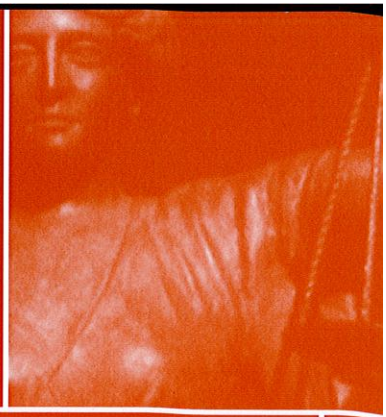
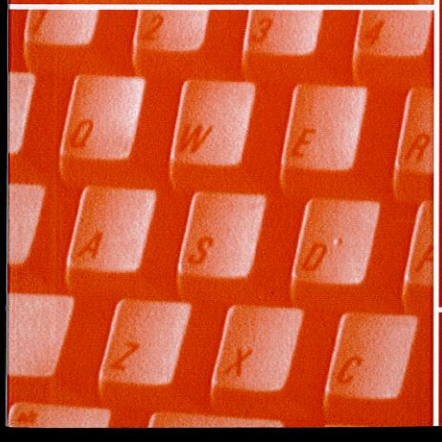


Australian Journal of Professional and Applied Ethics



Including Selected Papers from the 2010 Conference of the Australian Association for Professional and Applied Ethics

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Contents

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Correction:

In Vol. 11 of the journal, we incorrectly printed the name of an author.

Please note that the author of *Can Morality Be Codified?* should have been printed as **Peter Shiu-Hwa Tsu**.

We apologise to the author for the error.

The Journal

The Australian Journal of Professional and Applied Ethics is the official journal of the Australian Association for Professional and Applied Ethics.

It is published twice a year by the Centre for Applied Philosophy and Public Ethics, Charles Sturt University.

the name of an author.

Codified? should have been printed as

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Editorial Board

Introduction to Selected Papers from the 17th Annual Conference of the Australian Association for Professional and Applied Ethics, June 2010

Betty B. Chaar
University of Sydney

This volume of the AJPAE presents some of the many valuable, thought provoking papers presented at the 17th Annual Conference for the Australian Association for Professional and Applied Ethics (AAPAE), hosted by the Faculty of Pharmacy, the University of Sydney in June 2010. The theme of the conference was *Ethics in the Professional Life: Past, Present and Future,* inspired by the ever-increasing reflection on professional ethics in all walks of life.

The organising committee, comprised of Dr Betty Chaar (University of Sydney), Professor Ian Kerridge (VELiM-University of Sydney), Professor Belinda Bennett (University of Sydney), Professor Stephen Cohen (University of New South Wales), Professor Tom Campbell (Charles Sturt University) and Mr Jolyon Sykes (University of Canberra), was a vibrant group with wide ranging interests. Each had an invaluable role in devising a modernised, creative conference program, highly appreciated by all attendees. Professor Kerridge was particularly instrumental in facilitating the involvement of Professor Peter Singer, who attracted many delegates from around Australia and across the globe. Another global figure to grace the conference was our guest Professor Geoff Moore from Durham University (UK) who emphasised the role of virtue ethics in business. In fact, the conference attracted an international congregation of many persuasions.

The opening Keynote address was delivered by Professor Ron McCallum (recently honoured with the Senior Australian of the Year 2011 award) to a captivated audience. Professor Peter Singer talked to the congregation about his 'Shallow Ponds' theory on global poverty. Dr Simon Longstaff and Professor Simon Chapman debated the 'Nanny State' and aspects of autonomy, whilst Professor Gael McDonald (Deakin University) highlighted many issues relating to the importance of teaching ethics in business schools, and Dr Alan Saunders gave noteworthy insight into the ethics of journalism.

Over the three day conference 58 papers were presented, 5 innovative workshops conducted, two Author's sessions accomplished and 13 invited guest speakers presented Keynote addresses. The papers covered a vast scope of professional ethics from a variety of disciplines, ranging from business ethics, to bioethics, public health ethics and research ethics; including police ethics, teaching ethics, and media ethics. Some papers, such as Segon and Booth's paper describing management and bribery, and Bowden's paper on whistle blowing, attracted considerable media attention during conference proceedings. The inaugural Pharmacy Law and Ethics workshop was also covered extensively in the professional and pharmaceutical industry media. This clearly reflects the ever-heightening public interest in professional ethics, and the multitude of contemporary issues people wish to scrutinize and debate, to better comprehend.

The workshops were particularly well attended, as were the Authors' session where new publications were shared and critiqued. In workshops intense discussion about such issues as new methods of teaching professional ethics, human research ethics and animal ethics took place. An intriguing workshop, sponsored by the Department of Innovation, Industry, Science and Research (Commonwealth Government of Australia) and led by Dr Craig McCormick, delved into the complex issues of ethical and legal challenges associated with emerging technologies such as Nanotechnology, Biotechnology and Synthetic Biology. With the highly valued contribution of Professor Bennett and Professor Susan Dodds, the workshop was an exciting, dynamic addition to our conference program.

The selected papers published in this special edition of the AJPAE, were therefore selected from a very broad spectrum of interests in professional ethics. Bowden discusses whistle blowing, Breakey reflects on adaptive preferences of the human condition and Ardagh attempts to unravel ethical rationales for relief of poverty. Forge's pondering the justification for weapons research is particularly interesting in light of recent calamities in Japan and the global concern about nuclear plants. Organisational and ethical theories pertaining to the corporate world of business enterprises are discussed from various perspectives by Grant & McGhee, Savur, Thomson, Segon and Booth. Evolution of codes of ethics and the teaching of business ethics are interesting, core topics presented by Griggs and Plummer *et al.*

I hope you enjoy reading this timely edition of the AJPAE, which is the result of the combined efforts of the AAPAE and CAPPE (Charles Sturt University) and continue to support the Journal with your valued readership in the future.

