Cahier n°33 - The Idea of An Ever Closer Union Among the Peoples of Europe as a Normative Ideal for European Identity Formation

Stella Konakchieva

In this paper one aims at building a normative model for European identity formation dwelling on the Lisbon Treaty (2009) and the Schuman Declaration (1950). However, one is going to differentiate the use of these sources as purely legal documents and their use for finding normative constraints in normative political perspective. In order to build our model, we are going to present our concept of bonds, initially used by Jonathan White in the Political Bond of Europe 2009. By arguing what normative model for European identity formation the Lisbon Treaty (2009) and the Schuman Declaration (1950) set, we intend to recommend what additional measures should be taken at an EU level so that a sense of shared European identity among the EU citizens is fostered.

We are going to argue that the idea of an ever closer union among the peoples of Europe laid down in the Treaties and the Schuman Declaration represents a normative model for European identity formation by setting the conditions for such a process. We are going to argue which these conditions or factors are by using the concept of bonds. Also, we plan to justify why we can use these documents not only as legal sources but also as sources for finding normative constraints to the ideal of an ever closer union in the normative political sense.

The concept of bonds and the dual use of legal documents

As we set to do above, we are now going to explain what we are going to understand under bonds so that we can explain the conditions for European identity formation set in the Lisbon Treaty 2009 and the Schuman Declaration 1950 and ultimately conceptualize the idea of an ever closer union. Moreover, we will justify in this part how the legal frame could be as a normative source of ideas of how things ought to be rather than its use for legal purposes. Jonathan White distinguishes between different bonds that link people in Europe: a market bond, a juridical bond, a cultural bond and a political bond. His approach of analysis towards the possibility for the development of shared identity that could mirror the political community of EU is built on the so called practice turn and abandons the focus on seeking commonality or researching the perception of commonality. The conceptualization of a normative ideal such as a political bond in Europe focuses on the discursive-analytical stream of thinking or, in other words, seeks to answer whether and how individuals talk about common political problems or concerns in Europe. Such an approach is, indeed, innovative and as Jonathan White justifies it, it avoids the problems of the approaches that focus on researching shared culture, values, beliefs and norms which carry the in-built bias towards the idea that people possess developed orientations towards Europe/the EU. Using the metaphor of bonds, we are going to argue that bonds are those legally established conditions that structure the social milieu of the EU citizens and eventually bind or link them in the EU context. As to the use of the Lisbon Treaty and the Schuman declaration as normative-political sources of how things ought to be there are some theoretical issues that need to be addressed. Hakan Hayden and Mark Svensson, using the ontological statements of Emile Durkheim, offer us an understanding legitimate both for legal and social sciences. In the Concept of Norm in Sociology of Law they state: "when claiming that norms are things it is also understood that the most essential characteristic of those things is as carriers of normative messages. In other words, norms in this perspective are objects (things) containing messages of how reality 'ought' to be".

Moreover, we could add the arguments of legal positivists such as Hans Kelsen who find arguments in favor of an understanding reconciling both concepts about the norm as a legal fact or as a rule in law theory. In his theory of Grundnorm and chain validity in the hierarchy of norms the Basic norm or Grundnorm is in itself an ought presumption of how things should be.

