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NEW MINORITIES, SOLIDARITY AND EUROPEAN DEMOCRACY

Human Rights and Education in the European Regions: the Renaissance of Europe

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ABSTRACT

The present thesis argues that the quality of European democracy may be measured on local political authorities' commitment to human rights. Therefore, European solidarity based on sharing of economic resources shall not only be directed to enhance "new comers" and citizens' knowledge on human rights and international standards, but also nurturing a favorable environment for the formation of European leaders committed at filling the political distance perceived by Europeans between the EU and their cities. In addition, this thesis understands human rights as intelligible principles with universal, relative, practical, theoretical, apolitical and neutral characteristics of inclusiveness, which encompass both the newcomer with the citizen. Education to human rights shall be included, therefore, in the political language with the aim to form the protagonists of the EU 2020 goals.

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The business of us who are the founders of the Republic will be compel the best minds to attain that knowledge - which we have already shown to be the greatest of all - they must continue to ascend until they arrive at the good; but when they have ascended and seen enough we must not allow them to do as they do now.

What do you mean?

I mean that they remain in the upper world: but this must not be allowed; they must be made to descend again among the prisoners in the den, and partake of their labours and honours, whether they are worth having or not.

But is not this unjust? he said; ought we to give them a worse life, when they might have a better?

You have again forgotten, my friend, I said, the intention of the legislator, who did not aim at making any one class in the Republic happy above the rest; the happiness was to be in the whole Republic, and he held the citizens together by persuasion and necessity, making them benefactors of the Republic, and therefore benefactors of one another; to this end he created them, not to please themselves, but to be his instruments in binding up the Republic.

Plato, Republic, VII

INTRODUCTION

European Democracy

The word “Europe”, *in the Aristotelian mode as agora*,¹ is commonly used as metonym for European Union (EU). Its worldwide partners describe the EU as “the biggest democratic success story in history”, considering its internal achievements as a “source of inspiration for establishing peace, democracy, economic development, social cohesion and regional integration”.² Yet, the EU definitely seems perceived to be more of a democratic success in other regions than at home. Since 1973, the Public Opinion Analysis sector of the European Commission (Eurobarometer) has been monitoring the evolution of public opinion in the Member States and helped to prepare texts and conduct the evaluation of Commission’s work on major topics concerning European’s citizens. By the time this master’s thesis was written, the latest data available were published on December 2013. It depicts an image of the EU where the number of citizens trusting it (57% in 2007) has constantly decreased until they become a minority in 2013 (31%). Yet, the majority of Europeans considers that their voice do not count in the EU (66%) but more than seven in ten Europeans perceive the EU 2020 strategic initiatives as important, with the highest level measured for “to help the poor and socially excluded and enable them to play an active part in society” (81%). Finally, in almost all countries, at least one of the three most important issues facing the concern of respondents at the European level is related to the economic situation (45%) followed by unemployment (36%), which however takes the first place (49%) at the national level.³ These statistics return to the European Commission an image of Europe as a place of deep contradictions, almost paradoxical in the light of the opinion hold abroad. What seems to make the majority of Europeans happy about the existence of the EU, namely its struggle on achieving an EU model of democracy that guarantees social cohesion and inclusion, has the majority of Europeans protesting against the EU existence. Yet,

¹ This expression is used in Sia Spiliopoulou Akermark, “The added value of the Framework convention for the Protection of National Minorities (I)”, in Verstichel et al, *The Framework Convention* (n. 3 above), p.82-7. It is used in this thesis as synonym of *vox populi* - voice of the people - used to indicate a type of interview or discussion conducted among members of the general public.

² International Institute for Democracy and Electoral Assistance (IDEA), *Democracy in Development: Global consultations on the EU’s role in democracy building*, Stockholm, (2009), p.6.

³ Standard Eurobarometer 80, winter wave, pp. 1-30.

Europe may be intended as a political system aimed at preserving democracy among its member states, rather than practice it, because, according to the general notion of democracy, a democratic system is meant to assign power (*kratos*) to the people (*demos*), which freely establish the government - *politeia* - that represents the voice of citizens.⁴ Moreover, the quality of the government, to be fully democratic, may be quantified on its 1) transparency, accountability and responsiveness of elites, government and the state bureaucracy 2) participation of interest groups in the decision-making process, and 3) active and voluntary participation of citizens in politics. Finally, for a *politeia* to be democratic, 4) at least 70% of the population must support its democracy and democratic reforms.⁵ According to this definition of democracy and its quality, it can be justified the concern that a serious *democratic deficit* is still persistent since EU funding moment (1993). First, there is still no nation or state called EU. Secondly, because citizens do not have the possibility to vote for EU leaders, since there is no such figure or EU political party at the local level. Finally, the EU Parliament still holds a number of votes (43%) representing less than the threshold required for assessing an absolute majority. Yet, one may expect that democracy may be consistent at the national level. The proportions of Europeans who tend not to trust their national governments are 72% (69% regarding national parliaments). This is very puzzling because, according to most of European national Constitutions, citizens elect both the parliament and government to fulfill, respect and protect fundamental freedoms and everyone's rights. Nevertheless, apparently against their will and for obscure reasons that citizens are not aware of, the national *politeia* systematically fails citizens' expectations and seems orientated to fulfill only the demands and wishes of a restricted group of electors. To complete the picture hold in the popular imagination, the EU seems committed to the practice of oligarchy⁶ rather than democracy. Among all its institutions, citizens' direct representatives are elected only to the Parliament, while the other bodies are administrated by indirect elected representatives from the regional level or civil servants hired among the

⁴ There is no single definition of democracy, but there are many types of democracies and election's systems. According to the UN, "democracy is based on the freely expressed will of people and closely linked to the rule of law and exercise of human rights and fundamental freedoms". <http://www.un.org/>. *Politeia* is the original title of the so-called Republic of Plato.

⁵ Ania Mihr, *Transitional Justice and the Quality of Democracy. From Democratic Institution Building to Reconciliation*. Working Paper, The Netherlands Institute of Human Rights (SIM), Utrecht, January 2012. p.6

⁶ Plato defines oligarchy as a system of government that distinguishes between the rich and the poor, making of the former its administrators.

best human resources of the EU, and economically rewarded according to their high level of competence. However, these independent figures, fighting daily the scourges of inflation and economic disproportions, seem unable with the current instruments at their disposal to arrest the growing social unrest and dissatisfaction. Rather, they attract towards them the allegations of the Eurosceptic populist party's leaders that are depicting the EU as an attempt to preserve a hierarchical structure where the primacy (*archein*) of the *enriching* elite is conducted above the disappointment of the *impoverishing* majority. Who, among the international partners and the European citizens, is committing the error (*hamartia*) on judging the quality of the European democracy?⁷ Yet, does the EU have any role with the degeneration, corruption and pejoration of the local *politeia*, hiring to its bodies the best educated and professional figures (technocrats) among the regional local authorities and human resources, thus indirectly allowing European regions to be governed by uneducated servants?⁸ Finally, is really the EU the representation of a hierarchical parallel society, where the enlightened ruling elite - *archontes* - lives in the Islands of the Blest⁹ and is committed to the respect of superior laws (The Charter of Fundamental Rights of the European Union), while the majority - *demos* - keeps living committed to the laws of nature in the darkness of the caves, as described in the Republic of Plato?

Therefore, the first chapter of the present thesis argues that the quality of European democracy is guarantee by the presence of three main actors: Council of Europe (CoE), EU and citizens/*demos*. The second chapter argues that practices of inter-national education towards persons unaware of human rights dispose individuals and group of individuals to radicalization and contribute to the formation of parallel societies and new minorities at all levels of the EU and CoE. In contrast, the third chapter argues that education of *demos* and their public authorities to human rights does not affect individual's identity. On the contrary, within local realities, human rights' education invites everyone to assume an active role and critical thought to internationalize its local reality according to European standards. Therefore, education to human rights provided by the EU to its *demos* is not only

⁷ *Hamartia* is rooted in the notion of archery and it consists on missing to hit the desired spot of a target. In Greek tragedy, it is an error in judgment or unwitting mistake which is applied to the actions of the hero. For example, the hero might attempt to achieve a certain objective X; by making an error in judgment, however, the hero instead achieves the opposite of X, with disastrous consequences.

⁸ According to Plato, neither the uneducated and neither the overeducated may be good servants of the State. Cfr. Republic, VII, 519(a).

⁹ In Greek mythology, they are islands similar to the paradisiac garden, the Eden, described in the Bible.

desirable, but also it encompasses the realization of its 2020 goals because it calls the excluded part of international citizens living in the EU to enter in social practices with their local authorities and community. In addition, this thesis understands human rights as intelligible principles with universal, relative, practical, theoretical, apolitical and neutral characteristics of inclusiveness, which encompass the newcomer along with the citizen to become the protagonists of the realization of EU ambitious goals. In conclusion, this thesis intends human rights, along with education, as a primary source for social cohesion because both represent, in Descartes' words, the contemporary *scientia penitus nova*,¹⁰ "an entirely new science", that his predecessors described as "general and supreme science, which helps humans to communicate and to reason".¹¹ Public authorities were persistent to condemn the distribution of knowledge contained in Galilei and Kepler's books because retained pernicious and destabilizing for society, while these books were read in *private* rooms, offices and workshops of authorities. However, only when this knowledge became *public* in every schools and universities, a human representative could land on the moon. The XVII century represented the period that allowed this form of knowledge from private to become public, and the XXI century represent the EU challenge to form and educate contemporary *novatores*, European pioneers and leaders, to facilitate public accession to human rights' knowledge within different cities, regions and states.¹²

¹⁰ C. Adam, P. Tannery, *Oeuvres de Descartes*, X, pp.156-158.

¹¹ "Artem supremam unicuique infinita et generalem, per quam omnes homine naturaliter discurrunt, et raciotinantur". Cfr: Pedro Jerónimo Sánchez de Lizarazo, *Generalis et admirabilis methodus ad omnes scientias*, Turisonae, 1613, p.85.

¹² Three decades before the affirmation of the secular spirit of the XVIII century, the so-call Enlightenment, which in essence can be described as the continuation of the Renaissance, a group of significant figures, called *novatores*, ("innovating ones"), challenged the paternalistic approach hold by the powerful conservative authority. Among them may be listed Descartes, Galileo Galilei, Newton and Kepler.

Chapter I:

Concordia

This chapter introduces an historical overview of the notion of Europe and aims at charting the main historical and cultural events that resembled it as a space of social and political *concordia*/unity. Despite the fact that geographers have largely described Europe as a physical continent, historians have imagined it as the place of metaphysic unity among peoples, although intermitted by constant wars among their ruling elites. Therefore, to establish the limits of Europe has always been easier for geographers than for historians. However, the very agreement about Europe, apart the mythic origin of the name,¹³ has been reached over defining it as a *con-fusion* (bound together) of different traditions, cultures, languages, religions and ideas. In the assertion of Henri Hauser: “Europe, a confused concept”.¹⁴ The first description of Europe refers to a vast and mysterious mass of land situated northern the Mediterranean Sea. Herodotus, which divides the known world in three continents, provides to us the descriptions of Libya, Asia, and Europe.¹⁵ Their meeting point is the Mediterranean Sea. Within this area, a limited number of Athenian citizens nurtured the ideas of freedom and democracy soon challenged by Asian despotism, three monotheistic religions situated in the three continents contended the universal Truth, and autonomous and belligerent social groups followed each other at the ruling of the Mediterranean and its continental lands by imposing their own legal and linguistic standards. The European continent during the XVI century was far from being a homogeneous territory although vastly dominated by the same administration (the house of Habsburg) or by large from a single ruler, Philip II of Spain. Braudel reports that the polish

¹³ According to Homer, Europa was the name of a Phoenician princess whom Zeus abducted after assuming the form of a dazzling white bull. He took her to the island of Crete where she gave birth to Minos, Rhadamanthus, and Sarpedon. Cfr. Homer, *Iliad*, book XIV.

¹⁴ Henri Hauser (1866 – 1946), was Algerian-born French economist, historian and geographer. See F. Braudel; *The Mediterranean and the Mediterranean World in the Age of Philip II*, Harperand Row, New York (1972), p.189.

¹⁵ Herodotus, *Historiae* IV, 36

ambassador Dantisticus, writing to the king of Poland of his travel from Antwerp to Bruges and Calais in the autumn of 1522, simply states that “ex Antwerpia per currus ut hic fieri solet” - “from Antwerp by wagon as is the custom here”. By contrast, muletrains dominated the South. In January 1560, pack animals carried the future queen of Spain, Elisabeth of Valor, along with her carriages, belongings and suite, from the Spanish frontier until the interiors of the Peninsula.¹⁶ Moreover, personal security was dramatically low in the Mediterranean; continuously threatened by merciless brigands and pirates ready to kill for few golden coins. Refers Braudel that Ottobon, a Venetian ambassador sent to Danzig (Gdańsk), wrote in his notebook that one could walk in the streets of the city “l’oro in mano senza pericolo di esser offeso” - gold at hand without risk to be harmed.¹⁷ Europe, concludes Braudel, is diversity itself.¹⁸ However, the adjective *Europaeus* has been also used to indicate a borderless region of shared ideas, values and culture.¹⁹ In 1453, almost at the end of the European Renaissance, Aeneas Silvius Bartholomeus, the future humanist pope Pius II, describes in his volume *De Europa* that, despite the large number of differences between the several *nationes* at the universities,²⁰ many students could travel and study in the European universities, many philosophers could discuss the same ideas and scientists could share their latest discoveries.²¹ Moreover, during the Renaissance, artists challenged each other to reach the artistic perfection; intellectuals learned Greek and Arab to access the wisdom of ancestors without the mediation of translation and merchants connected Europe by constantly travelling from the Baltic to the Black Sea. However, this cultural and scientific advancement could not be possible without looking at Europe in its unity with the Mediterranean during the previous centuries. In fact, it is not an exaggeration

¹⁶ F. Braudel; *The Mediterranean* cit., p.189.

¹⁷ Ivi, p. 190.

¹⁸ Ivi, p. 191.