On the Justification of W

John Forge
University of Sydney

1. Introduction

What is distinctive about weapons *resea* instance, from weapons manufacture, is th create new and improved *kinds* or *types* involved in making weapons work and in u and control systems, delivery systems, pla forth.[2] I believe that engaging in this e provides the means to harm (or rather the to the same thing). If that is true, and I will is, the next question is what will count as a has received much discussion at all in appl It is important because if justifications a widespread and highly dangerous activity that WR is as dangerous as it is widespre produced the means to end much if not all

I am not certain why the topic has b been assimilated to, or lost in, discussion interest in Just War Theory (hereafter JW 1960s and especially since the publicat However, while providing the means for would seem to be a good candidate for ju of justification for WR to show that a justification of WR cannot be assimilated to this, however, I suspect that most wo then one is (therefore) justified in desig don't believe this inference is a valid researcher as an individual moral agent, weapons research, and war industry in institutionalised at least since the emerg discussion that follows may seem to otherwise, and I note that there is a institutional or political level – namely the present discussion could be situated that what follows is simply utopian or in

So my aim here is to introduce the its (perhaps unexpected) complexities. show that WR does require justific justification, one that appeals to cert weapons, ones that are defensive or

ance. Paris: OECD.
ance. Paris: OECD.
The Blackwell Dictionary of Western Philosophy.
riber/tocnode?id=g9781405106795_chunk_g9781
Society. *Harvard Business Review*, December,
tions. Edited by R.H. Campbell and A.S. Skinner.
ory. *Corporate Governance*, 5(1), 3-10.

Normative Conceptions of European Identity – A Synthetic Approach[1]

Pablo C Jiménez Lobeira
ANU Centre for European Studies, Centre for Applied Philosophy & Public Ethics

1. Introduction

Political integration has been part of the European project both in its initial, 'community' phase (Weiler, 1999, p. 4) and after the moment when it became a union (in 1992, with the Maachstricht *Treaty on European Union*). 'For four decades' – Weiler points out referring to the period going roughly from the 50s to the 90s –

> European politicians were spoiled by a political class ... mostly supportive and by a general population ... conveniently indifferent. That "moment" has had a transformative impact: public opinion in ... member states is no longer willing to accept the orthodoxies of European integration, in particular the seemingly overriding political imperative which demanded acceptance, come what may, of the dynamics of Union evolution (Weiler, 1999, p. 4).

'Output legitimacy' – the permissive consensus citizens grant to a government that is 'delivering', even if they do not participate in setting the polity's goals – could not sustain the political unification process indefinitely. Romano Prodi, a former Italian Prime Minister and President of the European Commission, spoke of a search for Europe's soul (Prodi, 2000, pp. 40-49). Such 'soul' – the lacking ingredient to make political integration possible – has been sought after in the abundant (and growing) academic literature about European identity (EI). The concept has long been important for politicians too.

The *Declaration on European Identity* (1973), for example, sought to better define the relations of the members (of the 'European Communities')[2] with 'other countries', and on the world stage. Even though written nearly forty years ago, the document shows traits that continued to appear whenever the topic of identity was addressed. France, Germany, Belgium, Luxembourg, Netherlands, Italy, Denmark, Ireland, UK (known collectively as The Nine) had overcome 'their past enmities' and decided that unity was 'a basic European necessity' to ensure 'the survival of the civilization' they had 'in common' (*Declaration on European Identity*, 1973, p. 1). They wished to ensure respect for the 'cherished values' of their legal, political and moral order while preserving 'the rich variety of their national cultures'. Fundamental elements of EI ('shared attitudes of life') were: the principles of representative democracy, the rule of law, social justice ('the ultimate goal of economic progress') and respect for human rights. Those principles corresponded to 'the deepest aspirations' of Europeans who should participate in their realisation especially 'through their elected representatives'.

The Nine reaffirmed their 'political will' to succeed in the construction of a united Europe and to transform their communities 'into a European Union' (*Declaration on European Identity*, 1973, p. 2). EI's originality and dynamism came from the diversity of cultures

> within the framework of a common European civilization, the attachment to common values and principles, the increasing convergence of attitudes to life, the awareness of

having specific interests in common and the determination to take part in the construction of a United Europe (*Declaration on European Identity*, 1973, p. 3).

In the international scene 'a very small number' of increasingly powerful countries motivated 'Europe' to unite and speak increasingly 'with one voice' to make itself heard and play its proper role in the world (*Declaration on European Identity*, 1973, p. 6). The Nine's foreign policy would ensure that international relations had a more just basis in accordance with 'the purposes and principles of the United Nations Charter' (p. 9).

But what does EI mean and why, if at all, is it relevant for the European Union (EU) today?

