

EUROPEAN UNION AND EUROPEAN IDENTITY. THEORETICAL APPROACHES IN JURIDICAL LOGIC

C. CODREA

Codrin Codrea

Faculty of Law, `Alexandru Ioan Cuza` University, Iasi

ORCID ID: <https://orcid.org/0000-0003-2507-2652>, E-mail: codrin_codrea@yahoo.com

Abstract: *In today's discourse, the concept of identity is profoundly contested, traversing socio-political movements like Black Lives Matter to intricate international law scenarios, such as Ukraine's identity contested by the Russian Federation. Central to these discussions is Europe, particularly post the 2016 Brexit referendum, which initiated a deep reflection on Europe's and the European Union's (EU) core identities. The myriad, spontaneous debates coalesce into a formidable challenge regarding European identity. A generic approach to this identity conundrum is to reference the values articulated in Article 2 of the Treaty on EU. However, this comes with complications. First, the current identity debate emerged precisely within the ambit of Article 2. Secondly, referencing David Hume's philosophical distinction, it is crucial to differentiate between the normative aspirations in European law ("what ought to be") and the prevailing reality ("what is"). Given the increasing discussions on identity, it is essential to bypass simplistic explanations and delve deeper. The pivotal questions surrounding Europe, its inherent identity, and the very essence of the EU might require an alternative analytical lens. This article intends to embark on a journey reflecting on European identity with a nuanced perspective from juridical logic, aiming to move beyond commonplace interpretations.*

Keywords: *principle of identity, European identity, EU identity, European law, juridical logic, Brexit, becoming European.*

1 INTRODUCTION

When delving into a concept as intricate as European identity, it becomes imperative to root our analysis in what identity is, beginning from overarching and firm fundamentals that set the very preconditions for thought. Thus, if we are to think the problem of European identity, we must first address the issue of identity from its most secure grounds. Since logic is often conceptualized as a form of meta-cognition - essentially, "thinking about thinking" (Codrea, 2023, p. 11), the foundational principles of logic serve as the most expansive guidelines that direct the process of thought, irrespective of its specific content. These principles are intricately woven into the syntax of both cognitive processes and linguistic expression, forming the paramount framework that determines validity.

The principle of identity implies that in the same time and under the same relation, any logical form (notion, logical proposition, inference) within an act of thought and any object of thought are identical to themselves: A is A.

Aristotle is the one who firstly characterized identity as such: "The word Similar, Identical, is used firstly in a casual, fortuitous sense (...) Besides the Similar, the casual Identical, there is the Identical in itself, which is used in as many senses as One in itself has. Because Identical in itself is said about things whose material is one, either as a species, or as a number and also about things whose substance is one. From here, it clearly derives that

identity is a sort of unity, a unity of existence of a plurality of that which results from considering many things as one, like when we say that a thing is identical to itself, in which case the same thing is considered as two things. (...) Because the contingencies of one thing must be the contingencies of the other.” (Aristotel, 1963, Organon IV, VII. 2, 152a); “Or, to search why a thing is itself means not searching for anything, because it is necessary that the existence itself of a thing to be self-evident. But the fact that a thing is itself is a matter of a singular reason and a singular cause for everything else.” (Aristotel, 2021, VII, 1041a, p. 305)

Gottfried Wilhelm von Leibniz is the one who phrased the principle of identity in a clear manner: “The primitive truths of reason are those which I call by the general name of identical, because they seem only to repeat the same thing without giving us any information. They are affirmative or negative. The affirmative are such as the following: Each thing is what it is, and in as many examples as you please, A is A, B is B. I shall be what I shall be. I have written what I have written. And nothing in verse as in prose, is to be nothing or a trifle. The equilateral rectangle is a rectangle. The rational animal is always an animal. And in the hypothetical: If the regular figure of four sides is an equilateral rectangle, this figure is a rectangle. Copulatives, disjunctives, and other propositions are also susceptible of this identicism, and I reckon indeed among the affirmatives: non-A is non-A. And this hypothetical: if A is non-B, it follows that A is non-B. Again, if non-A is BC, it follows that non-A is BC. If a figure having no obtuse angle may be a regular triangle, a figure having no obtuse angle may be regular.” (Leibniz, 1916, pp. 404-405)