¹⁹ During the Christian period the name Europe was widely eclipsed by Latin terms for Christianity (christianismus, christianitas), but it stayed extant throughout the middle Ages and enjoyed a renaissance thanks to Dante and Petrarch. However, with Pius II, the name *Europa*, and in particular the adjective *Europaeus* as a designation for Europeans and things European, have come to stay. Cfr. Michael Cotta-Schönberg, Two texts by Eneas Silvius Piccolomini on Denmark., p. 16. Available on line at <http://www.researchgate.net/>

²⁰ Student’s *nationes* (Latin: *natio* "being born") are regional corporations of students at a Universities. Students of *nationes* were all born within a same region, usually spoke the same vernacular language, along with the Latin, the language used at the University. Since the foundation on the XIII century, the university of Padua counts almost 1000 stone armors left by students and professors identified by their local self-identification in *subnationes*, and administratively grouped in 22 *nationes*.

²¹ Eneae Silvii Piccolominei postea Pii pp. II *De Europa*. Ed. A. van Heck, Vatican city, 2001.

to consider that since the XII century the European universities have been furnished with volumes of algebra, philosophy, alchemy, astronomy and other scientific discoveries thanks to the immense work of translation of the Spanish universities, especially Toledo. If the architects of Europe could use the golden section, Platonic ideas and Aristotelian syllogism could be studied in Paris and London, it was only possible thanks to the Arab support. Nevertheless, only small elite could experience the European Renaissance, while the majority of the population continued mostly to live analphabet and in slavery. This top-to-bottom social approach and political control did last until the French revolution, when a new player imposed its presence on the center of the stage. It challenged the cynic consideration of the human being living in the *theatrum mundi* and described in the words of Shakespeare's melancholy Jaques, *All the world's a stage / And all the men and women merely players / They have their exits and their entrances / And one man in his time plays many parts.*²² The so-call *Third Estate*, under the leadership of leaders like Maximilien Robespierre and Napoleon Bonaparte, ignited a period of revolution and transformation that brought the traditional Habsburgic geopolitical empires to fragment into nation-states.²³ In contrast with the previous riots, the third estate could enact a revolution because empowered with values resumed in the motto "Liberté, Égalité, Fraternité". Discussions over the definitions of Security, Freedom, Brotherhood, Property, Human and Citizen's Rights and Duties took place in almost every local café and meeting rooms of European cities.²⁴ To the eyes of local communities, the French Revolution seemed to embody the possibility to form a new political order able to vindicate the authority to assume the effective control of natural resources and land property.²⁵ In fact, since the peace of

²² Shakespear, *As You Like It*, Act II Scene VII. The term *Theatrum Mundi*—the world is a stage—has been created during the Baroque to indicate that the social and political realm in the real world is manipulated in exactly the same way the actor and the machines are presenting/limiting on stage.

²³ Abbé Emmanuel Joseph Sieyès, *What Is the Third Estate?* January 1789. In this political pamphlet, Sieyès argues that the Third Estate constituted a complete nation in itself and had no need of the "dead weight" of the two other orders, the First and Second Estates of the clergy and aristocracy. Sieyès stated that the people wanted genuine representatives in the Estates-General, equal representation to the other two orders taken together, and votes taken by heads and not by orders. These ideas came to have an immense influence on the course of the French Revolution.

²⁴ Cfr. fig.1 in the appendix. The title reads: *Declaration of the Rights, and Duties, of Man, and of Citizen. The people of Cavarzere proclaims in face to God the following declaration of the rights, and duties, of man, and of citizen.* Adopted in 1797, in a little village called Cavarzere, under the Republic of Venice, which counted no more than 6000 inhabitants living in extreme poverty and material deprivation.

²⁵ For the analysis of the "Forest Conflict" and property rights, Cfr. Jonathan Sperber, *The European Revolutions, 1848-1851*, Cambridge University Press, 2005, pp.41-55.

Westphalia, the administration of the territory fell under the control of a unique religious and political entity embodied in the figure of the emperor, ruler of *the religious-estate*.²⁶ Local interpretations of those values spread by the revolution challenged the principle that sovereignty was based on the interpretation of religion and legal administration adopted by the ruling elite, in accordance with the principle *cuius regio et eius religio*, as described in the international treaty of Westphalia. Local communities aimed at establishing the principle that *religious* sovereignty depended upon the effective control of communities over a region.²⁷ To establish again order and unity, the religious-empires were determined to address the social unrest first by means of war, and eventually political revenues, namely the legal institution of a Constitution, where the rich was counted together with the poor, the local minorities became the national majority and (almost) everyone was dignified by the status of citizen. This strategy resembled the ancient and medieval political weapon of the Roman SPQR (Senatus PopulusQue Romanus) to enlarge the privileges to be *populus* - citizens - to those who were before barbarian “communities”. In accordance with the liberal ideas of the *Leviathan*, written a century before by Thomas Hobbes, these “new” citizens were allowed to freely constitute themselves in states, administrated by citizens’ representatives, whose main duty consisted on respecting State’s Constitution and establishing the participation of citizens to decisions through the parliaments. The former ruling elite could keep the “religious” administration of the state, while the Constitutions, which resembled Rousseau’s social contract, embodied citizens’ fundamental freedoms and guarantee the division of powers between the former ruling elite to the new formed government/*politeia*. Yet, the values of the XVIII century considerably differed from the ones adopted by the new formed citizens’ governments. For instance, one may consider the positive use of the term “terrorism” during the French revolution and its condemnation by

²⁶ *Religiuous-Estate* is used here referring to the problem of the historicity of religion. Heidegger has addressed the problem of religion and its historicity with his well-known discussions of onto-theology, technology and the “holy”. According to him, religion is based on the precept “Follow me, run along behind me”. In 1963, after the publication of the text titled “Conversations with a Buddhist Monk”, he offers an illuminating formulation of religion that he accounts as *Nachfolge*, “following-after,” emphasizing, 1) the historicity of religion and 2) the centrality of language to religion, and 3) the hermeneutic character of religious tradition. Cfr. Robert Metcalf, “Following the Words: Heidegger’s Account of Religion as *Nachfolge*”, in *Journal for Cultural and Religious Theory*, 2010, pp.910-95.

²⁷ E. Dell’Agnese, E. Squaracina, *Europa: Vecchi confini e nuove frontiere*, Torino, UTET, 2011.

the UN General assembly in 1994.²⁸ Furthermore, the problem of land and its resources' property fell from a restricted elite's jurisdiction to the state, and therefore extended to all its citizens; local communities could finally own their natural resources, without the permission to use them if lacking of state's representatives authorization, thou. Nevertheless, as Brunner and Koselleck point out,²⁹ the change in meaning of terms forms a crucial basis for contemporary cultural, conceptual and linguistic understanding. What is the definition that may characterize Europe nowadays? Far from being a quest for the "European roots", which large debate has risen during the XX century, this chapter would attempt to recall the main historical and political events that are relevant to identify how the unity of visions among several states, throughout the up-to-bottom approach, did render Europe a place where there is obligation to respect human rights. This unity - *concordia*- is intended to be within three features: Values (Council of Europe) Power(s) (the EU) and People (citizens). Moreover, the third paragraph will introduce the phenomenon of "minority problem". The paragraph introduces the consideration that national minorities remain extremely problematic to the scope of preserving the European unity because they challenge and define the limits and incongruities of citizenship.

²⁸ The UN *Declaration on Measures to Eliminate International Terrorism* reads the word terrorism as "Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.". Cfr. General Assembly resolution 49/60, para. 3. On the Contrary, during the French period referred to as *La Terreur* (Reign of Terror 1793–94), Maximilien Robespierre, leader of the French revolution, is alleged to have said: "Terror is nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue" Cfr: Brett Bowden, *Terror: From Tyrannicide to Terrorism*, University of Queensland Press, 2008, p.8.

²⁹ Conceptual history (also the history of concepts or, from German, *Begriffsgeschichte*) is a branch of historical and cultural studies that deals with the historical semantics of terms. It argues that social history must begin with an understanding of historically contingent cultural values and practices in their particular contexts over time, not merely as unchanging ideologies or processes.

I.I The values

After the Second World War, worldwide calls for the “United States of Europe” resolved to create a confusing mixture of numerous and complex organizations.³⁰ Although it is beyond the purpose of the following chapter to give an account of the history of all the organizations that proliferated after the Second World War in Europe,³¹ the most important organization concerning the scope of this thesis’ paragraph is the Council of Europe (CoE). Its creation rendered possible for its member states to gradually nurturing peace, democracy and prosperity within an unprecedented framework based on individual freedom, economic dynamism and social protection and cohesion.³² It borne as apolitical institution on 5 May 1949, structured to enable as many countries as possible to participate. Yet, the CoE’s first aim is “to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress”.³³ Its statute establishes that decisions on all-important questions require unanimity, according to every country a power of veto as is to be found in the United Nations (UN) Security Council.³⁴ Since its establishment, the CoE concluded numerous conventions, in the fields of economics, culture, social policy and law, the most well-known of them was signed on 4 November 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This convention represents a unique and fundamental stronghold on the protection of human rights because it establishes a system of legal protection which enables the bodies established in Strasbourg (the European Commission on Human Rights and the European Court of Human Rights) to condemn violations of human rights. The *obligation to respect human*

³⁰ On 19 September 1946, Churchill proclaimed “we must build a kind of United States of Europe. In this way only will hundreds of millions of toilers be able to regain the simple joys and hopes which make life worth living”. Cfr. Winston Churchill, *Speech to the Academic Youth*, Zürich, Switzerland.

³¹ See for more specifications: Klaus-Dieter Borchardt, *The ABC of Community Law*, European Commission, 2000, pp. 9-14.

³² IDEA, *Democracy cit.* p.7

³³ Statute of the Council of Europe, art.1.

³⁴ Ivi, art 20.

*rights*³⁵ is therefore the first and foremost value on which Europe was founded. Yet, along with the analogy with the Sun which shines in the sky of Plato's Republic,³⁶ this obligation enlightened many more human rights that would be soon listed in conventions and treaties. The European Coal and Steel Community treaty (ECSC), which opened the way to the EU, was set up within private consultations at special subcommittees of the CoE. The father of the ECSC, Robert Schuman, describes it as "a new stage in human development [because] it contrasted with destructive nationalisms of the nineteenth and twentieth centuries that began in a glorious patriotism and ended in wars".³⁷ The ECSC was an institution founded on the supranationalist ideology, which casted itself as the *golden mean* between the extremes of the democratic syllogism composed at that time by the ideologies of Federalism of States and Super-State.³⁸ Yet, the ECSC demonstrated that the human right to life is related to the human need of peace. Some years later, a new concept of *Concordia* borne, binding not only nation-states and their organs to international organizations that followed the CoE and the ECSC,³⁹ but also familiarizing national societies and their individuals to the internationalization of legal, economic, social standards under a single framework represented by the European Economic Community (EEC). In the words of Robert Schumann, these new organizations, "with the free circulation of goods, capital and persons, are already profoundly and definitively changing relationships between associate states; in a certain sense they are becoming divisions, provinces of a single unit. And this unit cannot and must not remain a purely economic and technical enterprise: it requires a soul, an awareness of its historical affinities and its present and future responsibilities, a

³⁵ European Convention on Human Rights, art.1.

³⁶ Plato describes the idea of Good in analogy to the Sun: "as goodness stands in the intelligible realm to intelligence and the things we know, so in the visible realm the sun stands to sight and the things we see". Plato, the Republic, in Louis Pojman, *Classics of Philosophy*. New York: Oxford University, 2011, p. 171.

³⁷ Robert Schuman, *Pour l'Europe*, Editions Nagel, Paris, 1963.

³⁸ According to Aristotle, the 'golden mean' is the desirable middle between two extremes, one of excess and the other of deficiency. For example, in the Aristotelian view, courage is a virtue, but if taken to excess would manifest as recklessness, and if deficient as cowardice. Cfr: Kristján Kristjánsson, *Aristotle, Emotions, and Education*, Ashgate Publishing Limited, 2009, p.79.

³⁹ This "development came some years later with the Treaties of Rome of 25 March 1957, which created the European Economic Community (EEC) and the European Atomic Energy Community (Euratom); these began their work when the Treaties entered into force on 1 January 1958". Klaus-Dieter Borchardt, *The ABC cit.*, p.12.

political will to serve the same human ideal”.⁴⁰ In this frame, the negation of the right to life, war, was “not merely unthinkable, but materially impossible”.⁴¹

Nevertheless, Schumann’s realization of supranationalist organization did not lack of an historical antecedent. The Universal Postal Union, based on a multilateral treaty that instituted an independent “supranational” organism, was already a reality a century before the signature of the Coal and Steel Treaty.⁴² However, the Coal and Steel organization had no *obligation* to respect human rights. Nevertheless, assuring stability by implementing the conditions for a peaceful cooperation among member states, it represented a unique case in the history. It shared the attractive capacity to nurture a favorable environment for the establishment of more human rights, which acted as *unmoved movers* towards the rest of world.⁴³ The obligation to respect human rights started to be the main topic discussed at the UN. Nevertheless, the necessity of human rights within international treaties have two historical precedents too, although both before the Universal Declaration of Human Rights (UDHR). The first goes back almost two centuries up, when during the “Massachusetts compromise”, a Federalist American Constitution was ready for ratification only if being legally bound together with the Bill of Rights.⁴⁴ The second historical moment refers to the signature of the UN charter, which after years of endless discussions was ready to be accepted by the nations gathered in San Francisco not without listing basic freedoms and inclusion of human rights provisions in the founding charter.⁴⁵ However, the UDHR does not refer to any obligation to respect human rights. This concept, embodied nowadays in the ECHR, has been realized on personal capacities by eleven actors,⁴⁶ representing the national leaders of those countries that until then conducted politics by means of war. Their

⁴⁰ Robert Schuman, *Pour l'Europe* cit., p. 77-78.

⁴¹ European Commission, Robert Schuman: the architect of the European integration project; on line resource: http://europa.eu/about-eu/eu-history/founding-fathers/pdf/robert_schuman_en.pdf

⁴² The first congress was held in Bern, Switzerland in 1874, and was attended by delegates from 22 countries, 20 of them European but Egypt and the United States of America.

⁴³ Aristotle describes the existence of many *unmoved movers* that are the “first cause” of change in the world of physics, due to their power of attraction. Cfr. Aristotle, *Metaphysics*, book XI.

⁴⁴ Five states had ratified the Federalist Constitution with relative ease, but the Massachusetts convention was far more bitter and contentious. After long debate, a compromise (known as the “Massachusetts compromise”) was reached. Massachusetts would ratify the Constitution with recommended provisions in the ratifying instrument that the Constitution be amended with a Bill of Rights.