This dual use of legal sources is not a challenge for this paper but a tool for conceptualizing the idea of an ever closer union. On one hand, we are going to analyze the legal frame that defines the EU context as a social milieu that influences the individual's collective identifications. On the hand, we will argue that the ever closer union is a normative ideal for European identity formation and could be achieved through the functioning of those legally established bonds. We could distinguish between horizontal bonds, on one hand, and vertical bonds, on the other hand. The horizontal bonds regard the ties that are normatively set between the Member States but at the same time they could be built at an individual level in Europe or in other words between EU citizens themselves. The vertical liaisons or ties, on the other hand, build the connection between the European institutions and the citizens of the EU. Also, it is important to note that though all of these bonds all legal in a sense that they are legally set, we are not going to analyze them in the strict legal sense and our classification of bonds will not rely on legal definitions. While our main focus are the horizontal bonds on the individual level, which we will consider to be the foundation of an ever closer union among the peoples of Europe, we still need to make the comparison with the other bonds so that there is no further ambiguity. Thus, below we are going to present the three types of bonds in tables so that we could distinguish between them in a more ordered and visible manner.
<table>
<thead>
<tr>
<th>Normative Basis</th>
<th>Horizontal Bonds between Member States</th>
<th>Type of Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preamble, Article 2, 3 of the TEU</td>
<td>respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. promotion of peace, its values and the well-being of its peoples, economic and social cohesion, cultural diversity, solidarity and combat of discrimination etc</td>
<td>Cultural and political bond, based on common values but also common objectives (fundamental EU identity)</td>
</tr>
<tr>
<td>Founding Treaties (Last revision of Lisbon)</td>
<td>The principles of conferral of competence, Subsidiarity and Proportionality Opt-out clauses for certain countries such UK, Denmark, Ireland, Poland and Sweden</td>
<td>Constitutional bond (the fundamental normative basis upon which Member States unite together or confer sovereignty upon supranational institutions, the constitutional basis of the EU)</td>
</tr>
<tr>
<td>Primary law, General principles established by the ECJ, international agreements and secondary legislation</td>
<td>Acquis communautaire</td>
<td>Legal bond</td>
</tr>
<tr>
<td>Article 15 of TEU</td>
<td>The European Council (the general political directions)</td>
<td>Political bond</td>
</tr>
<tr>
<td>TFEU, Title 8 Economic and Monetary Policy, Chapters 1, 2; Title 1; article 5 of TFEU</td>
<td>Common currency and coordination of the economic policies of the Member States</td>
<td>Economic and Currency bond</td>
</tr>
<tr>
<td>TFEU, Part 6 Institutional and</td>
<td>Own resources based on GNI of each Member State</td>
<td>Budget bond</td>
</tr>
<tr>
<td>Financial provisions, Title 2 Financial provisions, Chapter 1 Article 126 of TFEU</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 3, 4, 6 of the TFEU</td>
<td>Areas of exclusive competence Areas of shared competence Areas of supported competence</td>
<td>Policy bonds</td>
</tr>
<tr>
<td>Article 24 and 42 of TEU</td>
<td>CFSP and CSDP - an ever increasing degree of convergence of Member State's action</td>
<td>Security bond</td>
</tr>
<tr>
<td>Articles 122, 222, 194, 196 of the TFEU</td>
<td>Energy/Financial, Civil, Security</td>
<td>Solidarity bond(s)</td>
</tr>
</tbody>
</table>

Table 1
As already mentioned above, we are now going to analyze in a more thorough way the horizontal bonds arguing that they could constitute and ever closer union between the EU citizens. EU citizens share the same political and civil rights that aimed at guaranteeing their participation in the democratic life of the Union so that decisions are taken as closely and openly as possible to them. If we define some of the EU citizens rights as civil such as the right to access of documentation in one's own language, the right of petition the EP and the right to apply to the European ombudsman, we could define this bond as a set of both political and civil rights. One could also add the fundamental human rights that EU guarantees additionally to its EU citizens through article 6 of TEU that gives The Charter of fundamental EU rights the same legal power as the Treaties have. The adoption of the Charter could be seen as an attempt to guarantee these rights on at an EU level proclaiming that there is a EU normative document dealing with the matter of fundamental human rights. One has to take into consideration, however, that the Charter is not applicable in certain aspects for some Member States. In particular, we are going to discuss Protocol 30 when analyzing the social bond.

What presents a special interest to the conceptualization of the ever closer union are precisely the economic and social bonds. First, they are mutually connected and second they are an essential part of the functioning of the free market and the free movement of persons which is one of the basic economic freedoms lying at the core of European integration process. The economic bond refers to the economic mobility of EU citizens, who according to Article 45 of TFEU "in the quality of workers have the rights, subject to limitations justified on grounds of public policy, public security or public health, to accept offers of employment actually made, to move freely within the territory of a Member State for this purpose, to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by the law, regulation or administrative action, to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission". Moreover, Article 45 proclaims that "(1) freedom of movement of workers shall be secured within the Union and (2) such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of employment". The mobility of workers is one of the 4 freedoms together with goods, services and capital which, regarded purely from the economic perspective, has to secure the functioning of the common market. We could call this particular horizontal bond an economic bond or a competition bond as it binds together all EU citizens as participants in a common labour market under common competition conditions and it prohibits discrimination based on nationality. The limitations to these rights on grounds of public policy, public security and public health have been carefully scrutinized by the European Court of Justice in its jurisprudence. The limitations grounded on public health, for example, concern only the entering or leaving of a country but not the permanent residence in it. Also, a list of illnesses exists. When it comes to public policy and the different positions that could be taken, only those positions where power and decision making is required, are subject to limitations. As to the public security, the Court has followed the line of addressing each case
individually by judging the behavior of the person concerned. This approach of the Court justifies the importance of free movement of persons as a core EU citizen’s right whose limitation is carefully scrutinized and controlled in judicial terms.