From a syntactical perspective, the principle of identity postulates that for logical reasoning to be considered valid, it must engage solely with rigorously defined concepts. This sentiment finds resonance in Aristotle's observation: “it is impossible to think if you are not thinking of a certain thing. Therefore, a word has to have a meaning, and a strict one.” This necessitates that such concepts maintain a consistent alignment with tangible entities in the empirical world. On a semantic plane, the principle of identity mandates that when a logical proposition is affirmed as true, a direct correspondence must be established between the declaration and its representation in reality. In ontological terms, this principle emphasizes the intrinsic self-consistency of an entity, suggesting that an object is invariably equivalent to itself, and if it exhibits a specified characteristic, then it undeniably possesses that characteristic. (Codrea, 2023, pp. 42-43)

But the identity principle, a fundamental pillar of logic, a pillar for thinking itself, already anticipates in its explanations certain difficulties, more in Aristotle than in Leibniz: it implies immobility, because that which belongs to an ever changing reality and is caught in thinking must not change. If that immobility is an actual impossibility, identity is restricted to mere truisms or tautologies which do not say anything about reality since we left out the changes, modifications, transformations. If we accept an ever changing reality, the consequence is *res de re non predicatur*: there is nothing we can say about things in reality.

However, if affirming identity, A is A, does not express properties of things in reality, nor affirming something about existence, nor the identification process, then it must indicate a sort of resistance: there is something about the object in reality which we think about, which has a core that exists in spite of the ever changing reality of contingencies, incidents, accidents. Identity therefore presupposes selection and fixation: A is A, not in the sense that A exists, but in the sense that A still is, A remains as A and not something else, in spite of A

changing. (Botezatu, 1997, pp. 28-29) We can easily substitute here the object of thinking, A, with Europe or EU.

Nevertheless, in logic itself the principle of identity encountered many issues: for example the logician Saul Kripke, who elaborated in 1960 the non-classical logic of relational or frame semantics, states that ‘The fact that a certain object has a specific property, necessarily or contingently, depends entirely on the manner in which it is described. If an object has the same property in all possible worlds it depends not only of the object itself, but also of the way in which is described. A possible world is given by the descriptive conditions which we associate with it.’ (Kripke, 2021, pp. 55-56). “Indeed, the necessary and sufficient conditions for identity in order for it to not become circular are very rare in each case. To be honest, mathematics is the only case that I know in which these conditions are given even within a possible world. I do not know other conditions for the identity of any other objects in reality – be it material or human beings”. (Kripke, 2021, pp. 58-59)

So we wanted to make sure we start approaching the problem of identity from the most secure grounds, from logic itself, and from one of its broadest and firm principles, the one of identity, and we ended up in a web of issues such as change, core or essence as a fixation and resistance in time in spite of becoming, and not ontological objects that simply exist but linguistic means through which such objects receive, are given, are attributed identity through descriptions.

2 The Ship of Theseus, Leibniz, Hobbes and Alan Gilbert’s contingent identity

The Ship of Theseus, rooted in Greek mythology, provides a profound contemplative backdrop against which we can explore issues related to identity and continuity over time. Theseus, the legendary Greek king and founder of Athens, is renowned for his daring escapade where he saved Athenian youth from the clutches of King Minos, subsequently retreating on a ship to Delos.

Plutarch, the renowned ancient historian, offers a detailed account of this ship's subsequent fate: “The ship wherein Theseus and the youth of Athens returned from Crete had thirty oars, and was preserved by the Athenians down even to the time of Demetrius Phalereus, for they took away the old planks as they decayed, putting in new and stronger timber in their places, insomuch that this ship became a standing example among the philosophers, for the logical question of things that grow; one side holding that the ship remained the same, and the other contending that it was not the same.” (Plutarch, 1960, 23.1)

This narrative subsequently evolved into a philosophical conundrum. As the Athenians replaced the deteriorating wooden parts of the ship with new timber, it raised an intricate question about identity and persistence: Does an object retain its original identity if its constituent components are replaced over time? The Ship of Theseus, as noted by Plutarch, became emblematic of this debate, with philosophers divided — one camp asserting that despite the replacements, the ship's identity remained intact, while the other argued that it had transformed into something fundamentally different. This ancient thought experiment continues to fuel modern discussions on the philosophy of identity and the nature of objects in flux.