⁴⁵ The UN founding charter contains slight references to human rights, but it provides the creation of ECOSOC, which later would establish the committee that proposed to the UN General Assembly to approve the text of the Universal Declaration of Human Rights.

⁴⁶ Konrad Adenauer, Joseph Bech, Johan Willem Beyen, Winston Churchill, Alcide De Gasperi, Walter Hallstein, Sicco Mansholt, Jean Monnet, Robert Schuman, Paul-Henri Spaak and Altiero Spinelli.

endeavor shall be paragoned to the ability of Liu Xin or Augustus Caesar to establish unity and peace by pursuing a common project.⁴⁷ Finally, to summarize the achievements of these eleven great personalities with Svetonio's expression: *Marmoream se relinquere, quam latericiam acceperant*.⁴⁸

However, at the founding moment of the European international organizations, citizens had little if any saying. Western Europe was created on practical needs to rebuild and avoid wars between nations' leaders, therefore by a top-to-bottom approach in the tradition of the International Law, rather than a bottom-up involvement of local communities. Nevertheless, a new conflict to define the material and ideological supremacy took place among the Federalist or Super-State ideologies. Europe was divided apart from this rivalry though the iron curtain.⁴⁹ Both ideologies aimed at guaranteeing the best economic growth, individual wellness, higher rates of employment and better standards of life to all their citizens. However, only within the CoE there was the obligation to respect human rights. Yet, as it was abovementioned, Europe has always been a place of common influence between many different social groups, and this influence had always demonstrated to remain persistent in time. In fact, the activism of Amnesty International first, and Human Rights Watch later, both setting down their headquarters among the founding member states of the CoE, rendered possible for anyone living right or left the curtain to become familiar with concepts of democracy, human rights and rule of law embodied in the values of the CoE. Their activism on behalf of human rights demonstrated there could be a different interpretation than the ideological interpretation of politics promoted by

⁴⁷ According to ancient Chinese texts, before the Xia dynasty was established, battles were frequent between the Xia tribe and Chi You's tribe. Under the rule of Liu, these tribes found unity in the common project to contain the flows of the yellow river. *Imperator Caesar Divi Augustus* reconciled the leaders of the people and the leaders of the Senate under his leadership (becoming himself *princeps*, "first citizen") and giving rise to the "*pax romana*" after several years of civil wars.

⁴⁸ Originally referred to the city of Rome, the expression is here used in the following sense: "they found Europe a place in ruin and left it of marble". Suetonius used the following expression "Urbem neque pro maiestate imperii ornatam et inundationibus incendiisque obnoxiam excoluit adeo, ut iure sit gloriatus marmoream se relinquere, quam latericiam acceperat". Cfr. Svetonius, "life of Augustus", in *De Vita Caesarum*. 28.

⁴⁹ On 5 March 1946 at Westminster College, Winston Churchill's speech "Sinews of Peace" used the term "iron curtain" in the context of Soviet-dominated Eastern Europe: "From Stettin in the Baltic to Trieste in the Adriatic an 'Iron Curtain' has descended across the continent. Behind that line lie all the capitals of the ancient states of Central and Eastern Europe. Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia; all these famous cities and the populations around them lie in what I must call the Soviet sphere, and all are subject, in one form or another, not only to Soviet influence but to a very high and in some cases increasing measure of control from Moscow".

conflicting superpowers. In this view, it may be possible to understand the adoption of the International Bill of Human Rights. Thirteen years after the entry in force of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), the insured legal obligation to respect human rights, as the Aristotelian *unmoved movers*, attracted peace along with new generations of human rights, and in 1989 the cold war was over.

I.II

The powers

During the decade before the end of the cold war, Europe was divided three main areas of influence. Each of them was ruled by a specific ideology and logic, along with national and regional specificities, and three different ruling organs: The European Economic Community (ECC), the Soviet Bloc (URSS) and the Arab League. Although different in the methodology and content, all these three powerful institutions were characterized by a traditional top-to-bottom approach to legitimize their use of power over societies, and they differently happened to be challenged by bottom-up movements. A phenomenon of social unrest invested Europe during the 1980s. On the northern side of the Mediterranean, as Michel Newman recalls, “the endeavors of the Community to challenge the growth of hostility was to seek a greater legitimacy with practical measures to strengthen the bond between ordinary people and the European Project”.⁵⁰ In the same situation was the Soviet Bloc. In Poland, the ruling communist party has addressed protests for the rising prices of basic goods with two years of martial law (1980-1981). The uncontrolled growth of inflation which was afflicting all the member states of the Soviet Bloc, catalyzed by a general discontent for the endless Afghan war and the Chernobyl disaster of 1986 were interpreted as facts that the Super-State ideology were not able to manage the continuous economic and social crisis. The Arab League lived a political unrest that led the super-powers into new proxy-conflicts. The rivalry between Arabism and Islam erupted with the Islamic revolution in Iran in 1979. In 1981, Islamic activists assassinated the Egyptian president Anwar al-Sadat, followed by Lebanon’s confessional State reconfiguration during the 1980s. As Christine M. Helms points out, “Islamic activists have been able to attract a wider and more committed audience, including adherents to Arab nationalist movements who had been avowedly secular and had formerly opposed them”. State Leaders of the Arab League were challenged by movement of activists who demanded a change on domestic and foreign policies. “No nation-state has been immune, explains Helms, [f]earful Arab nationalist leaders, unwilling or unable to abandon decades of ideological baggage, have begun a gradual, if erratic, process of melding the spirit and letter of Islamic precepts

⁵⁰ Michael Newman, Catherine Hoskyns, *Democratizing the European Union: Issues for the twenty-first Century*, Transaction Publishers, 2007, p.2

into existing national laws and political rhetoric”.⁵¹ This process brought to an escalation of conflicts that would not only involve the state members of the Arab league but in the logic of the cold war’s proxy conflicts, the ECC and the United States, too.⁵² Arabism and Islam became actual power-contenders during the Iran-Iraq war of the 1980s when “Middle Easterners, acutely aware that the governments of these respective countries were political paradigms for Islam and Arabism, warily envisioned a final, catastrophic battle in which an undisputed victor would emerge. Instead, an inconclusive ceasefire in 1988 and the death of Ayatollah Khomeini in 1989 left the fundamental dilemma unresolved. Arabism remains the seated authority, but previous assertions about its advocates’ right-of-succession are moot and ideological substance is beleaguered”,⁵³ as it will become evident almost 30 years later during the so-called Arab Spring.

On the Northern side of the Mediterranean, the Community has been forced to address a growing social unrest. The reasons, as Newman points out, were identified in “the structure and policy making system [which] bears the imprint of the early post-war years when political and economic elites constructed European integration on the basis of a “permissive consensus” [...]. [T]he system paid little more than lip service to democratic principles”.⁵⁴ However, the nature of the popular hostility would remain formerly unknown for another two decades. Symbolic provisions were taken from the Community member States. In 1983, the European Parliament adopted the flag, which in 1985 was adopted by all leaders of the Community as the official emblem of the European Communities. Regular and widespread use of the anthem was encouraged until the proposal to adopt standards for passports (same size and color in all member countries). These measures were meant to emulate that emotion that nationalism creates among civil society. However, the results did not meet the wished goals. These measures seemed only to contain the problem but far from being effective to solve it. In this perspective and under these premises the ruling elite of the EEC answered to the growing unrest of citizens by implementing more meaningful measures, such as the experimentation of the Schengen treaty (1985), the Erasmus

⁵¹ Christine M. Helms, *Arabism and Islam: Stateless Nations and Nationless States*, DIANE Publishing, 1990 p.1.

⁵² “Explosive devices [...] destroyed the United States embassy in Beirut, Lebanon in April 1983, killing 49 and wounding 120. In October of that year, the American and French military headquarters were similarly destroyed with a loss of 241 Americans and 56 Frenchmen”. *Ivi*, p.4.

⁵³ *Ibid.*

⁵⁴ Michael Newman, Catherine Hoskyns, *Democratizing cit.*, p.2.

Programme (1986) and the Single European Act (1987), which achieved universal suffrage in the European Parliament.

Nevertheless, the rational explanation of the causes of social unrest found elucidation in relation with another phenomenon that came to presence during the mid-1980s (and especially in force from the mid-1990s). Globalization challenged the assumption that citizens alone could guarantee commitment to human rights at the international level. Traditionally, the Constitution guaranteed to citizens the right to form governments delivered with executive powers. The constitutions adopted after the Second World War in Europe, however, did not only allow citizens to form governments, but also obligated them to respect universal legal principles, divisions of the powers and commitment to respect, protect and fulfill fundamental freedoms towards everyone, especially the non-citizens. Nevertheless, the popular perception that in a “globalized world” the power of governments was gradually shifting from elected bodies to undetermined non-state actors represented a severe violation of the principle that entrusted only the representatives of citizens to govern the state. Power shifted from citizens to undetermined non-elected bodies. To introduce the rationale that undergoes this phenomenon is necessary to recall Michel Foucault’s theory on power. He spent almost all of his life to identify the concept of power. Among the several definitions which one may encounter on his volumes, his inductive approach brought him to the following consideration: “power is the problem that has to be resolved. Take an example like the prisons. I want to study the way in which people set about using-- and late on in history-- imprisonment, rather than banishment or torture, as a punitive method [...] I constantly show the economic or political origin of these methods; but, while refraining from seeing power everywhere, I also think there is a specificity in these new techniques of training. I believe that the methods used, right down to the way of conditioning an individual’s behavior, have a logic, obey a type of rationality, and are all based on one another to form a sort of specific stratum”.⁵⁵ According to Foucault, the power undergoes certain logics, like the logics of the market, of politics and historical (religious) renditions. The Community, apparently under the influence of unidentified non-state actors, gradually started to promoting market deregulations and enlargement of

⁵⁵ Walter Truett Anderson, “The Truth About the Truth”, Hackett Publishing, 1995, p. 43.

freedoms in the financial sectors.⁵⁶ During the 1990s, remembered as the first economic crisis, states “are encouraged by a variety of public and private actors that support globalization not to use their sovereign powers in order to impede such free flows in to and out of their territory”,⁵⁷ namely adopting religious believes - *dogmata* - in service of the liberal ideology. Nevertheless, the outcomes of these economic decisions created a new *monster* -as much powerful as the Leviathan- but very different. Acephalous, disproportionate, emotionless, it is represented and constituted by the liberal flow of capitals, which move from land to land deciding the life and death of individuals, regardless of the legal principles and human rights. Without control, as Frankenstein's creature, it hit its creators in 2006 - the *annus horribilis* - with the worst economic crisis that capitalist democracies have ever experience. States alone resulted impotent to contrast the power of this monster, and the ruling elite experienced a gradual estrangement from their electorate base. These the bases on which the EU (established by the Maastricht Treaty in 1993) became the new actor, the stronghold which could shield the citizens from the hits of the *monster* by the adoption of the single currency, the Euro. However, to preserve their original sovereignty, social strong self-identified communities created a bottom-up countermovement, the so-call *localization's* phenomenon, which is the process of customizing a specific need within a specific set of practices, regardless of international standards or laws. Localization, in legal terms, has been described by Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, who travelled Europe by large Europe visiting Austria, Hungary, Italy (1728), Germany (1729), Holland and England (1730). During these travels, he could study the economy, the geography, the politics and customs of each country. His conclusions were gathered in the encyclopedic opera, *De l'esprit des Lois*, which needed almost 14 years to be presented in 2 volumes and 31 books. One of his conclusions states that power is the codification of international laws within local rules. According to him, power undergoes custom rules adopted in accordance with the “spirit of the people” living in a specific region. However, these rules are exquisitely practical and seldom theoretical. Rule, in fact, come from Latin “regula” - straight stick, bar - which is an *universal because practical* tool to solve problems of math, geometry, geography and only

⁵⁶ Jean-Pierre Casey, Karel Lannoo, *Europe's Hidden Capital Markets: Evolution, Architecture and Regulation*, CEPS Paperbacks (2005), p. 11

⁵⁷ K. De Feyter, *Economic Globalization and Human Rights*, EIUC Studies 2007, p. 51.

figuratively could be enlarged to the competence of science, jurisprudence and philosophy. This universal feature of the tool, however, is not reached on the base of any international accord, as the metric system for instance. Localization does promise to its adherents to exist regardless of other communities and ultimately represents self-isolationism. Globalization and localization challenged the supranational model of the ECC, threatening the principles of cooperation and solidarity among states, which has been achieved with much effort by the founding fathers of Europe. Therefore, member states tried to counterbalance the influence of both globalization and localization by allowing European international organizations to have more powers. The CoE, on the contrary, resulted to be a *glocalized* stronghold that could guarantee the commitment to human rights; adopting conventions aiming at reconcile the localized communities with the growing internationalism of states. Yet, the CoE acted as a powerful shield against the universalism of globalization and relativism of localization, in accordance with the conclusions of the International Human Rights Congress in Vienna, 1993: *all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.* Especially according to the second conclusion, that “regional particularities must be borne in mind”, the CoE adopted since 1985 the European Charter of Local Self-Government, which is the only document ratified by all the 47 member states, and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1980 and its three protocols), the Convention on the Participation of Foreigners in Public Life at Local Level (1992), the European Charter for Regional or Minority Languages (1992), the Framework Convention on the Protection of National Minorities (1995), the European Code of conduct for the political integrity of local and regional elected representatives (1999), the European Landscape Convention (2000), the Revised European Charter on the Participation of Young People in Local and Regional Life (2003), the European Urban Charter II - Manifesto for a new urbanity (Manifesto) and the Council of Europe Reference Framework for Regional

Democracy (2009). However, these measures were not accessible for ratification by the EU. The CoE created legal tools where the human rights of the individual could be respected. However, rather than implementing CoE's suggestions, the EEC invested its economic resources to realize a project aiming at constructing an economic stronghold - the EU - meant to protect its citizens against the *Creature* and strengthening the economic and political bounds between member states but leaving human rights aside. However, the EU did have no social contract to offer, or space for the individuals to participate to its decision. The EU, acting as a private company, hired the best human resources chosen by merits or indirect elections. The European citizen, accustomed by election's practice to intend democracy by means of direct participation through elections, felt excluded from the EU politics although subdued to its policies. In other words, with the advent of globalization and localization ideologies, the citizenship's privileges nurtured and strengthened by nationalism, were no more. A lack of a *demos*, or democratic deficit, seemed to threaten the fundamentals of the democracy within the EU. On the contrary, to the eyes of technocrats, this *demos* was an agglomerate of minorities, an heterogeneous mob, attached to national traditions and without a common purpose. Within the same eyes, the Yugoslavian ruling elite looked at the secessionist national movements. Unable to find a common diplomatic solution, the Yugoslavian forming national states addressed these problems by traditional means of war. The Yugoslavian war brought the international community to face the problem of "new national minorities", which have full control of a region that falls under the sovereignty of another "established national majority". Within the same complex framework, after the end of Yugoslavian war, the problem of new national minorities continued to raise and grow in the EU as well.