As to the social bond, one can say that this is probably one of the most controversial and not fully completed bonds between the EU citizens. It is not full because there is no harmonization of the different social systems of the Member States or a common social system. Moreover, Article 4 (b) of TFEU defines that social policy is a shared competence, in the aspects defined in Treaty, as it is the regime for all other shared competences. Later in the TFEU, we could refer to Articles 151 and 153. Article 151 sets the goals regarding social policy on EU level such as promotion of employment, improving working and living conditions so that their harmonization becomes possible, social protection etc. However, the article is very clear that when the Union and the Member States shall implement measures they have to take into account the diverse forms of national practices. Article 153 is very important because it clears out what legislative procedures in the different aspects mentioned in the same article are going to be used. One could see that the ordinary legislative procedure regards adopting decisions aimed at supporting the exchanges of information and good practices as well as adopting minimal requirements only in the health and safety issues of the workers and equality between men and women. The Council, however, shall act unanimously when it comes to social security and protection of workers, protection of workers when their contract is terminated, representation and collective defense of interests of workers and employers, including co-determination, conditions of employment for third country nationals legally residing in Union territory. This division between legislative procedures gives more insight which aspects of social policy are a matter of great sensitivity, particularly those where the Council acts unanimously. The social bond between EU citizens is not full because there are substantial differences behind the philosophy of the social systems in each country. The Charter of Fundamental rights of the EU includes a Solidarity Chapter which contains the ideas of the European Social Charter signed in Turin 1961 and 1989 Community Charter of the Fundamental Social rights of workers. Though the Charter has the same legal power as the Treaties, Protocol 30 is added to define special conditions to its implementation in UK and Poland. According to Article 1(1) of the Protocol: “The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms” and “(2) In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justifiable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law”. In particular the rights in the Solidarity Chapter such as the right of collective bargaining and action have no direct effect and the ECG will not have the power to control the application of this Chapter in UK and Poland.

Practically, there is a derogation for the Solidarity part for UK and Poland. This is only one example illustrating the sensitivity of creating a deeper and fuller social bond between EU citizens. When it comes to the cultural bond we need to clarify first that such a bond could foster a cultural identity which requires to define what cultural identity is comprised of. In most cases a cultural identity is based on common symbols, traditions, myths, customs but also values and attitudes that constitute the sense of belonging together. At an EU level, it is assumed that the societies of the Member States share common values whose normative basis is article 2 of the TEU: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. Except for common values, there were attempts to legalize a set of common symbols such as a motto, flag and hymn in the project of the European constitution. Currently, only part of the Member States and in particular Belgium, Bulgaria, Germany, Greece, Spain, Italy, Cyprus, Lithuania, Luxembourg, Hungary, Malta, Austria, Portugal, Romania, Slovenia and the Slovak Republic declare in Declaration 52 allegiance to the flag with a circle of twelve golden stars on a blue background, the anthem based on the „Ode to Joy“ from the Ninth Symphony by Ludwig van Beethoven, the motto „United in diversity, the euro as the currency of the European Union and Europe Day on 9 May as symbols of sense of shared community. The purpose of this paper is not to analyzing the impact of the symbols of the EU but only defining the normative constraints to the cultural bond that could constitute shared cultural identity. Thus, we could see that values could be regarded as the main elements of such a cultural bond compared to the common symbols that only some member states choose to identify with. If we dwell more on the Treaties and in particular the Preamble as well as the first major political document of the process of European integration-The Schuman declaration, one could receive more information and insight regarding the elements of the cultural bond. According to the Preamble of TEU one of the sources of inspiration for the establishment of the EU is:

“the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law”.

We could add the founding goal of the process of European integration which is the main focus of the Schuman declaration and is of course further implemented in the Treaties:

By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace.