2. Theoretical perspectives on EI

According to Aristotle (2009, pp. 84-87) polity is a specific 'constitution' (regime or *politeia)* of a 'city' (or *polis):* a ('political') community composed of 'citizens' (its members or *politai).* Taking these categories we could think of the EU as the *polis*, the body of legal treaties as its *politeia*, and the EU citizens as the *politai*. An 'arrangement of the city' only makes sense provided there is a city to arrange. And there is no city without 'citizens'. But even having them, the polity will not last unless certain cohesion among those citizens exists.[3] Yet, where might such cohesion come from given that EU citizens can be very diverse from each other? They speak different languages, like different food, hold different traditions, have different historical backgrounds, profess different religions and occupy themselves in different economic activities. And diversity of itself does not produce unity. So what kind of bond ought to unite politically very diverse Europeans? In this section of the paper I analyse several normative responses – culture, law, prosperity, international image, cosmopolitanism – taken from a work by Walkenhorst (2009).[4] His is not the only effort to classify convincingly the immense amount of literature referring to EI.[5] But his overview is useful as a departure point to illustrate the main normative conceptions about EI. For reasons of space I will present only one author representative of each position.[6]

2.1 Cultural EI

Through a historical survey, Ratzinger (2007) attempts 'to discover the deeper, more interior identity of Europe' (p. 20). He explains Europe based on its Christian traits in East (Orthodox) and West, North (Protestant) and South (Catholic), from the Hellenistic city-states to Rome, from Rome to Charlemagne, from Byzantium to Moscow (pp. 11-22), from the Enlightenment to post-modernity. His analysis shows that Europe cannot be conceived in geographical terms only.

Ratzinger (2007) perceives a deep crisis in today's Europe closely connected with identity. With the triumph of the post-European technological-secular world, with the globalisation of its way of life and its manner of thinking, he notes, 'one gets the impression ... that the very world of European values – the things upon which Europe bases its identity, its culture and its faith – has arrived at its end and has actually already left the scene ...' (pp. 11-22). This invites a comparison with the decline of the Roman Empire: it was still functioning as a great historical context, but no longer had any vital energy of its own (p. 24). He wonders what can promise 'human dignity and a life in conformity with it', a European identity 'that has a future and to which we can commit ourselves with all our might' (p. 26). The first of 'the foundational moral elements' that in his opinion should not be missing from EI is the unconditional character of human dignity

and human rights: values which are prior to any
are not created by the legislator but exist in th
belonging to a higher order: they ultimately deri
image – and are therefore inviolable.[7] The fact th
is the real guarantee of the human person's libert
that the human dignity, equality, solidarity, de
European treaties imply an image of man, a mor
in the Judeo-Christian tradition. 'These constituti
identity of Europe – 'along with their concrete
the future European Constitution' (pp. 30-31).

A second element of EI according to Ratzi
family. Monogamous marriage, 'modelled in the
structure of the relation between man and woma
of a larger community. Marriage and family, f
denial', gave Europe (in the East and in the W
humanity' (2007, p. 31). Europe, Ratzinger (2
fundamental cell of its social edifice were to disa
(p. 32).

The third foundational moral element of EI
sacred to someone else, especially God, even
'Where this respect is violated', he observes, 'sc
32-33).[8] He hoped for the Charter of Fundamer
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and human rights: values which are prior to any governmental jurisdiction. These values are not created by the legislator but exist in their own right and must be respected as belonging to a higher order: they ultimately derive from God – who has made man in his image – and are therefore inviolable.[7] The fact that they cannot be manipulated by anyone is the real guarantee of the human person's liberty and greatness. Ratzinger (2007) claims that the human dignity, equality, solidarity, democracy and rule of law present in the European treaties imply an image of man, a moral option, and a concept of law grounded in the Judeo-Christian tradition. 'These constitutive elements' – fundamental values in the identity of Europe – 'along with their concrete consequences, ought to be guaranteed in the future European Constitution' (pp. 30-31).

A second element of EI according to Ratzinger (2007) should be marriage and the family. Monogamous marriage, 'modelled in the basis of biblical faith', is a fundamental structure of the relation between man and woman. It is also the basic cell in the formation of a larger community. Marriage and family, founded on 'patterns of fidelity and self-denial', gave Europe (in the East and in the West) 'its particular face and its particular humanity' (2007, p. 31). Europe, Ratzinger (2007) says, 'would not be Europe if this fundamental cell of its social edifice were to disappear or if its nature were to be changed' (p. 32).

The third foundational moral element of EI for Ratzinger (2007) is respect for what is sacred to someone else, especially God, even from those who do not believe in him: 'Where this respect is violated', he observes, 'something essential in a society is lost' (pp. 32-33).[8] He hoped for the Charter of Fundamental Rights of the EU to be 'a first step, a sign that Europe' was 'consciously looking again for its soul'. He also wished that Christians saw themselves as a creative minority striving to contribute to Europe's recovery of 'the best of its heritage' and thus 'to the service of all mankind' (p. 34).

For Ratzinger 'culture' has as some of its components history and religion. He is of course worried that Christianity in Europe has suffered in relevance and in a way such that Christians have become a minority. But Christianity, after all, did not start in Europe. And it has today its most significant growth in Africa and Asia (*New Edition of the Statistical Yearbook of the Church*, 2010). What appears to be Ratzinger's main concern is that in denying its 'Christian heritage' Europe will not only be losing part of its history but also an essential component of its identity, of what makes Europeans 'European'.

Positions like this are sometimes labelled as 'ethnic'[9] and become thus associated with xenophobic or racist attitudes of the kind that could motivate 'aggressive nationalism and politics of exclusion and annihilation', bring back to the scene 'the worst parts of European heritage' (meaning history), and underestimate or 'willingly suppress the insight' about 'the degree to which Europe is multireligious and multicultural' (Friese & Wagner, 2002, p. 352). This does not appear to be so in the case of Ratzinger's 'cultural and historical' position (2007, p. 11). An elemental review of his publications shows quite a different picture (1985, 1997, 2004, 2006a, 2006b).