I.III

The “minority problem”

The legacy of the Cold War did represent for Europe a cultural earthquake and military conflict. It became clear to the ruling elites that ideologies, which dominated the cultural and political environment of states along with the familiar rhetoric of politicians, did not serve to cement public opinion anymore. The Community seemed to suffer of a Statelessness nation's syndrome.⁵⁸ Promoted by the Federalist Movement, founded by Altiero Spinelli, activists challenged the representatives of the state through an active campaign on their electorate to ask for implementation of a federalist EU of states and the desire to strengthening under citizens' control the roles of the European Parliament and the European Commission. On the other hand, the legacy of the Super-State ideology created an opposite situation within the Soviet Bloc, which may be referred as the Nationless States syndrome, which was characterized by decades of violent propaganda contrasting any national upraise. In the 1990's, the Soviet Bloc faced the worst socio, economic, cultural, political and civil crisis since the Second World War. It is a well-known fact that the outcome was the replacement of the Super-State ideology by nationalism, although the reasons of such an outcome could not be taken for granted. Among the many analysis and among the many theories advanced to explain the decline of the Super-State ideology within the former Yugoslavia, the outcomes of its crumble were not easy predictable, especially in relation to the ESCS's example. Thus, from a political point of view some theories are covering the previous heavy centralization of the power along with little or no participation of the civil society to state's decisions, resembling the situation of the European states before the war. However, this thesis adheres to the opinion that a fundamental factor of the social crisis was due to the commitment of the forming ruling

⁵⁸ This reflection is addressed in the light of the explanatory report of the Venice Commission about State succession. “The avoidance of statelessness is closely linked to the right of the individual to a nationality, since the non-fulfillment of this right leads to statelessness. Experience has shown that in particular in connection with State succession a large number of persons are at risk of losing their nationality without acquiring another nationality and in consequence becoming stateless. Chapter VI of the European Convention on Nationality on “State succession and nationality” contains some general principles related to nationality which are to be respected by States in the situation of State succession”. in: Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.

elite to avoid public education to the International Bill of Human Rights.⁵⁹ Once the emerging elite could use the national pattern to call up for their *people*, the rising nations were entitled to form governments legitimized to govern their independent states. Without a political and public awareness of the principles adopted within human rights treaties, nationalism could find a favorable ground to nurture communities' secessionism. The Republics of Yugoslavia had already adopted a Constitution (1974), however maintaining administrative independency and economic sovereignty. Once the Nation of Serbia hired the legacy of the Super-State ideology, the war stormed the Balkans, bringing terrible memories in the international community. Eventually, the new national ruling elites configured borders, sphere of influence between them and the Republic of Serbia. It is in this scenario that Europe faced a new threat: the "minority problem". At the beginning of the XX century, within the Balkan chess box, "[t]he term "international problem of minorities", in short the "minority problem", has been coined to emphasize that ethnic minorities as entities within states pose a certain problem with not only domestic but also potentially insignificant international implications".⁶⁰ Petra Roter goes further with her analysis, describing the implications of the existence of minorities Europe:

*Within their home-states, minorities tend to be seen as destabilizing entities that pose an obstacle to successful state formation and state preservation [...]. By endangering coherence and stability within individual states, which almost necessarily undermines regional stability, minorities and ethnic conflicts inevitably touch upon the issue of international security [...] and therefore on the issue of international order, norms and law.*⁶¹

⁵⁹ The International Bill of Rights is a legally binding international treaty composed by the UDHR, the ICCPR and the ICESCR. Moreover, that the Soviet Bloc was not committed to the UDHR is dating back on 10 December 1948, when the *Universal Declaration* was adopted by the General Assembly by a vote of 48 in favor, none against, and eight abstentions (the Soviet Union, Ukrainian SSR, Byelorussian SSR, People's Federal Republic of Yugoslavia, People's Republic of Poland, Union of South Africa, Czechoslovakia, and the Kingdom of Saudi Arabia).

⁶⁰ Petra Roter "Locating the 'minority problem' in Europe" *Journal of International Relations and Development* (2001), p.221

⁶¹ *Ivi*

Traditionally, human rights did mainly protect individuals from abuses led by the majority. These abuses were conducted for forcing the individual to obey the laws.⁶² However, the affirmation of the existence of a free faculty to will on the individual by the religious authorities needed to be protected by the assumption of the existence of fundamental freedoms that were not contemplated by the determinism of laws. These principles could grant free action of the individual within the due limits of laws. These freedoms originated the human rights listed in UDHR and reflected in the Constitutions. Commitment to respect these freedoms measures the neutrality of a state. Once Hobbes introduced the idea that the signature of a treaty could be open to elected bodies of the civil society, not only the traditional actors of the state, new local communities struggled to define more freedoms, more localized rules. Since the state intended these acts as deeds of insubordination and secessionism, conflict between local realities and centralized states erupted in Europe, ending with the definitive definition of state's borders. However, the rational and emotionless State proposed by Hobbes would never be possible if nationalism would not have delivered to citizenship not only rights and duties, but also privileges. Nationalism is a soft force of change and can be described as an alchemical recipe that has the effect to rise emotions in the individual. The power of emotions remains an explored area that may need more attention from the community of interdisciplinary scholars.⁶³ Nationalism may be described as an alchemical procedure that assembles different elements creating the emotion of "identity" of the single citizen with its civil society.⁶⁴ It is easy enough to draw up a list of the symbolic and material items which any real nation needs to possess: "a history establishing its continuity through the ages, a set of heroes embodying its national values, a language, cultural monuments, folklore, historic sites, distinctive geographical features, a specific mentality and a number of picturesque labels such as costume, national dishes or an animal emblem".⁶⁵

⁶² Friedrich Wilhelm Nietzsche, *The genealogy of Morals*, 1913.

⁶³ Emotions alter the perception of reality and are the main source of human decisions on behaving. See at length Joseph LeDoux, *Il cervello emotivo*, Dalai Editore, 1998.

⁶⁴ James Paul points out: "a nation is at once an objectively abstract society of strangers, usually connected by a state, and a subjectively embodied community whose members experience themselves as an integrated group of compatriots". Cfr: James, Paul *Nation Formation: Towards a Theory of Abstract Community*, London: Sage Publications. (1996), p. 34.

⁶⁵ Anne-Marie Thiesse, *La création des identités nationales*, Paris (2001), 13–14.

However, its alchemical nature is highly instable. It does not only unify several citizens of a State (Italy, Germany, and France) but may tend to separate them (Spain-Catalonia, England-Scotland). This instability derives from the fact that citizens are the only actors allowed to constitute states. However, in order to be persistent in time, states need the loyalty of their citizens. Nationalism represents the “religious” promise that citizens’ loyalty would be rewarded with specific privileges deriving from their national citizenship. These privileges are not human rights extended to everyone, but rather the possibility only for national citizens of the state to enter in social practice with the decisional bodies of the state. Yet, this conception of citizenship falls under the limits of the religious framework based on *do ut des*, “I give that you might give”.⁶⁶ However, as it was sketched in the previous paragraph, globalization attempted to dissolve not only states’ borders⁶⁷ but also facilitated to dissolving the alleged unity between states and nations. Within a globalized world, states became less and less efficient on preserving their promises of privileges accorded to citizens. Therefore, individuals could adopt a loyalty towards diverse communities (economic, social or other status). The outcome consisted in the creation of undetermined non-state actors, referred as international lobbies and international rich elites, which could replace the elected governments on dictating the priorities of the state’s agenda that did not strictly coincided anymore with state’s priority to preserve commitment to its Constitution. However, states could not only guarantee citizen’s original privileges deriving from their loyalty to nationality, but also state’s commitment to human rights extended to all their inhabitants could not anymore be guaranteed, thus creating a paradoxical status of continuous and perpetual democratic status of crisis. Within this social crisis, citizens could accuse non-citizens to have “stolen” their privileges at both international and local level. Human behavior in time of crises is highly unpredictable. The Balkan’s facts showed that within a state, Yugoslavia, a powerful group, identifying itself as a nation, may act in tyranny over near national minorities, with several attempts to repress (Kosovo) expulse

⁶⁶ The formula *do ut des* expresses the reciprocity of exchange between human being and deity, reflecting the importance of gift-giving as a mutual obligation in ancient society and the contractual nature of Roman religion. The gifts offered by the human being take the form of sacrifice, with the expectation that the god will return something of value, prompting gratitude and further sacrifices in a perpetuating cycle. However, in Pauline theology, *do ut des* was viewed as a reductive form of piety, merely a “business transaction”, in contrast to the Christian God’s unilateral grace. See Georg Luck, *Arcana Mundi: Magic and the Occult in the Greek and Roman Worlds*, Johns Hopkins University Press, (1985), p. 479.

⁶⁷ K. De Feyter, *Economic Globalization cit.*, p. 51.

(Croatia, Kosovo) or exterminate (Bosnia Herzegovina) them.⁶⁸ The case study of Kosovo may be exemplary for the awake of consciousness it created in the Community, which “appeared to be threatened in two ways: by a deficiency of European identity, in striking contrast to the continuing vigor of national identities, and by a process of fragmentation into micro-nations”.⁶⁹ Diversity management encompasses the tension between minorities and nations. In Yugoslavia, not all minorities were considered *per se* as a threat to national security, as long as they worked under the logic of accepting the nationalistic structure of the majority with whom they lived with - a process called naturalization -. Croatia and Bosnia Herzegovina could settle down their conflicts with Serbia after the determination of borders. However, Kosovo was considered part of Serbian nation, but dwelled by a national minority: “numerically inferior to the rest of the population of a State, *in a dominant position* of a region, whose members possess ethnic, religious *and* linguistic characteristics differing from those of the rest of the *Albanian and Serbian* national population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion *and* language.”⁷⁰

Jolyon Naegele, UN Mission in Kosovo (UNMIK) Head of Political Affairs Office, discusses that the possible creation of a Greater Albania in light of the international community's efforts to solve the status of Kosovo would be false, “because of local media's reflection of the interesting differences in the perception of the Albanian people and the differing perception that centers around the Albanian flag”.⁷¹ Moreover, UN recognized Kosovo as international protectorate, and not as a nation-state. Kosovo falls under the sensitive domain of human rights because introduced to Europe the dilemma of legislating over “new national minorities”. Not all CoE member states recognized Kosovo as an independent state, mainly due to the presence of similar national minorities at home. How to address the problem of these new national minorities, which are not the indigenous or traditional minorities referred in current human rights’ treaties? Does a new national minority fall under the scope of international security and human rights? This thesis

⁶⁸ Katherine Nobbs, *Political Participation of Minorities: A Commentary on International Standards*, London, 2010, p. lviii

⁶⁹ Anne-Marie Thiesse, *La création des cit.*, p.1

⁷⁰ This is an adaptation from Capotorti’s definition. Cfr: UN, “Study on the rights of persons belonging to ethnic, religious, and linguistic minorities”, E/CN4/Sub2/384/Add1-7 (1977).

⁷¹ Naegele Jolyon, “*New Presence*”, in: *The Prague Journal of Central European Affairs*. Autumn 2005, Vol. 7 Issue 3, p 32-33.

adheres to the understanding of minorities under the category of *human phenomena*. Under the same categories fall many more types of minorities and groups, like lobbies and non-state actors. Do human rights' treaties encompass *human phenomena*? Aristotle introduced this dilemma in the text *Politics*, "one who is incapable of participating or who is in need of nothing through being self-sufficient is no part of a city, and so is either a beast or a god." According to him, inclusion and self-sufficiency create a dualistic structure, on one hand a *demos* entitled to be human (citizen), and by exclusion, a group that is not human (non-citizen). There is no accordance on the legal definition of "minority" at the UN level, because there is no accordance whether the right to form national minorities is an human right. The EU cannot deal with this issue because it had (still) not jurisdiction to human rights treaties. On the other hand, the CoE could only monitor the human rights' commitment adopted by Kosovo in its constitution. However, Wittgenstein discusses the problem of inclusion and social entrance in practices. According to him, in order to follow a rule you must be part of a community of rule followers. Namely, follow a rule means to enter in social practices.⁷² These considerations trigger a dilemma for any legislator called to stabilize whether a *human phenomenon* falls under the scope of human rights: modern definitions of principles such autonomy, proportionality, subsidiarity, toleration, solidarity and dignity need always to be contextualized according to the "spirit of the people". On the other hand, if any legislator is aiming at reaching the Good Governance - which is linked to the Good Administration, and which have to be legally binding for the human family, then has to adopt a legal tool that let everyone to enter the same social practices. The Venice commission concludes that the legislator should use the Aristotelian *golden mean* of the *phronesis* - prudence - to make achievable this goal for anyone.⁷³ This concept has been embodied by the legal tool of the state's "margin of appreciation" - which advocates for the legitimation of the concept of *localizing* international laws into local practices as described

⁷² Arif Ahmed, *Wittgenstein's Philosophical Investigations: A Critical Guide*, Cambridge University Press, 2010, p.159.