Plutarch underlines here the problem of identity as the relation that a thing bears only to itself in the context that things change in time. If we transpose this form to the problem of

identity of Europe and of the EU we can see there are several political organizations which include the word `European`: The Organization for European Economic Co-operation founded in 1948 and which became in 1961 by the Organization for Economic Co-operation and Development, currently with 38 states, The Council of Europe, founded in 1949 currently with 46 states, The Organization for Security and Co-operation in Europe currently with 57 states, The European Free Trade Association, founded in the 1960 currently with 4 states.

All of these international political organizations include some of the European states but not all, and also states from other continents. Are these organizations European and if so, what makes them European? If they are as such, in what sense are they European? Is it the name they give themselves, is it the member states they include, is there something else?

We can look further at the beginning of post-war European construction: European Coal and Steel Community, founded in 1952 with 6 states, European Economic Community and European Atomic Energy Community (Euratom) founded in 1958 and all the political changes that came through treaties such as the 1986 Single European Act, the 1985 Schengen Agreement and 1990 Convention Implementing the Schengen Agreement. In what sense are these European?

We can even look closer and more focused on the EU at the gradual enlargement of the European communities and the subsequent integration of more and more states and even at the 2020 Brexit: was the EU of the 1992 Maastricht Treaty less European than the EU revised by treaties such as the 1997 Amsterdam Treaty, the 2001 Nice Treaty or the 2007 Lisbon Treaty? But can we speak of the same EU in this whole process? So there are three questions regarding identity in front of this avalanche of political and legal changes:

1. What is Europe? – meaning What is the identity of Europe?
2. What is it that is European? – meaning What are those properties that make Europe what it is?
3. What is the identity of EU?

In this puzzle, Leibniz might help with his “*principium identitatis indiscernibilium*”, the principle of the identity of indiscernibles, which states that “things qualitatively undistinguishable are absolutely identical” (Leibniz, 1916, p. 332) meaning that any two things are identical if they share all of the same properties. Applied to the Ship of Theseus, the solution is this: at the very moment the first plank was replaced it was not the same ship anymore. If the parts were not all original, with each new plank, the ship acquired a new property and as such, a new identity. Therefore, if we follow Leibniz, there is no such thing as a single Europe, neither in history nor in the present. It is logical impossibility, because Europe as broadly as we might define it – in cultural terms – is ever changing, it is just like the Ship of Theseus with its parts always changing. It also implies that there is no single European identity from the proposal of Robert Schuman of founding the European Coal and Steel Community to the current EU. Each step in the post-war European construction implied a series of discrete, separate identities, since not only the parts of these European Communities changed, more states joining them, but these Communities themselves have different goals, scopes and institutions.

Even closer in time, the EU of the 1992 Maastricht Treaty is different from the EU of the 1997 Amsterdam Treaty, the 2001 Nice Treaty or the 2007 Lisbon Treaty not only because it does not include all the original states, since the integration of new member states

continued and is still a political goal, but even the institutions themselves have changed. More recently, the EU after the 2020 Brexit is not the same as EU with United Kingdom (UK) as a member, it does not have the same identity. Let us complicate things even further, and assume the position of Thomas Hobbes: what if all the old replaced planks of the Ship of Theseus would be recovered and used to build a ship similar to the Ship of Theseus which now has all the planks replaced. Would we then have two identical ships? (Gallois, 2016, p.29) This would translate in a general dissolution of the current EU on the Brexit model, and a re-configuration of the same European states in an exact similar EU. But would it be the same? The answer is no: these political entities, no matter how similar they seem, do not share the same identity. So if we follow Hobbes and Leibniz and their perspectives on identity we might have to ask if there is a limit to how much something can change and not lose its identity.