2.2 Legal EI

In what could be called a 'manifesto on EI' written on 15 February, 2003 from 'the core of Europe' and with the assent of Jacques Derrida, Habermas tried to depict those aspects that unite Europeans and differentiate them from 'others'. For Habermas that date would be seen in history as the birth of the European public sphere (2003, p. 291). At the international level and in the framework of the UN, Europe had to 'throw its weight on the scale to counterbalance the hegemonic unilateralism of the United States' (2003, p. 293). He hinted at 'a feeling of common political belonging', the subjective part of EI. The European population must for him, add to their national identities – which engender an already abstract 'civic solidarity' – a European dimension.

EI in this context was 'the consciousness of a shared political fate and the prospect of a common future' and must make citizens of one (European) nation regard the citizens of another (European) nation 'as fundamentally "one of us"' (2003, p. 293). EI could be created by participation of the citizens in the public sphere. The Iraq War was a great opportunity to generate EI, given 'the difficulties of a situation into which we Europeans' had been 'cast'. He described 'Europe', with which citizens were invited to identify, as 'peaceful, cooperative ... open toward other cultures and capable of dialogue ...'; a form of 'governance beyond the nation-state' that had overcome the problems of nationalism and solved the injustices of capitalism through the social welfare system. The challenge for Europe was now to 'defend and promote a cosmopolitan order on the basis of international law against competing visions' (2003, pp. 293-294).

What was distinctive about Europe? Some of its originally characteristic traits have been so successful that other regions have adopted them, basically all of the West: 'Christianity and capitalism, natural science and technology, Roman law and the Code Napoleon, the bourgeois-urban form of life, democracy and human rights, secularisation of the state and society ...' (Habermas-Derrida, 2003, p. 294). The uniqueness of Europe lay in the overcoming of the destructive power of nationalism; an 'incomparably' rich cultural diversity; the acquired knowledge on how differences can be communicated, contradictions institutionalised, tensions stabilised, 'otherness' recognised; the pacification of class conflict within the welfare state; and the self-limitation of state sovereignty within the framework of the EU. It also lay in features of 'common political mentality' which included: suspicion when the border between politics and religion is transgressed, a 'relatively large amount of trust' in the organisational and steering capacities of the state, scepticism towards the achievements of the markets, moderated optimism regarding technical progress, keen sense of the 'dialectic of enlightenment', a preference for the welfare state's guarantees of social security and for regulations on the basis of solidarity, the desire for a multilateral and legally regulated international order, and the hope for an effective global domestic policy within the framework of a reformed United Nations (Habermas-Derrida, 2003, pp. 294-295).

Habermas (2001) sees EI as an artificial construction that must happen within an EU-wide public sphere embedded 'in a political culture shared by all'. The new awareness of what Europeans have in common is expressed 'admirably' in the EU Charter of Basic Rights. The Charter articulates 'a social vision of the European project' and shows what links Europeans together from the normative point of view (p. 21). For him, the emergence of national consciousness involved a 'painful process of abstraction' from local and dynastic identities to national and democratic ones (p. 16). 'Why', he asks, 'should the generation of a highly artificial kind' of solidarity 'among strangers' not go

beyond the national level, to a European level' Europeans can decide which historical experien

Habermas and Derrida propose some 'canc (2003). The first one – though for them nc European preference for politics over market a of the state and its capacity to correct market fa Europe' serves an ideological competition that capitalist modernisation to an ongoing politic individualistic ethics of solidarity, with the heightened sensitivity to personal and boc totalitarianism. Sixth, the domestication of s sovereignty – both at the national and internatic Europeans of a reflexive distance from themsel colonising and bringing about modernisation to

Habermas's notion of EI – from the subje common political belonging and a regard fo community ('one of us'). He speaks of 'an particular ethos': in other words, the attract 2001). EI engenders an abstract, civic solidarit objective point of view, the EU asserts its colonially reflective, market-controlling, religi 'the Other': the United States of America (US/ with the participation of all citizens in the pub that they choose as 'common memory', and fin

2.3 Economic EI

For Anthony Giddens (2007) the core of E be a feeling of belonging to a community (p. 2 as a community that is cosmopolitan and ope certain values and a purpose or goal. Intra-Eu ways to promote this identity. The European co say which territories belong to Europe and wh include some and exclude others, which does r cultivated with all neighbours. He points out, f membership for countries in North America links and backgrounds. In the same way, nob belong to the EU without question about their l thinking of new possible members of the EU, th practicality and economic costs (pp. 275-281).

He sees the rejection of the Constitutional T as mainly due to economic causes: the EU is r when compared to China or India) and there is strive for the combination of economic growth example of the Nordic countries (Giddens, 200 EU as an object of identification is the achie prosperity) for its citizens (p. 288). Other featu form of polity with trans-national governance

beyond the national level, to a European level? Through discussion in the public sphere, Europeans can decide which historical experiences they want included in their identity.

Habermas and Derrida propose some 'candidates' for this historical grounding of EI (2003). The first one – though for them non-appropriate – is religion. Second, the European preference for politics over market and thence their trust in the civilising power of the state and its capacity to correct market failures. Third, the party system that 'only in Europe' serves an ideological competition that subjects 'the socio-pathological results of capitalist modernisation to an ongoing political evaluation' (p. 296). Fourth, an anti-individualistic ethics of solidarity, with the goal of equal provision for all. Fifth, a heightened sensitivity to personal and bodily integrity, after the experiences of totalitarianism. Sixth, the domestication of state power through mutual limitation of sovereignty – both at the national and international level. And seventh, the assumption by Europeans of a reflexive distance from themselves to account for their former violence in colonising and bringing about modernisation to other parts of the world (p. 297).