⁷³ The CDL-AD(2011)009-e, *Stocktaking on the notions of "good governance" and "good administration"* paragraphs 4 and 5 read as follows: "The Venice Commission has taken note of the diverging views that exist, even among its own members, about the usefulness and the democratic legitimacy of the notion of good governance, and does not intend to carry out an exhaustive study on it. This document only purports to provide some elements of reflection which can be used in further discussions. The Venice Commission took note of it at its 86th Plenary Session (Venice, 25-26 March 2011).II. The origins of the notion of "good governance". The concept of governance is a very old one; it can be traced in the works of Aristotle, who referred to good governance to describe a state ruled by an ethical and just governor".

by Montesquieu. However, contrary to the principle of the Westphalia treaty, the margin of appreciation adopted on *human phenomena* does not apply to the jurisdiction of international laws, because it is referred to human rights, neither on religious *dogmata*, because human rights are not religious norms. Therefore, localization is in contrast with the universal principles promoted by the ECHR and in contrast with those political parties that are promoting autonomy (self-sufficiency), because *auto* (self) and *nomos* (law) is in contrast with the universal goal to render accessible for everyone to enter in social practice with the same human family. Under this light, it could be possible to understand why the CoE, in collaboration with the EU, have used their “margin of appreciation” on the normalization of the Kosovar region. They supported both economically and administratively the government of Kosovo, opening negotiations aiming at entering Kosovo in the same social practices of the CoE, the obligatory step to ingress the EU in the next future.⁷⁴ However, critics have raised from Kosovar national politician adhering to nationalist leaders which described it as “unreal” and more an attempt to urge the Serbian government to start a political-trust process than a real possibility (Serbia is candidate to access the EU).⁷⁵

In conclusion, power-contenders are representing for the stability of the international community what new national minorities are representing for the European stability. Therefore, the prolificacy of international treaties and regional conventions aims at defining the contemporary concept of minority and democracy. Among them, international human rights treaties are the most violated and exposed to reservations. May be possible for EU to reduce its *democratic deficit* by accessing CoE human rights treaties? In order to identify better this concept some more clarifications are needed. First, democracy in Athens was based on principle of *isonomy* - equality among equals-, which encompassed only citizens and was based on the principle of exclusion for all other *human phenomena* (slaves, women, travellers etc...). In contrast, according to Ronald Dworkin and the Venice Commission, the modern concept of democracy shall be based on inclusion. In fact, if any teaching could be learned from history, it may listed that any act of exclusion triggers the insurgence of emotions of frustration, anger and exasperation. This mix of emotions may end up triggering acts of violence, provocation and conflict, which are not necessarily

⁷⁴ On 11th June 2014 Kosovo became the 60th member of Venice Commission.

⁷⁵ Interviews conducted during EIUC field trip in Kosovo.

undergone by minorities or majorities. Excluded individuals living within parallel societies do them.⁷⁶ These implications were well-known to the ancient Greeks, who start the chain of facts leading to the Trojan War with an act of exclusion.⁷⁷ May the translation of *demos* as citizenship be a misleading interpretation of the Athenian democracy? In fact, *demos*, in modern and ancient Greek language, hold a double meaning. Traditionally it is translated with *people* and referred to *citizens*. This definition constitutes the legal approach currently adopted by nation-states. The citizens of EU, and only them, are granted with special privileges that differ them from all the rest of the individuals living within the EU, like freedoms of movement or major economic benefits. This is the exclusionist approach. Nevertheless, *demos* holds another meaning, too. Within the territorial unity of the *polis*, the father of Athenian democracy, Cleisthenes, firstly constituted the regions - called *demoi* - and later established the privileges accorded to citizenship. In order to forestall strife between the traditional clans, which had led to the tyranny in the first place, he changed the political organization from the four traditional tribes⁷⁸, which were based on family relations, into ten tribes according to their area of residence (*demos*).⁷⁹ Only later, he established that advantaged members of these *demoi*, called citizens, could access the decisional process of democracy at the Boulé - the Parliament -. This later decisions was taken for practical reasons. Being tribes separated by specific borders, changing their self-identification as a *demos* not of the tribe but rather as a geographical place and adopting new names, Cleisthenes legislated *de facto* over the creation of thirty new minorities. Inventing the *demoi*, Cleisthenes enlarged in practice the democratic base increasing *de facto* pluralism on the decision-making process. These *demoi*, having a direct influence on the evolution of Athenian democracy, could start a social process that, three generation later, would initiate the Golden Age of Pericles. His process of creating the condition for

⁷⁶ Practical examples are the suburban riots of Paris (October and November 2005), the English riots between Saturday 6 August and Thursday 11 August 2011, where thousands of mostly young males rioted in several London boroughs and in cities and towns across England, and the Copenhagen December Riot which took place on 16 December 2006 and the Copenhagen March Riot in 2007.

⁷⁷ The Trojan War has its roots in the marriage between Peleus and Thetis, a sea-goddess. Peleus and Thetis had not invited Eris, the goddess of discord, to their marriage and the outraged goddess stormed into the wedding banquet and threw a golden apple onto the table. The apple belonged to, Eris said, whomever was the fairest. See on line source <http://www.stanford.edu/~plomio/history.html>

⁷⁸ Namely Argadians, Egicorians, Geleonts and Oplets. After Cleisthenes' reform, these tribes only maintained a symbolic religious and sacral function.

⁷⁹ There were 30 *demoi* grouped in ten and named after Pythia's suggestions. Yet, the three groups of 10 *demoi* were called after their districts: hinterland (Upercria), coast (Paralia) and metropolis (Pedias).

identification of the individual from a tribe/nation to a territory resulted in practice to be the *golden mean* to avoid tribe's perpetual conflicts and secessionist struggle. Within this understanding democracy as a bottom up process, in Strasbourg on 29 May 2008, the CoE delivered "The European Urban Charter II- Manifesto for a new urbanity", which may be sum up by its statement: "We solemnly reaffirm that the central aim of urban policies is social and spatial cohesion. Our towns and cities are places where people live and work, multigenerational, multicultural and multireligious places where people from all social backgrounds mingle on a daily basis. For urban society to develop fairly, mutual assistance between citizens, dialogue between groups, including inter-religious dialogue, and voluntary activity need to be promoted. We will continue our fight against financial and employment insecurity, exclusion and all forms of discrimination on grounds of social status, age, culture, religion, gender and disability." In conclusion, a democracy based on *isonomy* among states and nations' representatives is in contrast with the development of new generations of European leaders that may represent democracy as a plurality of *demoi*. Within states and nations, citizens and non-citizens are fighting their hierarchical supremacy over each other. However, within states and nations' *demoi*, democracy shall be founded on human rights in accordance with international standards and under the supervision of state's authorities, the EU and the Council of Europe. There shall not be privileges, established by law, that allow a citizen to be "more human" than a non-citizen. All persons living in accordance with human rights may find their "new citizenship" in the European *demoi*. The identification of Europe within a single EU *demoi* is at odds with the increasing need to render democracy an inclusive space for pluralism of *demoi*. Within the variety of European *demoi*, citizens and non-citizens may be introduced to human rights by local authorities.

Chapter II

Varietate

Contrary to the four Greek tribes living in Athens during the 508 b.c, in the *polis* of Europe the CoE counts 820 million citizens living in 47 nation-states. Among them, there are existmations to exist more than 40 million people whose mother-tongue is a lesser user language.⁸⁰ In 2004, Pan and Pfeil estimated the total number of national minorities populations in 105 million people, or 14% of 770 million citizens living in the CoE at that time. Finally, approximately 20 million non-Europeans live in the EU, 4% of the overall population.⁸¹ These numbers seem hardly close enough to represent a threat to the democratic quality of CoE member states. In fact, according to the theory of 10-80-10, the behavior of a society may be next to change if the actions taken from a minority are imitated by the 30% of the total.⁸² Considering for instance the fundamentalism religious practice of a minority that is around the 5% in a laic state, the whole population of the state may be at risk to accept the practice of fundamentalism whether the 30% of the total enters into those practices. However, in a globalized world, any percentage may be required for a new minority to become a threat to the power/logic of nation-state. The recent episodes during the election of the EU Parliament show that the “emergency of newcomers” - especially if citizens of “eastern” EU member states⁸³, brought a conservatory wave of populist parties to constitute a new European political group.⁸⁴ However, the emergency regarding minorities and newcomers, associated to crimes and infringements of national laws, is raised by all conservatives parties during electoral campaigns, thus to be reduced to average level after the seats (and money) of the parliament have been distributed.

⁸⁰ Roy Norman Pedersen, *One Europe 100 nations*, Multilingual Matters, 1992, p.10.

⁸¹ Christoph Pan, Beate Sibylle Pfeil, *Minderheitenrechte in Europa. Handbuch der europäischen Volksgruppen* (2002).on line source: <http://www.living-diversity.eu>

⁸² The 10-80-10 theory says that in any crisis, the 10% are making plans and taking action to change the society while the 10% is “change-phobic” and criticize any change at all, while the 80% of people are bewildered and in a stupor and wait for someone to give them instructions and orders. Notes from E.MA class, 4th november 2013, Dott. Anja Mihr.

⁸³ The case study of polish minorities living in UK are described by Michael Johns, *The New Minorities of Europe: Social Cohesion in the European Union*, Lexington Books, 2014, p.75-99.

⁸⁴ Posing itself as the conservative right and identified as Eurosceptic: the European Freedom and Direct Democracy (EFDD) - whose co-presidents are from 5 Star Movement (M5s)(Italy) and the United Kingdom Independence Party (Ukip).

Nevertheless, the ideas of social emergency remain to persist in the public opinion even after elections, and historical episodes report the quantity and quality of many creative and violently ways that have been adopted by *some* groups to manage the diversity of the “others”. Since the 1990s, for the first time in the history, the legal recognition of the existence of diversity has been addressed by devising complex power-sharing solutions within the human right framework.⁸⁵ The main understanding of diversity is represented, *in the Aristotelian mode as agora*, by the word “culture”. In fact, it encompasses several concepts, like race, nationality and ethnicity. Michael Mann argues that the “ideal of rule by the people tends in some cases to convert demos into ethnos, when belonging to the dominant culture is the sole criterion of citizenship, thus generating a culturally organic nationalism that encourages the cleansing of minority cultures”. Ephraim Ninni explains that the “exclusive regime of “one person-one vote” cements by default the hegemony of the cultural majority, for the equality offered was between individuals and not between cultures”.⁸⁶ Roter concludes that a national model of democracy shapes the society on a hierarchical structure, labeling individuals at least in two conflicting categories - “us” against “them” - and brings citizens on a superior position than non-citizens.⁸⁷ The strategy of the OSCE and the COE is direct to establish legal procedures in which resistance to diversity and political dissidence may be addressed according to human rights’ regime. Graham Fox, UN special rapporteur on minority issues, lists the three most shared priorities from the point of view of minorities: 1) the effective political participation (in contrast with their poorly representation) to the bodies of the state, 2) the effective implementation of consultation right⁸⁸ and 3) the right to education, especially in the bilingual model which allows the movement of persons to live *de facto* in a foreign region. Marc Weller lists five instruments adopted to address ethnic communities by states. “First, they were given territorial autonomy in areas where they lived. Secondly, they were given guaranteed rights of co-decision (or veto) in the central institutions of the state. Thirdly, they were also

⁸⁵ See, at length, Weller and Metzger, *Settling Self-determination Disputes: Complex power sharing in theory and practice*, (2008) on line resource

http://nijhoffonline.nl/book?id=nij9789004164826_nij9789004164826_i-794.

⁸⁶ K. Nobbs, *Political Participation of Minorities* cit. p.639.

⁸⁷ P. Roter *Locating the ‘minority’* cit., p.227.

⁸⁸ Free, prior and informed consent (FPIC) refers to the rights of local communities, particularly indigenous peoples, to participate in decision making about issues impacting them. Examples include natural resource management, economic development, uses of traditional knowledge and genetic resources, health care and education.

offered roughly proportionate representation in the executive and other organs of state authority. Fourthly, ethnic groups were offered wide-ranging human and minority rights provisions, guaranteeing their ethnic identity throughout the state. Finally, certain functions were delegate upwards, to international actors, or at least supervised by them.”⁸⁹ However, the experience of federalist states as Spain showed that these measures, meant to pacificate conflicts, *de facto* resulted to downgrade, rather than solving, the minority problem.⁹⁰ After all, nation-state had been always reluctant to consider minority rights as human rights, “having fewer hesitations when engaging them as issues of conflict prevention or conflict transformation”.⁹¹ The quantifiable measure of the European phenomenon of new national minorities is depicted in fig. 2 in appendix. Among them, the extremist new national minorities, like Catalonia and Scotland, are engaging the unity of their nation-state for becoming a new nation-state through the adoption of the self-determination right, while the majority of other new minorities seeks greater self-governance and more representation during the decision process at the parliament level of state. Therefore, their legal condition is sensibly different. Many political parties, associations and movements may claim for rights that do not comply with their respective Constitution or the CoE provisions, but in any case, to my knowledge, local authorities have the possibility to access these conventions. This crucial aspect shall be more often highlighted. The argumentation of States, along with its threaten sovereignty, is based on the assumption that whether a national minority has the effective control of a region it may use a “margin of appreciation” that may violate the obligation to respect human rights. However, the CoE conventions refer to universal principles and rights entitled to anyone.⁹² On the contrary, State’s citizenship is based on an ideology of exclusion and hierarchization.⁹³ European Local communities do not have the possibility to access these conventions if not at the national

⁸⁹ K. Nobbs, *Political Participation of Minorities cit.*, pp. lviii lix.

⁹⁰ *Ibid.*, pp. 651-653.

⁹¹ *Ibid.*, p. lix.

⁹² The EU Charter of Fundamental Rights entrenches, among others, rights and principles resulting from the common constitutional traditions of EU countries and other international instruments. Cfr: http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

⁹³ See Paragraph 51 of the explanatory report of the FCNM, which refers to Article 7 and reads as follows: “The purpose of this article is to guarantee respect for the right of every person belonging to a national minority to the fundamental freedoms mentioned therein. These freedoms are of course of a universal nature, that is they apply to all persons, whether belonging to a national minority or not (see, for instance, the corresponding provisions in Articles 9, 10 and 11 of the ECHR), but they are particularly relevant for the protection of national minorities. For the reasons stated above in the commentary on the preamble, it was decided to include certain undertakings which already appear in the ECHR.”

level, while the nation-state is usually reluctant to ratify these treaties. The scopes provided within the Lund Recommendations (provided by the OSCE) and the European Charter of Local Self-Government (CoE), along with its update version of the Manifesto, are not linked to any national citizenship or hierarchization of society. For instance, the Charter refers to nation as the source of financial resources, “which shall be disposed freely by local authorities”.⁹⁴ In the Lund recommendations, “self-governance implies a measure of control by a community over matters affecting it. The choice of the term governance does not necessarily imply exclusive jurisdiction. The State may achieve this through delegation or devolution, or, in case of a federation, an initial division of constituent powers. Among OSCE’s participating States, in no case self-governance include any ethnic criterion for territorial arrangements”.⁹⁵ For discussing the principle of democracy based on self-governance of *demoi*, and the principal reason of the considerable resistance to it by the nations, it is useful to establish which claims are recognized as rights and which ones are not. Laws on self-government are usually a result of negotiation between at least two parts, and the outcome of negotiations along its effective duration depends on the rights and obligations of the negotiating parties. Self-government is not present in international law.⁹⁶ It understands self-government in the light of self-determination and it is used to refer to the right of people to decide on the internal organization of the State. On the contrary, self-determination is not present in the European legal system. Yoram Dinstein has identified seven ways in which self-government has been established at the international level: multilateral (Bosnia and Herzegovina) or bilateral treaties (Palestine), resolution of the League of Nations (Aaland) and the UN General Assembly (Eritrea), decisions by the UN Security Council (Kosovo) and national laws, sometimes based on international treaty (South Tyrol) or sometimes purely local initiative (Greenland). Finally he identifies the so called “treaty federalism” which encompasses autonomies in Canada and US based on treaties made with the indigenous people.⁹⁷ However, what happens in all the remaining cases when the community has no possibility to access conventions and treaties? Francesco Palermo analyzes the phenomenon of participation of minorities on the ground of their representation in state’s executive structures. He focuses the general problem of the

⁹⁴ art.9 (1).