A thought experiment proposed by Alan Gibbert delves into the perplexing interrelationship between similarities and its implications for identity, offering illuminating perspectives for an aspirational trajectory of European integration. (Inman, 2018, pp. 351-366) Envision a scenario wherein a sculptor procures a mass of clay, nominally designated as 'Europe'. From this substrate, a statue is carved, christened as the 'European Union'. This raises the salient question: Are the constructs of 'Europe' and 'European Union' congruent in essence? At a prima facie level, one might posit an affirmative, grounded in their shared material composition. Despite overt transformations, the clay invariably informs the entirety of the statue, and no fragment of the statue stands devoid of this clay. This engenders a concept of "contingent identity". (Jubien, 1993, pp. 37-40) Drawing a parallel, it suggests that the EU is wholly enveloped by Europe, with no constituent element of Europe existing beyond the purview of the EU. However, a potential deconstruction of the statue, regressing it to its elemental clay, results in the cessation of the statue's existence, contingent on its delineated form, symbolic of the 'European Union'. Conversely, the malleable essence of 'Europe', unshackled by formative constraints, persists. While in an idealized context the clay and statue might be construed as identical, given their shared material essence albeit with different forms, their identity is challenged by the potential non-coexistence of one in the absence of the other. Applying this conceptual framework to the European paradigm, while it may be accurate to state that the EU is integrally European, the claim that Europe is entirely encapsulated by the EU is not wholly accurate in contemporary contexts. This viewpoint is further corroborated by Article 49 of the Treaty on the EU, which underscores the potential for the Union's continued enlargement. This article stands as testament to the distinction between the geographical and cultural entity of Europe and the political structure of the EU, indicating that Europe's identity is not solely defined by its Union membership.

3 The problem of fungibility and European implications of Brexit

A way to avoid the uncomfortable solution of Leibniz is to explain how identity endures over time, because, as stated before, since everything changes, just like the Ship of Theseus, objects might eventually stop being what they are and become something else. Logically, we have to make a distinction between essential and accidental properties. Essential properties are the core elements necessary for something to be that thing that it is, while accidental properties are those elements that can change, appear or disappear without

making it a different thing. That which makes Europe unique constituting its core, its identity are essential properties we can call “European”, and we can separate these from all the other properties Europe has, which change in time and are accidental. However, is this separation even possible? If so, is it a neutral act? Would it not have inevitable political consequences of excluding those who do not possess the “European” properties strictly defined at a specific moment in time?

If we look at the EU, there must be something that endures in time in this political project. At this point we can ask a thorny question: if we think of 2020 Brexit – is/was the United Kingdom (UK) essential or accidental for EU? If we look in the history of European construction, through all the integration waves of different states, those states were accidents before being integrated and became essential to the EU identity once they became members? It is not self-evident at all what exactly is an accidental property and what is an essential one and it is not at all self-evident at all when exactly in the process a property becomes accidental or essential and thus, the more something changes the more difficult becomes the task of establishing its identity.

We can agree that something stops being the same when it loses its essential property, but when exactly does that happen is a matter of perspective. When it comes to defining the identity of Europe cultural anthropology generally indicates the broad frames identified by Paul Valery: Greek thinking, Roman law and Christianity as essential properties, as fundamental European (Valery, 1919, p. 321-337). But all these core properties are subjected themselves to change, they are all extensive processes of cultural transformation, they constantly become and in this process of becoming they also detached from territory. We can just take for example Christianity: it is precisely Christianity as a cultural process that allowed for a general secularization and opened up the cultural process of Modernity. The same happens with all these European traits – they allow for a counter-reaction against themselves, they interact with each other, they become something different in very unpredictable ways, making it impossible to pin down to a specific trait. It was the task of an antiquated cultural anthropology, particularly evolutionist, starting from Enlightenment to the early 20th century, to identify an ‘Other’, to construct ‘Otherness’ in order to coagulate a fixed European identity (Codrea, 2013, pp. 73-76). This essentialist approach is made obsolete by the very process of European integration allowed by Article 49 of the Treaty on EU, which implies precisely this: there is no definite, homogeneous delimited Otherness, but differences within a shared European identity. Therefore, a culture can become in order to integrate the values in Article 2 of the Treaty on EU and meet the other criteria, and so does EU in order to integrate that culture. This does not make volatile, but rather sets in a flux, in a constant dynamic the very notion of identity of Europe. The fundamental consequence is that the identity of Europe is becoming itself: however paradoxically it may appear, Europe is becoming Europe, since what it is that makes Europe unique, that which is European, is also constantly becoming. In this sense which does not settle for an easy, essentialist answer with a fixed set of properties which could very well be found or agreed upon and would sacrifice transformation in order to have a static identity, we all are, from individuals to states and the EU itself, becoming-European.