It can be concluded that from a normative political perspective it is legitimate to speak about a European cultural bond based on peace as a value on its own, the values in article 2 of TEU, the cultural, religious and humanist inheritance of Europe in the Preamble and to some extent the common symbols of the EU such as flag, hymn, currency and motto. Additionally, one could also add another category of values. It is namely solidarity whose deepening is set as a goal in the Preamble:

“DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions”. 
Solidarity remains a key issue affecting the development of an ever closer union between the peoples of Europe, particularly in the light of the contemporary EU crises: the euro-zone crisis which turned to be a Grexit crisis (the possibility for Greece to leave the Euro-zone), Brexit crisis (the referendum for UK’s membership in the EU that took place June 2016 and eventually led to UK’s leaving the Union) as well as the refugee and the Schengen crises. It is legitimate to conclude that while peace has been established, solidarly as a further step for the deepening of the process of European integration needs to be addressed.

As to the motto of unity of diversity, it is important to pay attention to the idea behind it as well as the problem about the inheritance of Europe. Unity in diversity suggests that there is a unity in sharing common values while the history, culture and traditions of the Member States and their societies continue to be respected. Thus, this is not a cultural bond based on the abolition of former cultures. On the contrary, it is built on the notion about the religious, cultural and humanist heritage of Europe as well as the respect for national traditions. Except for the humanist inheritance of Europe, no other particular is explicitly mentioned in the Lisbon Treaty. To conclude, no exact cultural limitations are set for the European identity are set. In other words, EU does not, at least normatively and formally, define itself exclusively in a cultural or religious way. Christianity, for example, unlike in the project for European constitution, is not mentioned explicitly in the Lisbon Treaty. The difficulty of defining what European is, is recognized by the EC in a report from 1992: 8

The term ‘European’ has not been officially defined. It combines geographical, historical and cultural elements which all contribute to the European identity. The shared experience of proximity, ideas, values and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation. The Commission believes that it is neither possible nor opportune to establish now the frontiers of the European Union, whose contours will be shaped over many years to come. 9

Moreover, as Chris Shore observes in Inventing The People’s Europe, the debate for the cultural boundaries of Europe is connected to further problems such as the enlargement of the EU and the possible membership of Turkey, for example. It is no doubt, however, that de facto, Europe is a space of cultural diversity bearing in mind that there are Muslim communities as well as countries of different Christian traditions, both Catholic, East Orthodox and Protestant. These examples illustrate the thesis of Anthony Smith that Europe is a family of cultures instead of a unified culture. 9

An ever closer union or a prototypical model for a common European identity formation

We managed to define 3 levels of bonds or ties that the Treaties set: two horizontal and one vertical types of bonds. We defined that the Lisbon Treaty defines 5 types of horizontal bonds between EU citizens—a cultural bond, a civil and political bond, a social bond, an economic or competition. The normative constraints in the Preamble support the idea that Europe, as a whole, lacks a common culture with deeper cultural and emotional significance, common political mythology and symbols. Moreover, the Preamble rather justifies the diversity and supports Anthony Smith’s view on Europe as a family of cultures [Smith, Anthony, 2008] that share however some common values.

In conclusion, from the normative-political perspective that we chose to be a starting point of our analysis, we could note that the social and the cultural bonds between the EU citizens are particularly weaker and not fully developed in contrast with the economic dimension of free movement of persons. If an ever closer union should be seen in the future, further measures need to be taken, which requires a more specific approach as the domain of culture differs from the economic understanding of Europe as a common market. Culture and cultural diversity, in particular, make the European project unfinished one. The formation of a common European identity that could underpin the political unification in terms of common values and symbols is a challenge from a theoretical as well as practical perspective. One of the purposes of this paper besides outlining a normative model for European identity formation was also to give further recommendations what measures should be adopted for fostering such an identity. If we stick to the normative spirit of this paper, we have to say that the future of the EU as well as its role as a global actor on the international scene requires it to build an identity for its citizens so that they could identify themselves with the EU as a political community that defends their interest. This, on the other hand, requires an EU citizenship model which binds EU citizens together irrespective of the numerous national, regional and local cultural differences. Therefore, further research is needed what elements could exactly strengthen a bond between the EU citizens that is both cultural but at the same time civic and political: a shared sense of cultural identity that is strong enough to make them support and accept as legitimate the European political construction.

October 2016

Notes