Habermas's notion of EI – from the subjective point of view – means a feeling of common political belonging and a regard for the other citizens as part of the same community ('one of us'). He speaks of 'an interest in and affective attachment to a particular ethos': in other words, the attraction of a specific way of life (Habermas, 2001). EI engenders an abstract, civic solidarity among strangers, the citizens. From the objective point of view, the EU asserts itself as peace-seeking, power-moderated, colonially reflective, market-controlling, religion-suspecting, and so on, in contrast with 'the Other': the United States of America (USA). Since EI is an artefact, it must be built with the participation of all citizens in the public sphere, contain those historical aspects that they choose as 'common memory', and find expression in the law.

2.3 Economic EI

For Anthony Giddens (2007) the core of EI is the 'European Social Model'. EI must be a feeling of belonging to a community (p. 277). On the objective side, he sees the EU as a community that is cosmopolitan and open. The members of this community share certain values and a purpose or goal. Intra-European education and travel are important ways to promote this identity. The European community must have clear borders, ways to say which territories belong to Europe and which ones do not. There must be criteria to include some and exclude others, which does not mean that good relations should not be cultivated with all neighbours. He points out, for instance, that nobody thinks of possible membership for countries in North America even though they possess clear European links and backgrounds. In the same way, nobody doubts that Norway or Iceland could belong to the EU without question about their location in Europe or not. When it comes to thinking of new possible members of the EU, though, Giddens (2007) relies on reasons of practicality and economic costs (pp. 275-281).

He sees the rejection of the Constitutional Treaty by the Dutch and the French in 2005 as mainly due to economic causes: the EU is not growing as fast as the USA (even less when compared to China or India) and there is a need for a European debate in order to strive for the combination of economic growth with high levels of social welfare after the example of the Nordic countries (Giddens, 2007, p. 294). The source of legitimacy for the EU as an object of identification is the achievement of the 'social model' (economic prosperity) for its citizens (p. 288). Other features of EI are the facts that the EU is a new form of polity with trans-national governance (p. 284); that it is not like the USA –

Europeanness is not 'Americanness' (p. 276); and that the EU is not a 'post-national' polity, as Habermas would have it, but an association or community of semi-sovereign nations (p. 272). Giddens (2007) coincides with Weiler in considering the EU a construction that promotes virtues like tolerance and humanity (p. 269). He sees EI as a product of the Cold War in contrast with, on the one hand, American liberalism, and on the other, Soviet communism (p. 255). For him, the real problem with EI arose after 1989, with the expansion of the European Community eastward.

In Giddens's eyes, the EU is a powerful source of democratising influence, that promotes the rule of law and market economy; a protection for its citizens in the face of global threats (Giddens, 2007, p. 258). It is a way for collective (European) defence and reaction to conflicts elsewhere in the world, a leader in climate change policy, and a more egalitarian balance of power between the member states (Giddens, 2007, p. 258). Purposes for the existence of the EU are: the (European) social model, and the conservation within, and promotion without, of a zone of peace and European values such as democracy, unity in diversity and solidarity (p. 264). For him subjective EI equates – as in the case of other authors – to a feeling of belonging. The object of EI is strongly centred on what he understands by the 'European social model', and cohesion is ultimately based on economic prosperity.

2.4 International EI

It may be difficult to find what a Czech and a Spaniard have in common. But it might be less difficult to say why the polity of sorts to which they both belong is unlike the Republic of Zambia, the Central American Integration Region or the Russian Federation. Ian Manners (2008) has coined a term to describe an (objective) identity for the European polity: the EU is 'a normative power' which promotes a series of substantive normative principles such as: 'peace, freedom, democracy, human rights, rule of law, equality, social solidarity, sustainable development and good governance' (Manners, 2008, p. 66). The way in which the EU promotes those principles is by being 'a living example' (in virtue ethics terms), 'reasonable' (in deontological terms), or by 'doing less harm' (in consequentialist terms) (p. 66).

Manners (2008) depicts a polity that is attractive as an object of identification. Arguably, that is how Europeans would like to see themselves and be seen by others on the world stage. The EU as a normative power, unlike 'the Axis of Ego' (United States, Russia and China), possesses the ability to establish normative principles and apply them to different realities (p. 80). In his view, the EU represents in foreign policy a step beyond the sole play of national or regional interests and is anchored instead in ethics and universally accepted values and principles.

An identity based on the international image of the EU is certainly attractive as an impulse for unity. The principles Manners appeals to are ideals that few citizens and countries would oppose. It is in the details – cynics would point out – that the problems begin. The EU had a dubious role during the nineties in the Balkan wars. The 2003 Iraq war itself, taken sometimes as the icon distinguishing the USA and the EU, is difficult to understand under a simplistic view. Not all member states of the EU disagreed with the USA: several of them actually took part in the invasion (UK, Spain, Poland, Denmark, and others). The EU's 'soft power', represented by French President Sarkozy, achieved a modest and questionable agreement between Russia and Georgia in the aftermath of their war in 2008. Even after the creation of the position of 'High Representative of the

European Union for Foreign Affairs and Securi
policy remains difficult and slow.