However, in all the broad traditions of European thinking there is a strand which rejects the very idea of essential property: from Heraclitus to existentialists in continental

thinking, to later Ludwig Wittgenstein in Philosophical investigations in the analytical tradition, and Richard Rorty in the pragmatic tradition. Heraclitus was the first who formulated this idea with a major impact on European thought and thinkers like Friedrich Nietzsche, Martin Heidegger, Georges Bataille, Michel Foucault, Gilles Deleuze, Jacques Derrida and the postmodern thinking in general: “you cannot step in the same river twice”, meaning that nothing is identical to itself because both you and the river are in constant change. (Drozdek, 2020, pp. 27-43) Back to the Ship of Theseus: it was not the same not only when it arrived with all its original parts changed, but it was not identical from the very first time anything about it changed. So is it important if identity endures over time, does it even make sense to speak of identity if it is not resistant to time? Why is it so relevant if things endure? Well, it is if you want to know if you are in time, within a personal or collective history, the same you think you are. However, thinking you are identical and actually being the same are different things.

In the realm of political architecture, the notion of a consistent and enduring identity holds paramount significance. Within the framework of European private law, there is the compelling concept of “fungibility,” defined as the quality of being interchangeable among objects of similar classification. To elucidate, currency within this legal paradigm exemplifies “fungibility”; it is perceived not in terms of its tangible manifestation but rather the abstract “value” it symbolizes. When entities are esteemed based on their distinct characteristics, they depart from this “fungible”, replaceable status. (Beaudreau, 2006, pp. 205-223)

The edifice of the EU is constructed upon the foundational principle of the “non-fungibility” of the identities of its member states. Consider a hypothesis wherein, upon its departure from the EU, the UK is substituted by a different state. Even if this hypothetical arrangement adheres to legal stipulations and secures the endorsement of member states, it would precipitate a transformative shift in the EU's composite identity. It is precisely the inherent “non-fungibility” of each member state that permits the EU to resonate with its emblematic credo of “unity in diversity” as opposed to a mere doctrine of interchangeability.

When evaluating the UK solely from an economic perspective, especially within the confines of the European market, its characteristic of “fungibility” becomes evident. This suggests that, in the economic realm, the UK's value and role can be interchangeably utilized or substituted with other entities, underlining the commoditized nature of nations within the integrated market system. The notion of “fungibility” underscores the fluidity and versatility of economic relations, where national distinctions may become secondary to economic functionalities. It is within this analytical context that I postulate the UK's interpretive misstep in relation to the EU: the UK anchored its intrinsic, “non-fungible” identity upon predominantly “fungible” economic paradigms. While the embryonic stages of European integration, as envisaged by luminaries like Schuman and Monnet, were rooted in economic collaboration, they strategically circumvented the quagmire of identity discourse, especially given the post-war European milieu where identity bore politically volatile undertones. Indeed, the deepening of economic ties across European nations fostered the emergence of a shared European identity, anchored in the transformative journey of “becoming European.” The tumultuous events and shifting alliances of the 20th century made it untenable for any single state to claim an unchallenged, politically neutral primacy over this evolving identity. Instead, the collective experiences, challenges, and aspirations of the continent have shaped a

composite identity that transcends nationalistic bounds, reflecting a shared European destiny.

Therefore, the regression of UK on a static identity paradoxically grounded on “fungibility as a non-fungible trait” was possible only through a fallacious populist rhetoric: the Ship of Theseus is the same with all the planks replaced.

4 The Lacanian „stade du miroir” and its implications on European identity

Going to the level of perception of individuals, groups, member states, of EU itself and of Europe as a whole, the identity problem becomes even more complex. The same three questions have to be rephrased:

1. What is Europe? – meaning What is perceived to be the identity of Europe?
2. What is it that is European – meaning What are those properties that are perceived to make Europe what it is?
3. What is the identity of EU – meaning what is it perceived as the identity of EU?