⁹⁵ K. Nobbs, *Political Participation of Minorities cit.*, p. 769.

⁹⁶ *Ivi.*

⁹⁷ *Ibid.*, p.618.

purposes of minorities forwarding this intimate dilemma: “on one hand, it is essential to any minority governance - as it self-evident that minority policies cannot be elaborated, implemented and monitored over the head of the concerned groups - that minority rights are not benevolently imposed from the top-down without an effective participation of those concerned, as this attitude is both paternalistic and ineffectual; on the other hand, involving minorities always brings about the risk of involving only *some* groups, *some* of their representatives, *some* of their views, *some* of their interests, and neglecting many other factors that might emanate from a complex social formation like a minority group”.⁹⁸ He identifies two main types of legal response to the challenge of minority representation in the executive structure of the state. The first generation - as he calls it - “is strictly related to power-sharing as a measure for conflict resolution”. This approach is represented on the adoption of quotas of representativeness on strict numerical correspondence between the share of national minority population and their reflections in the civil service. However, concludes Palermo, “it proved too rigid and they lack a vision of what comes next”.⁹⁹ The second generation tries to resolve the dilemma by setting political rather than numerical goals. He brings the case of Croatia and quotes lengthy Art. 8 of the Law on the State Administration System: “members of ethnic or national communities or minorities are guaranteed representation in ministries and state administrative organizations, taking into account their total participation in the population of the Republic of Croatia and, with regard to state administration offices in regional self-government units, taking into account their total participation in the population of the country”. However, Palermo notes that a relatively margin of discretion is left in the interpretation of concepts such as ‘equitable’, ‘proportionate’, ‘appropriate’ representation forwarded by the law, which makes it very difficult to make these clauses justiciable in courts. The limits of the solutions adopted, concludes Palermo, needs to be approached in pluralist terms.¹⁰⁰ According to him, participation, in order to be pluralist, has to guarantee participation in the civil service and through the branches of government other than legislature, *in a consistent way*.¹⁰¹ “There is still much work to do to identify the most effective instruments for achieving this. Perhaps

⁹⁸ *Ibid.*, p.436.

⁹⁹ *Ibid.*, p.451

¹⁰⁰ *Ibid.*, p.437

¹⁰¹ Italian Prime Minister Matteo Renzi, opening the Italian Presidency of the EU at the Parliament of Strasbourg, recalled the problem of a missing European Community Service.

it will take a third generation of rules on enhanced participation to successfully address this extremely complex but unavoidable issue”.¹⁰² In conclusion, the expression of Palermo about a third generation of rules may become meaningful in the light of the quote reported by Petersen of a Basque patriot who exclaimed “The more Basque I become, the more European I become also”.¹⁰³ How it will be argued in the next chapter, *concordia* among states and *varietate* among communities seem to be the energetic drivers of Europe. Apparently, only a certain balance between them, as in the yin and yang symbology, reaches harmony. Yet, the already attractive appeal of obligation to human rights, like a magnet, encourages new nations, new states and new minorities to ingress the European family. However, in contrast with the Greek concept of hospitality, these newcomers, these new minorities are not always welcome.

¹⁰² K. Nobbs, *Political Participation of Minorities* cit. p.452.

¹⁰³ R. N. Pedersen, *One Europe* cit.,p.10.

II.I

Minorities

Minorities do not have a legal definition. Nevertheless, there are many legal definitions of the threads affecting them. Europe has always been a meeting point between ideologies, newcomers and cultures. Yet, it has been also the place of endless conflicts, wars and human atrocities. Only recently, it achieved, among many other human rights, equal rights of men and women and the human right for immigrants and minorities not to be ever expected to renounce their faith, culture or identity.¹⁰⁴ In the summer of 2010, the Council of Europe's Secretary General, Thorbjørn Jagland, asked for an independent "Group of Eminent Persons" (the Group) to prepare a report on the challenges arising from the resurgence of intolerance and discrimination in Europe. The principle hold firmly in the report is that "identities are a voluntary matter for the individual concerned, and that no one should be forced to choose or accept one primary identity to the exclusion of others".¹⁰⁵ The report identifies as major threats the rising intolerance, rising support for xenophobic and populist parties and parallel societies. Behind them, it explains, "lie insecurity (stemming from Europe's economic difficulties and sense of relative decline); the phenomenon of large-scale immigration (both as actually experienced and as perceived); distorted images and harmful stereotypes of minorities in the media and public opinion; and a shortage of leaders who can inspire confidence by articulating a clear vision of Europe's destiny".¹⁰⁶ The most important part regards the proposals, which are reported almost at length because they are extremely relevant to scope of this thesis.

"The Group urges States to extend the full rights and obligations of citizenship, including the right to vote, to as many of their resident population as possible and,

¹⁰⁴ Respectively the CoE Gender Equality Committee (GEC) and CoE Advisory Committee (AC) of the Framework Convention for the Protection of National Minorities (FCNM). The GEC is currently staffed by the Department of Gender Equality and helps in integrating gender equality policies across various government bodies and directing central and local governments as they put gender mainstreaming into practice. The FCNM, art 5: reads as follow: *The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*

¹⁰⁵ AAVV, *Living together Combining diversity and freedom in 21st-century Europe*. online resource available at www.CoE.eu, p.5.

¹⁰⁶ *Ivi.*

as an interim step, to give all foreign residents the right to vote in local elections. States are also urged to correct misleading information and stereotypes about migration, and to give their citizens a more realistic picture of the situation of migrants and of Europe's current and future needs in the field of migration. Therefore the Council of Europe and the EU are asked to work together on a comprehensive, coherent and transparent immigration policy for the whole of Europe. Finally, the peoples of Europe are urged to reach out to their neighbors in the Middle East and North Africa who are now so courageously demonstrating their attachment to universal values of freedom and democracy, notably by offering them the chance to participate, with an appropriate status, in European institutions and conventions. Finally, among the several proposals, the Group recalls that Europe's towns and cities are the key battleground in the struggle to combine diversity and freedom, we call on all member states to establish country-wide programmes for civil servants and employees in local and regional social services, to train those who are working with migrants and people with migrant background.”¹⁰⁷

However, these threats are here described on their quality. In 2014, during the press presentation of the report “State of democracy, human rights and the rule of law in Europe”, Jagland quantifies the threats affirming that *Europe is in biggest human rights crisis since Cold War*.¹⁰⁸ The report lists a large number of concrete challenges to human rights, democracy and the rule of law in Europe. At the top of the list is present: *ethnic discrimination/national minorities*. The report states that the factors determining this emergency are “increased nationalistic and racist ideologies - Inter-ethnic conflicts that endanger democratic stability - Hate speech, hate crime and ethnic discrimination”. The main actions proposed to address these phenomena are 1) ratification of Protocol No. 12 of the ECHR, the Framework Convention for the Protection of National Minorities (FCNM)

¹⁰⁷ *Ivi.*

¹⁰⁸ The General Secretary urges “member states to stop the erosion of fundamental rights and adopt further reforms of Europe's unique Convention system. Europe needs a new pan-European security agenda which must include the protection of the rule of law and democratic principles. Together, we need to put Europe back on the path of unity and co-operation, based on common values, standards and legal obligations.” On line interview available at <https://wcd.coe.int/ViewDoc.jsp?id=2184579&Site=CM>.

and the European Charter for Regional or Minority Languages 2) Fully implement the obligations under these conventions and ensure a proper follow-up to the Committee of Ministers' Resolutions 3) Take active part in the No Hate Speech Campaign of the Council of Europe.¹⁰⁹

The contemporary understanding of the rights of minorities has been provided by the OSCE throughout the Lund Recommendations, which are, however, not legally binding provisions. Protocol No. 12 of the ECHR, which was adopted in 2000, states art 1 “the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. Unlike Article 14 of the Convention which prohibits discrimination “on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”, the prohibition of discrimination in Protocol 12 is not limited to enjoying others rights provided by the Convention. Moreover, the French edition refers to *other status* by the expression *ou toute autre situation*, enlarging the meaning of status, which is specific, opening to the level of contextualization. Moreover, the pioneer work of the OSCE, which facilitated the Parliamentary Assembly of the Council of Europe (PaCoE) to prepare in February 1993 a recommendation to include in the European Convention on Human rights an additional protocol, which safeguarded minority rights, was rejected due to the lack of political will to find a definition of minority. However, this protocol became the FCNM that, along with the principle of self-identification, provides specific obligations for state parties *on effective participation* for those affected by violations of this obligation by state and private actors.¹¹⁰ Francesco Palermo has recently proven through an analysis of the case law of national courts that the provisions of the FCNM are certainly more than soft law.¹¹¹ Sia Spiliopoulou Akermark has outlined two main functions of it: the protection of rights of persons belonging to national minorities and, *in the Aristotelian mode as agora*, where

¹⁰⁹ Council of Europe, “State of democracy, human rights and the rule of law in Europe”, 2014, p.12. available on line at <https://wcd.coe.int/ViewDoc.jsp?id=2184579&Site=CM>.

¹¹⁰ M.Weller, K. Nobbs, *Political Participation of Minorities ci.*, p.254. The commentary on effective Participation, paragraph 2, states that the interpretation given by the Advisory Committee from 1999 and 2007 to the provision of the Framework Convention are relating to the effective participation of persons belonging to national minorities. Cfr: *Ibid.*, p.228.

¹¹¹ *Ibid.*, p. 226.

international organizations are also places for discussion for continued exchange of views and the ongoing formation of knowledge and opinions.¹¹² Moreover, the main actor of the convention, the Advisory Committee (AC) on the FCNM has recently established standards for how states should involve minority representatives in their reporting obligations and these rules can also be, *mutatis mutandis* applicable to other treaties with reporting obligations.¹¹³ The European Charter for Regional or Minority Languages seeks to protect non-dominant languages in the European space. The predecessor to the current Congress of Local and Regional Authorities, the Standing Conference of Local and Regional Authorities of Europe undertook its preparation because involvement of local and regional government was considered essential in the view of democracy. The actual Charter was written in the Parliamentary Assembly based on the Congress' Recommendations. Moreover, along with these important legally binding treaties, the CoE has more monitoring bodies: the European Committee of Social Rights (the ECSR), the European Commission against Racism and Intolerance (ECRI), and the Committee of Experts of the European Charter for Regional or Minority Languages (the ECRML), the Group of States against Corruption (GRECO). Finally, the report states that these provisions “need to be amended, so that the Council can respond faster and more effectively to emergency situations and urgent requests from member States”. In conclusion, a practical definition of minority with political powers is present in the Treaty of Lisbon since 2009. The European Citizens' Initiative (ECI) enables one million EU citizens, who are nationals of at least one quarter of the Member States, to call directly on the European Commission to propose a legal act in an area where the Member States have conferred powers onto the EU level. This right to request the Commission to initiate a legislative proposal puts citizens on the same footing as the European Parliament and the Council, who enjoy this right according to Art. 225 and 241 TFEU, respectively.

At the International legal level, a missing definition of minority remains the biggest obstacles for legislators to shield them under the protection of hard law. Although there is a growing acceptance of the recognition of the right to self-identification, along with its corollary of social and cultural diversity, there is still no clear definition of who is entitled to hold the right to be a minority. Minorities, to become a legal term, need to exercise an

¹¹² *Ibid.*, pp. 227-228.

¹¹³ *Ibid.*, p.706.

identity shared by a certain number of persons, but it is properly because of the use of this numerical category that all proposals for a definition of a minority fall under the paradox of the bald.¹¹⁴ Identity seems more a matter of political mobilization than a precise delineation of community's characteristics or beliefs. Therefore, there is no need to create any new identity. Moreover, the main practical need of an already self-identified group is on the choice to place itself in different categories, cultural, religious, linguistic, or it can become an ethnic minority, a national minority or indigenous people. Each of these categories is associated with a specific set of claims, participation, representation, recognition of language, religion, education, land, autonomy etc. in accordance with both the International Bill of Human rights and other major international treaties which are monitored by the UN Human Rights Treaty Bodies. How a judge may establish the legitimacy of a claim to belong to one or the other category? Between a people and a minority, the international and regional laws had far better protect the concept of people. In this legal framework, new minorities within the EU are not counted at all, because reckoned as European citizens. In particular are not counted the minorities that do hold an European citizenship but are *de facto* excluded from local political participation. Among these new minorities fall those "newcomers", which are European citizens, but are depicted as coming from "another culture". Finally, there are also groups that fall under categories other than ethnic, national religious or linguistic ones, for instance, women disabled, gays, lesbians and *other status*. These minorities share many of the same problems entitled to the "traditional or autochthonous minorities", but governments are reluctant to extend to them the full panoply of citizens' rights, considering them groups and not minorities. In the *globalized* world described by the EU, minorities will unify *somehow* and *somewhat*, but in the *localized* world, new minorities tend to constitute "parallel societies".

¹¹⁴ The bald man paradox (phalakros) is one of paradoxes of Greek philosopher Eubulides of Miletus. It is an example of a Sorites paradox and relates to vagueness of language. "A man with a full head of hair is obviously not bald. Now the removal of a single hair will not turn a non-bald man into a bald one. And yet it is obvious that a continuation of that process must eventually result in baldness." Cfr: Kirk Ludwig, Greg Ray, "Vagueness and the Sorites Paradox", *Philosophical Perspectives* 16, 2002.