To be fair, Manners does not speak direct
depiction of the EU's international image can –
sense of belonging and cohesion among EU citiz

2.5 Cosmopolitan EI

Gerard Delanty (1995, 2002) has long advoc
identity of Europe'. He defines EI against either
as a 'cosmopolitan identity based on a cultural l
a supranational identity (Delanty, 2005, p. 405).
EI construction) should not be conceived of as a
which produces a supranational identity to the d
a way to transform statehood in Europe. Europea
but its expression (Delanty, 2005, p. 408). EI
construct or a legal-constitutional framework.
existence', though very weak in comparison wit

The nature of EI, argues Delanty (2005), 'is
be a foundation for a cultural identity in the c
Culture is for him 'a dynamic and creative pro
argues that 'there is little evidence that peop
principles' and that Habermas's vision of a p
European' (p. 412). In his view, cosmopolit
contradictory, ambivalent and paradoxical projec
priority to give way to a 'new notion of integrati
outside Europe. Cosmopolitanism is about 'the
subjectivities in the context of the encounter of
417). Europeanisation has more in common wit
specific as a European People, a European socie
heritage' (p. 417).[10]

Delanty's (2005) cosmopolitan perspective '
dimension of societal encounters' (p. 417).
convergence 'but it is also consistent with plural
entails differentiation' (pp. 417-418). Yet grea
more overall cohesion, and for this reason 'Euro
418). His idea of EI is that of a 'self-understandi
fate' or in the state or territory, but 'in a mode
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419). Because Europe lacks its 'People', for Del
which can be better described in terms of
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of diversity'.

European Union for Foreign Affairs and Security Policy', coordinated action in foreign policy remains difficult and slow.

To be fair, Manners does not speak directly of EI. Yet, it is easy to see how his depiction of the EU's international image can – and in fact does – give rise to a common sense of belonging and cohesion among EU citizens.

2.5 Cosmopolitan EI

Gerard Delanty (1995, 2002) has long advocated for what he calls the 'cosmopolitan identity of Europe'. He defines EI against either a 'national Europe' or a 'global Europe', as a 'cosmopolitan identity based on a cultural logic of self-transformation' rather than as a supranational identity (Delanty, 2005, p. 405). For him, Europeanisation (the process of EI construction) should not be conceived of as an exclusively institutional EU-led project, which produces a supranational identity to the detriment of national identity, but rather as a way to transform statehood in Europe. Europeanisation is not a response to globalisation but its expression (Delanty, 2005, p. 408). EI is a social reality, not an institutional construct or a legal-constitutional framework. Europe actually does have a 'cultural existence', though very weak in comparison with national identities.

The nature of EI, argues Delanty (2005), 'is one that in embracing diversity ... cannot be a foundation for a cultural identity in the conventional sense of the term' (p. 409). Culture is for him 'a dynamic and creative process of imaginary signification'. Delanty argues that 'there is little evidence that people identify strongly with constitutional principles' and that Habermas's vision of a post-national Europe is 'limited and too European' (p. 412). In his view, cosmopolitanism is not clearly defined, but is a contradictory, ambivalent and paradoxical project. For cosmopolitanism, democracy loses priority to give way to a 'new notion of integration' within the European nations and also outside Europe. Cosmopolitanism is about 'the transformation of cultural and political subjectivities in the context of the encounter of the local or national with the global' (p. 417). Europeanisation has more in common with cosmopolitanism than with 'something specific as a European People, a European society, a European Superstate, or a European heritage' (p. 417).[10]

Delanty's (2005) cosmopolitan perspective 'entails a recognition of the transformative dimension of societal encounters' (p. 417). Europeanisation is producing greater convergence 'but it is also consistent with plurality', because 'the integration of societies entails differentiation' (pp. 417-418). Yet greater convergence does not translate into more overall cohesion, and for this reason 'Europeanisation is difficult to democratize' (p. 418). His idea of EI is that of a 'self-understanding' that is not rooted 'in a community of fate' or in the state or territory, but 'in a mode of recognition and discursive rationality that is decentred' and 'not uniquely European' (p. 418). The republican tradition based on the idea of civil society and democratic governance is 'limited when it comes to a movement such as Europeanization which is not based on a concrete people as such' (p. 419). Because Europe lacks its 'People', for Delanty democratisation is not the key to EI, which can be better described in terms of 'self-transformation rather than self-governance'. In his view, cosmopolitanism would be more central to EI than republicanism, which as a political philosophy 'assumes a certain unity to political community', whereas cosmopolitanism operates under the assumption of 'unity in terms of diversity'.

That his proposal of EI advocates an identity, which does not identify, which is not European (but cosmopolitan) and which prescinds from democracy, does little for its own cause. While appealing as an ideal of social coexistence or even as a description of how globalisation operates in local contexts, it is difficult to envisage Delanty's conception of EI as a source of cohesion for the political community.

3. Towards a notion of EI

From the preceding analysis a few elements emerge which could get us closer to a synthetic notion of EI. It is clear, first of all, that EI can be approached from the perspective of the subject who experiences or possesses it, or from that of the object of that experience. *Subjective* EI is usually called 'identification', 'commonality', 'Europeanness', 'a feeling of belonging'. The 'subject' is the collectivity of EU citizens. The subjective side of EI is therefore identification of the Europeans with the EU, not at an individual level, but rather at the collective level. Therefore, subjective identity refers to a common denominator arguably present in all members of the collectivity, not the identity (or identities) of individuals. This is the subjective aspect of EI.

The *objective* aspect, the centre of identification, is the European polity. It has to do with what the EU is, or what image it projects, or what it is not. This aspect of EI often appears in discussions about the future of the European project or its past, or its achievements, or the kind of polity the EU is, or its place on the world stage. EI denotes identification of subjects ('Europeans') with an object ('Europe'). But what kind of 'object'? Is it 'Europe' considered as society, culture, economy, art, landscape or polity? The list can be long. In this paper, the concept of EI is approached from a political perspective: culture, law, economic prosperity, international image, or cosmopolitanism as potential groundings for the cohesion of the EU as a political community.