There is this very interesting notion in Lacanian psychoanalysis called “stade du miroir” (looking-glass phase) which may prove useful in trying to answer these questions reconceptualised from the level of perception. Jacques Lacan noticed that newborns do not have any perception of themselves as a whole. It is not an ontological problem, it is not a question regarding the existence of the child, because she/he is, exists, just like Europe or EU, but a matter of perception. She/he sees only uncoordinated fragments of her/himself, parts of his legs, toes, hands, palms, fingers, and internally perceives only the motion of body parts as autonomous. So the conscience of the unity of all the uncoordinated movement of his body parts, the image of the self as a whole, as an unity of all that autonomous fragments comes not from within, but from the outside: in the moment when for the very first the time the child sees the reflection of herself in the mirror. This moment generates a conflict between the perception of the fragmentary body and the unity that is reflected, which the child resolves by accepting the unifying image of the self. (Diatkine, 2002, pp. 19-20). It is the external reflection in the mirror that unifies all the internal fragmentary subjective perceptions and offers, from the outside, the possibility of the internal perception of identity, of self, which is then gradually internalized and adopted as the identity of the self. For Lacan, this phase of the mirror is essential for the constitution of self-identity through identification. However, it generates two consequences: on the one hand, the mirror shows both the future of a possible unifying coordination of what was perceived as autonomous and fragmentary, but on the other hand, it is also the moment when the subject becomes alienated from herself by gaining an awareness on the fact that the fragmentary, conflicting identity held before was the product of “méconnaissance”, ignorance. (Evans, 2005, pp. 272-274)

The perception of the identity of Europe and EU can be approached in a similar way. Looking from space to Earth, we can identify this sub-continent as a territory we discover it is called Europe. We can see that all the international organizations which have `Europe` or `European` in their names cover this territory. We can also see that geographically, the territories of these organizations do not overlap. So we can observe there is not a fixed limit to what is called Europe. If we cannot see a limit, this does not mean limits do not exist: they are established by international law and in the founding treaties of each organization: by law, the limits of `Europe`, and `European` as a property, lie at the borders of the most extremely geographically located member state of each international organization. So there are

fragments overlapping in what we call 'Europe', autonomous entities or loosely coordinated organizations which do not offer the perspective of a whole, but a distinct approach on what Europe is. If we look for a mirror at this point, it is easy to find in the history of Europe: Goethe, Leibniz, Nietzsche etc. spoke of the identity of Europe long before any internal conscience existed at the level of either states or individuals. If we are to narrow our post-war European identity reflected later by the pioneers of EU, those who held the mirror were Aristide Briand, who was the first who elaborated in 1929 an official project of a federal EU proposed at the League of Nations, in 1946 Winston Churchill who advanced the proposal to establish the United States of Europe, based on post-war Franco-German reconciliation, Robert Schuman, Jean Monnet, Konrad Adenauer, Paul-Henri Spaak, Alcide De Gasperi, Joseph Bech, Johan Willem Beyen, Sicco Mansholt, Walter Hallstein, Altiero Spinelli who also saw Europe as becoming into a political Union. There are also symbols of EU representing its identity in relation to the identity of Europe: the European flag, the European anthem, the 2004 Treaty establishing a Constitution for Europe which was unratified also due to a semantic confusion and an illogical fixation on static identity, the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007 and recognized in Article 6 paragraph (1) of the Treaty on EU the same legal value as the treaties, the European citizenship introduced by the 1992 Maastricht Treaty, the Unified European civil code which the European Parliament demanded in 1989, 1994 and 2000 and which started with the Lando Commission elaborating the Principles of European Contract Law (PECL) published in 3 parts, in 1995, 1999 and in 2003, followed by the Common Frame of Reference with the hope that the creation of a unified European contract law would be achieved by 2010.

But just as the mirror is external to the child, so are these reflections of the whole external to the ones that sometimes cannot, fail or refuse to internalize this identity. It is very interesting that none of the pioneers of the EU used a fixed identity for Europe but rather the idea of unity which implies becoming towards the values which ended up fixed by law in Article 2 of the Treaty on EU. They all started from fragments, a torn up post-war Europe, and grounded Europe on becoming and reflected back this identity to what Europe actually was like in reality at that particular time in history. The mirror showed the becoming-European, a process which is still unfolding.