II.II

Parallel societies

Different minorities, *in the Aristotelian mode as agora*, may form a majority and perceived to hold a dominant position of a place.¹¹⁵ However, their different self-identification, whether it seems to resist the several forms of naturalization promoted by the national majority, brings the minority to be apostrophed by citizens with typical claims as: “they like to keep themselves to themselves”, “they have no desire to integrate”, “they cannot speak our language” and “all they want is rights without duties”.¹¹⁶ These familiar patterns are especially related on symbolic places in western European cities called “ghetto”. The term refers to a compact urban district where ethnic, religious and national minorities form a large majority of the inhabitants. Historically, these communities have often been a useful stage in the gradual integration of immigrant groups into a host society. However, the term “ghetto”, is usually used to denote a degrading situation, especially if a district becomes largely separated from the rest of the city, in conditions of social and economic exclusion (or self-exclusion).¹¹⁷ In this sense, the typical ghetto becomes in the people’s imagination an exclusive area, controlled by foreign laws than the national ones, with high rates of unemployment and juvenile crime. Alternatively, it may denote an area whose inhabitants keep themselves to themselves in a solidal loyalty to their condition of marginalization. Ghettos are areas “where members of the “indigenous” population, if they stray into it at all, feel unwelcome and insecure”.¹¹⁸ Parents of “indigenous population” often find their classrooms filled only with children from other new minorities, giving the possibility to hold emotional talk shows and “serious” political debates over the degrading system of education and the lack of resources to ensure that these children become fully fluent and literate in the national language, as their pupils are. This contributes significantly to the fear and resentment of immigrants and minorities voiced by many citizens:

¹¹⁵ “ Migrants are often described as a social and political group alien to the members of their host society. Attention is paid to cases where they behave like a closed and self-contained community, and much less to cases where they are open and seek friendly relations with members of other groups. Typical claims are “they like to keep themselves to themselves”, “they have no desire to integrate”, “they cannot speak our language” and “all they want is rights without duties”. Cfr: AA VV, *Living together cit.* p.14.

¹¹⁶ *Ivi.*

¹¹⁷ *Ibid.* p.15.

¹¹⁸ *Ibid.* p.25.

*The resentment is further fuelled by the belief that these communities have chosen to isolate themselves, and seek deliberately to live in a “parallel” society, minimizing contact with the rest of the population even while gradually “colonizing” more and more of the city – even though, in some cases at least, members of the community in question feel that it is the host society which has rejected and isolated them.*¹¹⁹

In reality, ghettos and parallel societies are two distinct phenomena. The ghetto is delimited within a city and, in many cases, it contains a number of minorities living together but often at odds with each other. Parallel societies may be sometimes localized within cities but also be geographically spread-out, living intertwined with the wider community but minimising real social contact with it.¹²⁰ Instead, the wider community, which perceives itself as increasingly heterogeneous, is much more mono-ethnic and monoculture. However, the stronger opposition of parallel societies is not necessarily related to cultural or religious grievances. First, within capitalist economies, social and economic deprivation is more frequent a cause for social unrest. Foremost, Gilles Deleuze and Félix Guattari have argued that economy based on capitalism guides the individual to develop the disorder known as “schizophrenia”.¹²¹ Within parallel societies, high educated members living in an open minded environment, may find difficult to integrate with an education that may feel as foreign, and they may therefore nurture a kind of “cultural schizophrenia” that prone them to radicalization. Isolation leads to mutual exclusion and therefore to incomprehension. Within parallel societies, the “No hate campaign” is necessary, but not sufficient. Which legal conditions encompass parallel societies? Yash Gay explains that “local government can also be an effective way to give certain powers to a group, as the geographic scale is small and the prospect of the inhabitants being ethnically homogeneous and better. Some federations now constitutionally protect local government as a third tier of government for this very reason”. Yet, Italy had ratified the Convention on

¹¹⁹ AA.VV *Living together cit.* p. 14

¹²⁰ *Ibid.*, p. 23

¹²¹ G. Deleuze, F. Guattari, *Capitalism and Schizophrenia*, Paris (1972). The thesis exposed by the authors reflects western society's innate herd instinct that has allowed the government, the media, and even the principles of economics to take advantage of each person's unwillingness to be cut off from the group. Moreover, those who suffer from mental disorders may not be insane, but could be individuals in the purest sense, because they are by nature isolated from society.

the Participation of Foreigners in Public Life at Local Level. In 2005, the a report was delivered showing that 1) this tool could not be fully implemented due to imprecision of national legislation in relation to which body of the state and at what level of the hierarchy is authorized to deliver political rights to non-citizens, whether the local authority or the State; 2) participation of foreigners is only meant by electoral means of representation, therefore limiting the perspectives of other forms of participation, especially on their inclusion in the dialogue with small and medium enterprises.¹²² In sum, local self-government seems not to meet the sympathy of national political parties because the federalism adopted in Spain tend to obtain undesired goals, leading to secessionism among national minorities and therefore rising iron curtains among parallel societies. Nevertheless, since the world seems to be menaced by a “Clash of Civilizations” at the international level,¹²³ the “problem” of new minorities within the EU does seem not meet the due attention. On addressing the audience of a “new Narrative for Europe”, Barroso’s speech “Tearing down walls – building bridges” points out: “populism, xenophobia, extreme nationalism, all these demons we have been fighting are now pushing back. And if you think about it there is something common: some of those movements are against foreigners, they are xenophobic, some are against trade, they are against globalization, they want new walls, new protectionism, some are extreme nationalist. But if you look you see that all of them have one Leitmotiv in common: they are very strongly against the European Union. They see the need for destroying the European Union, precisely because they know that the European Union is a model of openness that is the opposite of extremism and extreme nationalism”. Actually, these new minorities of “Euroseptic” cover almost the 10% of the total seats of the European Parliament. Among them, there is the “outlawed” Golden Dawn, the extremist UK Independence Party (Ukip), the Movement five stars (M5S) and many more fundamentalist parties. They represent the growing social unrest that is reflected in the local realities, formed by that cultural schizophrenia of both citizens and newcomers,

¹²² AAVV, *La partecipazione politica degli stranieri a livello locale*, (2005). On line resource available at: http://www.piemonteimmigrazione.it/PDF/Rapporto_ASGI-FIERI_2005.pdf.

¹²³ According to the author’s view: “it is my hypothesis that the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural. Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will dominate global politics. The fault lines between civilizations will be the battle lines of the future”. Cfr: Samuel Huntington, “The Clash of Civilizations?”, in *Foreign Affairs*, Summer 1996.

which experience daily the phenomenon of parallel societies and economic crisis. However, these politicians, “tourists of the democracy”, did largely claim during the national election campaigns their will to renegotiate the European treaties. In other words, the *new fundamentalists* do not want secession from the EU but to participate its decisions in order to bring to the attention of its bodies the problem of growing social unrest, thus to scout *together* the (legal) practicable solutions for meeting the practical needs. This latest stage of EU democratic process towards the constitution of the EU single demos, however, leaves open many questions. Which instruments do have the European leaders for taking reforms that would not only downgrade - again - the social unrest, if not adopting the “advisory treaties” of the CoE? Moreover, for those national minorities which have already established the dates to hold a secession referendum, Catalonia on 9th November 2014 and Scotland on 18th September 2014, although it would be unconstitutional for the former and economically unsustainable for the latter, would be possible for the EU to integrate them without passing through the phase of monitoring the effective commitment to human rights by the nation-state which is mandatory to access the CoE? In addition, in order to do that, would the CoE be legitimized to accept their candidature, if the very existence of new national minorities may be forcing the ECHR to accept the right of self-determination through the democratic tool of referendum, a right that is not contemplated within the ECHR? The case study answers to these dilemmas while in the next chapter would be dedicated to the EU legal framework that does already protect new minorities.

III.III

New national minorities in Poland

The Facts:¹²⁴

applicants: Mr Gorzelik, Mr Sowa and Mr Kołodziejczyk. Polish citizens but not local authorities.

General background:

Silesia (Śląsk) is a historic region that is now in south-western Poland. After the First World War the 1919 Treaty of Versailles provided for a plebiscite to be held to determine if Upper Silesia should remain German or pass to Poland. The results of the plebiscite in 1921 were favourable to Germany except in the easternmost part of Upper Silesia. After an armed rising of the Poles in 1922 the League of Nation accepted a partition of the territory; the larger part of the industrial district, including Katowice, passed to Poland.

From 2 May to 8 June 2002 a census, the National Population and Housing Census, was carried out in Poland. Its purpose was to gather data relating to the distribution of the population, demographic and social factors, employment, standards of living and housing. It also addressed issues relating to citizenship and nationality. One of the questions relating to nationality gave the following definition of nationality: “Nationality is a declared (based on a subjective feeling) individual feature of every human being, expressing his or her emotional, cultural or genealogical (relating to parents' origin) link with a specific nation.”

According to the census report, 36,983,700 people (96.74% of the population) declared themselves Polish nationals. 471,500 persons (1.23% of the population) declared a non-Polish nationality, including 173,200 persons who declared that they were “Silesians”.

First-instance proceedings

The applicants, who describe themselves as “Silesians”, decided together with 190 other persons to form an association with the name “Union of People of Silesian Nationality” (Związek Ludności Narodowości Śląskiej). Eventually, a memorandum of association was

¹²⁴ All the facts are quoted from: Gorzelik and others v. Poland, (44158/98) [2004] ECHR 72 (17 February 2004). On line source available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61637#{"itemid":\["001-61637"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61637#{).

adopted. According to it, the applicants were authorised to proceed with the registration of the association, and the necessary documentation was submitted to the Katowice Regional Court on 11 December 1996 in order to render legal the registration of the “Union of People of Silesian Nationality” (hereafter referred to as the “Union”). Moreover, they produced the memorandum of association which read, that the Union shall conduct its activity within the territory of the Republic of Poland [...] pursuing the following aims (here listed on their relevance to this case study):

- (1) to awaken and strengthen the national consciousness of Silesians;
- (4) to protect the ethnic rights of persons of Silesian nationality;
- (5) to provide social care for members of the Union.

Furthermore, the following means to achieve the aims were listed:

- (4) promoting the emblems and colours of Silesia and Upper Silesia;
- (5) organising demonstrations or [other] protest actions;
- (7) setting up schools and other educational establishments;
- (8) cooperating with other organisations;

Paragraphs 9 and 10 are related to membership:

(9) There shall be two categories of members of the Union, namely ordinary members and supporting members.

(10) Any person of Silesian nationality may become an ordinary member of the Union.

Paragraph 15 of the memorandum of association read, in so far as relevant: “A person shall cease to be a member of the Union if:

2. (a) on a reasoned motion by the board of auditors, the management board decides to deprive him of his membership; (b) the relevant motion of the board of auditors may be based on such reasons as the fact that the member in question has not fulfilled the requirements set out in the memorandum of association for becoming a member or has failed to perform the duties of members as specified [in paragraph 14.]

(30) *The Union is an organisation of the Silesian national minority.*

Commentary: as it can be noted, the requirements for being a member of the national minority that leads to the privileges of full rights are based on criteria of exclusion of non-nationals, namely the “others”. Moreover, *mutatis mutandis*, this popular definition of

“citizenship” is a legacy of nationalist exclusion methodology. This exclusive vision of accession of the individual to the civil society practice has been recently challenged by the Venice Commission, which states as follows: “There is a growing tendency in Europe to grant the right to vote for local representative bodies not only to citizens but also to residents who are not citizens of the country concerned, but have had residency there for a considerable period of time (not necessarily permanent residence or domicile within the meaning of various laws)”.¹²⁵

The Facts

Eventually, On 27 January 1997 the Katowice Governor, acting through the Department of Civic Affairs, submitted his comments on the application to the court, which read as follows:

- (i) It cannot be said that there is a 'Silesian' (Ślązak), in the sense of a representative of a distinct 'Silesian nationality'. 'Silesian' is a word denoting are presentative of a local ethnic group, not a nation.
- (ii) Social research relied on by the applicants to demonstrate the existence of a 'Silesian nationality' does not accord with numerous other scientific publications. [...] These research relied on by the applicants merely refers to the self-identification of the inhabitants of Silesia, indicating that their *local self-identification* takes precedence over their national self-identification.
- (iii) Paragraph 10 of the memorandum of association states that any person of Silesian nationality may become an ordinary member of the association, but does not clearly specify the criteria for establishing whether or not a given person fulfils this requirement. [...]

¹²⁵ It continues as follows: *this phenomenon may be observed within the member States of the European Union (subject to particular arrangements taking into account the situation in each member State). In addition, the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (1992) recommends granting- 3 - CDL-AD (2002) 3 foreigners the right to vote and stand for local elections provided that they have been lawfully and regularly resident in the host country during the five years preceding the election.* In: Consolidated Opinion on the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units of Croatia: Adopted by the Venice Commission at its 50th Plenary Meeting (Venice, 8-9 March 2002).

(iv) Paragraph 30 of the memorandum of association, which calls the Union an organisation of the Silesian national minority', is misleading and does not correspond to the facts. There is no basis for regarding the Silesians as a national minority. Recognising them as such would be in breach of Articles 67 § 2 and 81 § 1 of the [old] Constitution, which guarantee Polish citizens equal rights. In particular, under the relevant provisions of the Law of 28 May 1993 on Elections to Sejm [Sejm" is the lower house of the Polish Parliament] ('the 1993 Elections Act') (Ordynacja wyborczado Sejmu Rzeczypospolitej Polskiej), registration of the Union would give it a privileged position in respect of the distribution of seats in Parliament. [...] Registration of the association would have been to the detriment of other ethnic groups in Poland, such as Cracovians (Krakowiacy), Highlanders (Górale) and Mazurians (Mazurzy); this would have amounted to a return to the *tribalism* (podziały plemienne) which had existed prior to the formation of the Polish State.

Commentary:

As it was argued in the first chapter, Cleisthenes' challenges persisted in time. However, return to tribalism is considered by the polish local authorities to be an outcome of the legal recognition of the right to *local self-identification*, which instead demonstrated to be a democratic solution, which overcame the problem of tribes. To my knowledge, there are no provisions from the Venice Commission on *local self-identification*, but along with art. 5 FCNM, do exist the provisions of article 3 of the which state: "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice".

