they are kept for other purposes of the party- most often for the national Parliamentary elections. That is why; the first solution will be the EU to implement strict policy of transparency during the EP's elections and specific activities that would provide necessary knowledge for citizens.

Another solution to the problem of the democratic deficit is more effort in establishing the European public sphere. Any kinds of agreements with the national media how to reflect better issues in the EU will increase the necessary information for citizens. Here, another problem should be addressed as well. All of the meetings of the EP should be open to the public and all of the laws that are debated should be presented to the public because people are affected by them.

It seems that if the EU wants to enforce laws and broad kind of regulations over its citizens, changes in the decision-making procedure should be undertaken as well. The latest implies that the EP is not the only participant in the co-decision process. The other institutions are not directly elected from citizens, but have extreme power in defining the policies and laws within the Union. This aspect seems very problematic and it is at the core of the debate between the exact nature of the Union- whether it is more intergovernmental (states preserve their national sovereignty and just negotiate with other countries in the framework in the EU) or supranational organization (states give part of their sovereignty and put themselves under the Community legislation). The EU combines elements from the two, but as far as the European identity is concerned, the supranational character of the organization is problematic aspect of laws' legitimacy from normative point of view. On this ground, I

consider that the role of the European Parliament has to be dominant regarding the decision-making process and only very limited of others, which are not elected by the citizens themselves. In fact, there is a lot of discussion about this on a European level. The President of the EP is insisting on strengthening its role with possible changes. For example the next Commission's President on the basis of the Lisbon Treaty will be elected by the EP with the majority of the EP. This new procedure will be similar to the national election campaign where right-wing and left-wing parties run against each other to get the majority of the Parliament and might increase the participation and the attention.⁶⁵

In conclusion, it seems that indeed the issue of identity poses difficulties towards normative legitimacy of law implementation in the EU. Kant's worries about international coercive organization and the conceptual difficulties that it creates from the standpoint of sovereignty are still relevant today. Kant's theoretical assumptions including the importance of a "general will", the fact that only such a will can be legislative, the point that public and international laws might together lead to the idea of public laws of people, and the act by which people form themselves into a state makes the original contract, are crucial ideas that might help us to detect many problems in the case of the EU and make us think for possible solutions how to overcome them.

⁶⁵ BBC News "Federal EU: European Parliament President Martin Schulz- <http://www.bbc.co.uk/news/uk-politics-19598582>

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