5 Identity as becoming and European law

But what are we to understand from the identity of Europe as becoming-European and how does this interact with law? Going back to logic and what Kripke argued, that 'The fact that a certain object has a specific property, necessarily or contingently, depends entirely on the manner in which it is described. (...) mathematics is the only case that I know in which these conditions are given even within a possible world. I do not know other conditions for the identity of any other objects in reality – be it material or human beings' we can agree that the identity of Europe and EU is not mathematics. But if logic encountered these troublesome issues with the very core principle of identity, if logic as thinking about thinking is tangled in this sort of unsettling issues and cannot escape language, even more all of this applies to law.

Law is also part of the linguistic means through which we organize the world: from the most basic norm to the most complex ones. My definition of law here is very simple:

power filtered through text. The power exerted through law has specific attributes, which are very well known in legal scholarship (national, European or international), but it is power nevertheless, and it is always power that fixates identity. In order to establish a political identity, European law needed first to set limits, but the mirror was set on becoming-European so European law had the paradoxical task to fixate and not immobilize: to be flexible and regulate how those limits extend and appropriate that which is external, that which becomes European and is part of Europe changing Europe itself. The proper illustration for the relation between European law and becoming-European as identity is Article 49 of the Consolidated Version of the Treaty of EU which states that: “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.” What does European mean here? It is not related to geography, but to culture, and culture is becoming: Cyprus was unanimously recognized as European, and Turkey also was recognized as such, however, in 1987 the application of Morocco was rejected. Also there is a debate whether some EU member states like Hungary or Poland are in a process of becoming un-European (Bernhard, 2021, pp. 585-587). It is Article 2 that orients becoming-European even among member states, and it is legally possible through the interpretation of this article to admit an identity of Europe in spite of geography: “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.”

But through power in general, be it by law or not, it is also possible for an identity to be established, fixed, set, in spite of its becoming. This is very obvious in the constitutions of member states which fix an eternal eternity as an offshoot of the legal and political notion of sovereignty. Therefore it is not necessarily that the object in reality has or not a core that resists becoming, it is the other way around: though law, the object in reality has to resist becoming in a certain sense because it was fixed in a given, attributed identity. It is through law that the selection and the fixation takes place and a legal identity is applied to objects in reality such as human beings and groups of people, which, in return, have to be in that way determined by their attributed essence or core, even if they, in reality, are not. If European law allows becoming by its very nature incorporating flexible limits from primary law to its very motto, „unity in diversity”, national law cannot help but pose obstacles in order to preserve a fixed identity which constitutes its ontological ground.

The state is bound to territory, hence the importance of the physical geography for the state – borders are the limits which separate one state from another, within the borders there is the essence, the core, the identity of people attributed by the state (Deleuze, Guattari, 2013). It bears no importance if people themselves perceive their own identity as it is attributed through law by the state, because law operates with the normative and not the descriptive: it always prescribes what and how reality should be and not how it is or even in spite of what it actually is. (Kelsen, 2000, pp. 102-105) The very strictly limited legal borders which situate a state on a map, allowing for a specific national identity to be constituted and attributed as different from any other, are physical lines drawn in history in a physical cartography based on a real geography.

However, in now days EU, the notions of geography, cartography and map, even though did not disappear, are detached from the physical, which is not to say that as such they become less real; on the contrary, in a sense, they are more real now than they ever were since they correspond to a reality in a constant flux. In which sense they are more real? In the sense that the free movement, the mobility European law makes possible, turn physical borders into non-physical signs, and as such, they become closer to the ever changing reality we inhabit. The physical does no longer have primacy within the Union: there is no material geography anymore in the foreground other than perhaps aesthetic, but rather a plurality of geographies, and thus, not a single cartography but rather a multitude of cartographies which do not produce a single map but rather multiple maps. The very idea of an internal map of the EU has now days a psychological nature, and as such, it is about internal cartographies and the internal geographies. It is an emotional, affective geography made possible by European Law. For example, psychologically, some Eastern European member states as a psychological reality have collectively as neighbours member states such as Italy, Germany, Spain, France, rather than their actual geographical neighbours. Each European citizen has this very internal geography of Europe which is more real than the actual geography or actual borders drawn on maps.