Another relevant element from the analysis is that, however 'light', inclusive and 'politically correct' it is, the definition of a 'European' identity always leaves some in and others out. Identity implies delimitation, definition, without necessarily implying discrimination or oppression of anyone not included in the concept. It is perfectly possible for Europeans to establish a very close and cordial relationship with non-Europeans.[11] But that does not mean that everyone can be a 'European' – this would render the term altogether meaningless. There is a defining and intrinsic characteristic of EI, a limit that any identity implies. Only taking this into account can Europeans say what they are as a community, and therefore who is part of it or not. Definition does not have to mean essentialism either: identities can and do change. This takes me to the next distinction.

EI has two chronological aspects: the past and the future. The part of EI that looks back is Europe's collective memory, its history and heritage. The part that looks forward is the project, its future. Some argue in favour of one view to the detriment of the other. But there is no reason why *both* could not be parts of EI. History can provide a context without determining the future.

4. What soul for Europe?

I would like to submit therefore that EI has several elements – not necessarily in conflict with each other – if analysed from the perspectives suggested in the preceding section. Attending to its history, there is no doubt that both the biblical tradition and the Enlightenment have a place in it and form part of its *culture*. As a *political project* EI has a strong republican orientation which competes against the 'market-only, no-polity'

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when referring to one of the traits of EI, its Chr
Preamble to the Constitutional Treaty:

> True tolerance – as that discipline of the
> coerce the other – can only exist against
> And there is a contempt for the other,
> attitude'. How can I respect the identity of
> identity? And why would a Muslim or a Jev
> a society which excludes from its identi
> religious identity? (p. 8).

5. Conclusion

I would like to conclude with three ideas. F
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of the international image in order to define EI

position, and still today continues to push in the direction of making the EU a democratic, representative, legitimate and participative polity. Looking *inwards*, the EU polity may show that EI is strongly correlated with economic prosperity for all. Looking *outwards*, EI has to do with how Europeans would like to be perceived abroad. The EU's source of cohesiveness, its identity, could reside in the conception of a polity grounded on the inspiration of the rich (spiritual and ethical) values of the biblical tradition and the Enlightenment, built with the participation of civil society (deliberation and democracy), maintaining a mixture of justice and 'social-market economy', and playing a pacifying and civilising role on the international stage.

The final element, cosmopolitanism, is also part of EI. But none of the thinkers analysed here is suggesting in their proposals for EI, that the EU should not be open and cosmopolitan to a certain extent. Setting the contours of a polity in order to define it is actually not a hindrance for constructive, friendly and peaceful engagement with non-European citizens or countries: rather, it is a pre-requisite. Therefore, cosmopolitanism has to be nuanced. The EU is not an equivalent of Planet Earth. Its identity has to be much more modest and 'particular'. An exercise of definition that blasts all the boundaries cannot be a 'definition' (etymologically 'a setting of limits'). EI has given elements that should not be ignored. They allow the EU to set terms of encounter and integration for its new member states and immigrants. At the same time, EI will be as dynamic and changing as the citizens of Europe make it.[12] Stating clearly what defines Europeans today as a political community does not mean that such a configuration cannot change in the future. However, ignoring fundamental traits of their identity will help no one – Europeans themselves, immigrants, non-Europeans – as Weiler (2006) points out when referring to one of the traits of EI, its Christian heritage, during the debate about the Preamble to the Constitutional Treaty:

> True tolerance – as that discipline of the soul which resists the tendency to coerce the other – can only exist against a basic affirmation of certain truths. And there is a contempt for the other, not respect, in an 'everything goes attitude'. How can I respect the identity of the other if I do not respect my own identity? And why would a Muslim or a Jew, as religious minorities, feel safe in a society which excludes from its identitarian icons recognition of its very religious identity? (p. 8).

5. Conclusion

I would like to conclude with three ideas. First, I have taken EI to mean the source of cohesion for the EU as a political community.[13] There is debate as to *what* the source of political cohesion can or should be. But the *need* for cohesion is self-evident.[14]

Second, the concept of EI seems to have a place for several of the positions analysed. I have introduced those positions and hinted at the idea that they might be stressing different aspects of a wider synthetic notion. Elsewhere I have developed this idea.[15] The 'models' or 'positions' on EI might be rather 'aspects' of it – at least to a certain extent. The cultural aspect leaves the question of how to organise the polity open, and therefore does not clash with the legal aspect, as long as the cultural aspect is not completely ignored or denied. What the international aspect sells to the world is its culture, its legal organisation and its combination of economic progress with justice. The deliberative aspect cannot help relying on common memories, a shared 'political culture' and mention of the international image in order to define EI.

Third, and last, the concept of EI is both definable and evolving, given and dynamic. After all, the collective EU – the *polis* – is composed of its citizens – the *politai* – who themselves have a given past, preferences and allegiances, but also an open future which they can shape in various ways. This dynamism is rightly stressed in the cosmopolitan aspect of EI as long as it does not do away with the other aspects (cultural, legal, international and economic). The 'right balance' for their interplay could be developed from Beuchot's concept of 'analogical hermeneutics' (2004, pp. 33-44).[16] All of these elements are part of a synthetic notion of EI, or the normative account of the sources of cohesion and unity for the European political community.

Notes

1 An earlier version of this paper was published in the proceedings of the 17th Australian Association of Professional and Applied Ethics Annual Conference (Jiménez Lobeira, 2010b)

2 Three: one for 'carbon and steel', one for 'economic', and one for 'atomic' cooperation.

3 Obviously, in the absence of any coercive force.

4 He calls them: 'historical-cultural', 'political-legal', 'social', 'international' and 'post-identity commonness' (Walkenhorst, 2009, pp. 4-8). I have slightly modified the names to suit my own analysis taking into consideration the authors I select as representative of each. Walkenhorst reached his classification through study of documents handed to the Convention on the Future of Europe 2002-2003.