When it comes to subjects of law as individuals, we speak of identity of persons – established by internal norms and subscribed to the legal notions of citizenship and nationality. But only if we perceive ourselves as belonging to a certain group that perception becomes part of our identity. Otherwise, it is just labels attributed from outside by law. The EU also uses the legal notion of European citizenship, recognized first in the 1992 Maastricht Treaty, with the possibility of the European Court of Justice to provide legal protection to subjects of European law (Banard, Leinarte, 2022, pp. 24-44). This concept of European citizenship is also bound to territory. So there are two complementary legal notions which relate to territory, cartography and maps: national citizenship and European citizenship. From a legal perspective only, the latter implies the first in order to fixate identity: it is through national identity that one is attributed European identity, as it is stated in Article 20 (1) of the Treaty on the Functioning of the European Union. But at the level of perception, it can very well be the other way around as it is often the case: “I am firstly European and only secondly a citizen of the state X”. And if we accept there is no such thing as fixed identity, and thus all personal, national and European identities become, it is not even relevant what that identity is in a specific point in time: you would only use a static image in the process of becoming (Bergson, 1998, p. 251). You can simultaneously have different identities, and not only different, but contradictory as well, since each is coupled with specific roles and occupy specific positions within an internal taxonomy. As Michel Foucault phrased it, “I don't feel that it is necessary to know exactly what I am. The main interest in life and work is to become someone else that you were not in the beginning” (Foucault, 1988, pp. 9-15). So individuals, nations and EU they all become European, and as such, as Friedrich Nietzsche argued, they become precisely what they are (Nietzsche, 2012) and this is only made possible through law, especially Article 2 of the Treaty on EU which speaks of values: Europe is bound to become European through values and not essential cultural properties. Becoming European starts from territory but is nevertheless detached from it since values are not bound to territory: they cross borders and also if they are to fail, they do so between borders.

6 Conclusions

The discourse on European identity and the role of the EU in shaping this identity poses a complex intersection of legal, philosophical, and historical perspectives. At the heart of this discourse lies a foundational query: what signifies the "becoming-European" and how is it entwined with legal stipulations? Juridical logic can help navigate through a labyrinth since identity itself rests heavily on descriptors, casting doubt on concrete definitions of identity for non-mathematical entities like the EU.

Legal constructs, particularly European law, have historically been instrumental in shaping societal norms and identities. Law, as I construe it, is the manifestation of power through textual means and this power both dictates and reflects identity. By defining political boundaries and asserting an ever-evolving European identity, European law acts as an agile tool that acknowledges both rigidity and flexibility. A salient illustration is Article 49 of the Treaty of the EU, which anchors the basis for state membership within the EU on values, not just geographical markers. It underlines the significance of values such as human dignity, democracy, and equality, hinting at a European identity that transcends mere physical boundaries.

Member states, in their essence, are bound to territory, providing a concrete national identity and yet, within the EU, there is a gradual transition from rigid geographical boundaries to a more fluid understanding of space and identity. European citizenship, as postulated in the 1992 Maastricht Treaty, serves as an embodiment of this evolving understanding. The intertwining of national and European citizenships suggests that identity, both at an individual and collective level, is not static but in a state of continuous flux as Michel Foucault emphasized the fluidity of self-identity. Foucault's notion, coupled with Nietzsche's understanding of "becoming", underscores the dynamic nature of identity – constantly evolving, molded by influences both internal and external.

Conclusively, while definitive answers regarding European and EU identity remain problematic, it is evident that the intricate dynamic between law, culture, and history continuously shapes and reshapes the understanding of 'becoming-European'. The conceptualization of Europe and EU's identity in juridical logic is both complex and elusive, suggesting that it may best be understood through processes, evolving paradigms like "becoming". Yet, to further nuance this intricate discussion, I draw upon Jacques Lacan's reflection: "What I realized in my history is not the past definite of what was, since it is no more, or even the present perfect of what has been in what I am, but the future anterior of what I shall have been for what I am in the process of becoming".

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