5 See for example Hurrelmann (2005), Delanty (2002), Bellamy (2008) or Friese & Wagner (2002).

6 While I have taken Walkenhorst's conceptual classification of theories about EI, the choice of authors is mine, considering the length, depth and clarity with which these authors have written about their particular position.

7 Elsewhere (Ratzinger, 2005) he points to the Decalogue in the Bible as the origin of those values. 'The Muslims', he says, 'who in this respect are often and willingly brought in' (to the discussion about mentioning God in the European Constitution) 'do not feel threatened by our Christian moral foundations, but by the cynicism of a secularized culture that denies its own foundations. Neither are our Jewish fellow citizens offended by the reference to the Christian roots of Europe, in as much as these roots go back to Mount Sinai: They bear the sign of the voice that made itself heard on the mountain of God and unite with us in the great fundamental orientations that the Decalogue has given humanity'.

8 He notices a phenomenon of 'self-hatred in the Western world that is strange and that can be considered pathological' (Ratzinger, 2007, pp. 32-33). He is referring mainly to Europe, but not only. The West is making a 'praiseworthy attempt' to open up to 'foreign values' and understand them. But 'it no longer loves itself; from now on it sees in its own history only what is blameworthy and destructive, whereas it is no longer capable of perceiving what is great and pure. In order to survive, Europe needs a new – and certainly a critical and humble – acceptance of itself' (*ibid.*).

9 See for instance Tomlinson & MacLennan (cited by Walkenhorst, 2009, p. 11), or Delanty (2002, p. 348).

10 However he does speak elsewhere (Delanty, 2010, p. 15) about a 'cosmopolitan cultural heritage'.

11 Could there be a better relation than the one Europeans have with (just to give a few examples) Canadians, Americans, Australians or Argentineans? None of them expects to be called 'European' or feels discriminated against if s/he is not.

12 An EI that will keep the European polity toget
example, when according to Professor Philip
Muslim population of around 25 percent'.

13 I am aware that the very term 'identity' is lade
not to mention the perspectives from which
psychology, sociology, bioethics, law, religion,
way I have defined it, as source of cohesion
especially to someone thinking from a social co
identity seems to have been one of the main
Treaty of Maastricht of a 'European citizenship'

14 Andreas Føllesdal (2009) has offered a good e
liberal-contractualist perspective. One of his poi
of the polity may have difficulty trusting each
future commitment to, laws, and trusting the
when establishing or modifying procedural rules

15 See Jiménez Lobeira, 2010a.

16 Which could also shed light on how to achi
immigrants in Europe through his idea of 'int
same notion – analogical hermeneutics – to
(Beuchot, 2005, pp. 33-44).

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Australia National University Centre for Europe

[12] An EI that will keep the European polity together today is different to the one in 2100, for example, when according to Professor Philip Jenkins (2006, p. 533) Europe could have 'a Muslim population of around 25 percent'.

[13] I am aware that the very term 'identity' is laden with varied, and often contested, meanings, not to mention the perspectives from which the term can be approached (philosophy, psychology, sociology, bioethics, law, religion, and so forth). Here I am taking it in just the way I have defined it, as source of cohesion. I concede that the term may *sound* strong especially to someone thinking from a social contract perspective. The 'need' for a European identity seems to have been one of the main motivations behind the creation in the 1992 Treaty of Maastricht of a 'European citizenship' (Weiler, 2002, p. 324-335).

[14] Andreas Føllesdal (2009) has offered a good explanation supporting this assumption, from a liberal-contractualist perspective. One of his points is that, without a shared identity, members of the polity may have difficulty trusting each other in their present compliance with, and future commitment to, laws, and trusting the authorities to be guided on common grounds when establishing or modifying procedural rules.

[15] See Jiménez Lobeira, 2010a.

[16] Which could also shed light on how to achieve social integration of culturally different immigrants in Europe through his idea of 'interculturality', which is an application of the same notion – analogical hermeneutics – to the problem of cultural diversity in a polity (Beuchot, 2005, pp. 33-44).

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Providing 'access to Er courts

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1. Introduction

Queensland is an Australian state that conta (including English), Indigenous languages an conducted in Australian Standard English, wh language of many accused and witnesses. Provi method of ensuring 'access to English', but ac always available and, in the case of Aborig communication breakdowns. In 2000, the Attorney-General (JAG) tried to alleviate the by publishing the *Aboriginal English in the Cou* designed to provide guidance on the nature solutions. This paper reports on a project des Handbook on its tenth anniversary. Unfortuna range of state government agencies and indi result over the decade. As one Cairns magistra then there is no access to justice'.

There are already examples in Queensl accommodate Indigenous culture and demograp Court of Queensland, 2009) which provide cult the Remote Justice of the Peace (Magistrates C in remote communities to hear minor matters ((as will become clear, constraints of time, dis Queensland criminal justice system wants t struggling to find a workable method.

This project was funded by a grant from th Account Fund administered by JAG. Consult District Court of Queensland, Queensland mag Director of Public Prosecutions (ODPP), law policy officers and registry staff and the Cultu Service. It is not the intention of this paper English may be a factor in over-representati justice system. While language has been studi 2002a, 2002b; Eades, 1988, 1992, 2008) no st or not language difficulties directly contribute the background to the issue of Aboriginal Engl and makes recommendations for further study solution may not be attainable.