The case:

On 24 June 1997 a single judge, sitting in camera as the Katowice Regional Court, granted the applicants' application and registered their association under the name of the "Union of People of Silesian Nationality", followed by an appeal from the Katowice Governor on 2 July 1997 which was heard by the Katowice Court of Appeal on 24 September 1997, which crashed the previous decision. On 3 November 1997 the applicants lodged a cassation

appeal (kasacja) with the Supreme Court (Sąd Najwyższy). On 18 March 1998 a panel of three judges, sitting as the Administrative, Labour and Social Security Chamber of the Supreme Court, dismissed the applicants' cassation appeal. Eventually, the applicants brought the case to the Strasbourg Court which accepted it, alleging that probably the Katowice Court of Appeal had wrongly interpreted the relevant provisions of the Law on Associations and that the impugned decision had contravened Article 84 of the Constitution, Article 22 of the International Covenant on Civil and Political Rights and Article 11 of the ECHR. At this time, Poland became party of the FCNM, too.

ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

In its judgment of 20 December 2001, the Chamber found that there had been no breach of Article 11. It held that the refusal to register the applicants' association, which had been prompted by the need to protect the State electoral system against the applicants' potential attempt to claim unwarranted privileges under electoral law, had been justified under paragraph 2 of that provision (see paragraphs 64 and following of the Chamber's judgment). After the appeal to the Gran Chamber, both parties agreed that there had been an interference with the exercise of the applicants' right to freedom of association, within the meaning of paragraph 2 of Article 11. However, the Court accepts that the national authorities, and in particular the national courts, did not overstep their margin of appreciation in considering that there was a pressing social need, at the moment of registration, to regulate the free choice of associations to call themselves an "organisation of a national minority", in order to protect the existing democratic institutions and election procedures in Poland and thereby, in Convention terms, to prevent disorder and to protect the rights of others. For these reasons on 17th February 2014 The court unanimously holds that there has been no violation of Article 11 of the Convention.

JOINT CONCURRING OPINION OF JUDGES COSTA AND ZUPANČIČ, JOINED BY
JUDGE KOVLER

(5) So what is the present case about? It concerns an association that was formed with the name “Union of People of Silesian Nationality” and whose aims as stated in its memorandum of association included: “to awaken and strengthen the national consciousness of Silesia, to restore Silesian culture, to promote knowledge of Silesia, to protect the ethnic rights of persons of Silesian nationality”. The memorandum of association affords the Union very broad ranging means with which to accomplish its aims, without, however, expressly giving it a right to put forward candidates for election. Lastly, paragraph 10 of the memorandum of association provides: “Any person of Silesian nationality may become an ordinary member of the Union” and Article 30 adds: “The Union is an organization of the Silesian national minority”. It is important to note these points, since, behind its innocuous appearance as an ordinary association, the Union saw itself in practice as the incarnation of the “national” Silesian minority and it is this factor that helps to explain the reaction of the authorities of the respondent State.

12) Ultimately, the decisive factor for us in the present case was the fact that the association would not only have existed, but also have been registered, if it had changed its name and amended paragraphs 10 of its memorandum of association, as it had been asked to do by the Governor acting in his supervisory capacity (see paragraph 24 of the judgment). While this would have deprived it of the electoral “advantage” afforded national minorities, it would have acquired full legal capacity as an association. We thus return to the starting point of this opinion: in practice, the measures the applicants complain of constitute not so much a real interference with their freedom of association as an attempt on the part of the domestic authorities to avoid the unforeseen consequences – which would infringe the principle of equality – of the exercise of that freedom. For all these reasons, we were able to accept the finding that “it was not the applicants' freedom of association per se that was restricted by the State”

Commentary:

The judgment expressed by the Court of Strasbourg reflects the state's authorities consideration that political participation is only based on election's participation. However, political participation of minorities shall not be limited only to this feature. Especially if

what is at stake is not the possibility for a group of almost 190 individuals to elect one representative at the Polish Parliament, but if their local self-identification is not recognized as a human right by the Polish Government. Yet, despite of the presumption that the Silesian minority would be eligible to the Polish Parliament, in 2009, the FCNM Advisory Committee urged the Polish authorities outside the Courts to continue their dialogue with the Silesians and to ensure that persons claiming to belong to the Silesian group are able to express their identity. This recommendation was adopted because regarding the status of Silesians, who are seeking recognition as a minority group, the Advisory Committee noted only an open attitude adopted by the Parliamentary National and Ethnic Minorities Committee, which took the initiative to organize an open hearing on their identity, linguistic aspirations and national identification. Therefore, the Advisory Committee was particularly encouraged by the initiative proposed by some members of Parliament to introduce a private members' bill amending current legislation with a view to recognizing the Silesian language as a regional language in Poland. However, in 2012, the Advisory Committee noted that in spite of the substantial number of persons declaring in the last census their Silesian nationality and speaking the Silesian language at home, the authorities, apart from the Parliamentary National and Ethnic Minorities Committee, have not considered the matter since the first monitoring cycle and have not entered into dialogue with the persons concerned.¹²⁶ In conclusion, the interest of the Advisory Committee clearly demonstrates that *local self-identification* is not only protected within the ECHR, but it is a human right that needs to be implemented by national governments.

¹²⁶ ACFCNM State Reports, Opinions, Comments and Resolutions on Poland (2009-2012), on line resources available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNDocs/Table_en.asp.

III

Europe

As it was sketched in the first chapter, Europe is wherever the first article of the ECHR is applies. Since obligations fall under the moral, legal and religious categories, there seems to be a widespread confusion whether human rights may participate or imitate all of them or not. However, since International Law lays down obligations for States to respect, protect and to fulfill human rights, and democracy is a feature in those states that accord to both citizens and non-citizens human rights, these rights shall fall under the jurisdiction and protection of whom is an expert on the law. In addition, since international treaties encompass the behavior of governments, human rights are also under the jurisdiction of politicians. Yet, the quest for identity of an European *demos* shall be more an effort to identify the CoE's *demos* and the European politicians that must implement human rights provisions. However, the CoE is apolitical and encompasses two political powers: the EU and the Eurasian Economic Community (EEC). As it was argued in the previous chapter, the *democratic deficit* of the EU has been addressed by strengthening the relationship between the citizens and the institutions, using several measures adopted in the Treaty of Lisbon: 1) increasing the number of areas of competence of the EU, 2) allowing the Parliament to elect the president of the European Commission in accordance with the results of the European elections and 3) obliging the EU to access the ECHR. Yet, the governability conducted within the EU Council reflects an outstanding *concordia* among political leaders, because in 81 per cent of cases decisions are taken by unanimous consensus without the need to vote.¹²⁷ The influence of citizens over the decisions of the EU Council seems to be in line with national elections through the choice of the best national mediators who are capable of finding the most persuasive rather than the most conflictual ways of governing the EU. This thesis adheres to the opinion that politicization of the EU would be quite pernicious for its *concordia* because it would bring to the level of Concordia the animosity of local realities, with the attempt to involve the best minds to find a solution by a top-to-bottom approach. However, such situation would *de facto* reflect the animosity of the local realities at an upper political level without solving the local problems

¹²⁷ Dorothee Heisenberg, "The institution of consensus in the European Union: Formal versus informal decision-making in the Council", in "European Journal of Political Research", n. 44, 2005.

and therefore diminishing the levels of *concordia* in the EU. Plato stated that the leader of the *polis* shall be educated under the Sun of the Good, but he has to come back to the cave where his fellows are, and where he comes from, although he would risk to be killed. Plato also argued that promising everyone a better condition of life with the promise of living in Eden would have deleterious effects, because after years in the dark, the direct light of the Sun may burn their skin or blind their eyes.¹²⁸ Therefore, a slogans like “More Europe ” (to the Europeans) - or neologisms as “Euroscepticism” are simply the image of what is happening at the national level of Europe within local realities, where a political debate is conducted through similar slogans but within different individual nations, as for example in Poland “Poland for the Polish (citizens)” or “Italy for the Italian (citizens)”. The linguistic mechanism undergoing the use of slogans has been largely studied at least since the end of French revolution. In the first chapter it was discussed how the French slogan had transformed empires into nation-states. Moreover, how it was recalled in the first chapter, the French slogans and constitutions influenced European local communities to adopt specific interpretations of human rights. As it has been proposed, globalization transformed nation-states in national minorities craving for having more control over state’s apparatus, and how localization influenced the behavior of national minorities to nurture a separatist feeling. In this chapter, it will be proposed that globalization and localization are responsible for the creation of double-standard politics. In addition, the linguistic mechanism that allowed empowerment of leaders such as the “terrorist” Robespierre or the “emperor” Napoleon will be discussed. Therefore, the question that this chapter addresses is whether the development of human rights at the international level only reflects the rhetorical “*loci*”, that is the places where politicians’ arguments are found. In other words, who is the actor empowered to have *juris-diction* – a Latin expression for the “word of law”, or more precisely, the authority to administer human rights? Parents, for instance have jurisdiction over teenage sons. Courts have jurisdiction over sentences. Nevertheless, do mathematicians have jurisdiction over numbers? Equally, do lawyers have jurisdiction over human rights? To discuss this issue it would be useful to analyze how power may be transferred from idealistic slogans to affect the behavior of persons, starting from the second half of the XIX century in Germany. Adopting the premises that any contemporary

¹²⁸ Post, L. A. "The Seventh and Eighth Platonic Epistles". The Classical Quarterly (Cambridge University Press on behalf of The Classical Association), 1930.

society's concept is old enough to be changed, Friedrich Wilhelm Nietzsche demonstrated that his vision of *power* could easily become of public dominion if “encapsulated” within a polysemic word, *über* (in Latin *super*), eventually attached to a word of undefined meaning - *Mensch* – man. This new term, contextualized within the future to come, formed the word *übermensch*, which was a sort of prophecy. The linguistic process he used was based on the possibility of the German grammar to create neologisms by the process of aggregating words. Therefore, for the large public, *übermensch* (super-man) held a meaning that was *real*, because nominated,¹²⁹ although not yet present, but on its way to become, like the kingdom of the heavens of the New Testament. After Nietzsche's death, the memory over his neologisms persisted in Germans' imagination. With time passing, the imagination (in Greek, “*phantasmata*”), was blurred with memories, therefore *con-fusing* (binding together) the *übermensch* prophecy with newborn persons or groups of persons. The leader or the political or religious party that, looking for public legitimization, was able to proclaim himself the super-man, would therefore be able to bring the heaven in earth - the super-socialism - and establish the best of governments - super-nationalism. Within this new kingdom of the Lord down to earth, as Zarathustra prophesized, peace and prosperity were assured. However, not for all, only for those who had faith that this would happen. This is a way, among many, which describes the events how words, like slogans, may empower a leader. However, this is only a description of how an individual may be empowered to become a leader. Foucault observes that it is possible to distinguish at least two more categories of how a leader may administer this power: firstly, “the techniques of domination which allow to define the behaviour of individuals, to impose certain finality or certain objectives”, and secondly “the techniques of the self which allow individuals to carry out, by themselves, a certain range of operations on their bodies, their souls, their thoughts, their conduct, and to do so in order to produce in themselves a transformation, a modification, and to attain a certain state of perfection, of happiness, or purity, of supernatural powers”.¹³⁰ This lecture of Foucault may be meaningful under the light of describing the deeds of the new ruling elite who, in Yugoslavia, obtained popular

¹²⁹ The biblical conception of creation refers to the pronunciation of words from God (light, darkness, earth...) which “became” (came to being) realities. This theory is reflected in the popular Latin expression “*Fiat lux*” which is translated by “Let there be light”.

¹³⁰ Michel Foucault: *New Directions in Theorising World Politics* in “Global Society” Volume 23, Issue 4, 2009.

legitimation by using the interpretation of nationalism along with human rights, as a source of supernatural power entitled to anyone who had faith in their leaders and in the “Greater Yugoslavia to come”. In this context, Karl Schmitt could write: *he who invokes the word 'humanity' wants to cheat*.¹³¹ However, whether political jurisdiction is extended to limitrophes groups who do not accomplish the same trust (faith) over the leader, without necessarily leading to a conflict, it may create more a religious misunderstanding that can be resolved by the one who holds the best interpretation on human rights, which is not necessarily a state or a nation. Nevertheless, after World War II, the vision of power referred to as “super” became rapidly a synonym of “ultra”, in most of cases in a pejorative sense, like ultra-nationalism, ultra-extremism etc.... Thus, a rather a new vision of power was adopted to indicate the “New world order” which was then forming. However, this time the linguistic process was different because English, the language largely adopted in the official documents, consisted of a radical different grammar than German.¹³² The vision of power adopted by the “new” ruling elite was transmitted using a new semantic methodology that adopted synonyms, likewise new super-man became *people*, new-race *culture*, new-war, *conflict* new-minorities, *power-contenders* etc. The words represent the most powerful of entities. Whether the III World War, if it happens, will bring a clash of civilizations, it will surely start within a mono-ethnic and mono-linguistic group rather than a multi-linguistic one. As Gorgias pointed out, the political leader who, Paris, would persuade with his language the people, Helen, would lead the world to civil war. In fact, the Achaeans and the Trojans did not have any difficulty to communicate among themselves; rather, “Trojans spoke poetically, with the aim of avoiding conflict, whereas Achaeans repeatedly engaged in a public, ritualized abuse of linguistic term”.¹³³ According to Gorgias, words (*logos*) have power (*dunamis*) that is equivalent to that of the gods and is as

¹³¹ Carl Schmitt, *The Concept of the Political*, 1932, p.55.

¹³² “Propagate our language all over [the] world. ... Fraternal association with U.S. – this would let them in too. Harmonises with my ideas for future of the world. This will be the English-speaking century.” Winston Churchill’s remarks to the British Cabinet, 12 July 1943. Otto Von Bismarck, asked what was the greatest political fact of modern times, replied: The inherited and permanent fact that north america speaks English. Cfr: Susan Ratcliffe, *Little Oxford Dictionary of Quotations*, p. 225.

¹³³ The Trojans in the Iliad have no difficulty in speaking to their Greek opponents. From the Greek point of view, the languages of Trojans and their allied neighbors were not as unified as those of the Achaeans [...] Achaeans are proficient at blame, while Trojans perform praise poetry”. Cfr: Mackie, *Talking Trojan: Speech and Community in the Iliad*, Lanham MD: Rowmann & Littlefield, 1996, p. 74.

strong as physical force.¹³⁴ According to the New Testament, the first action of God was the *Logos*, and through the language, the Mighty created the world. Thus, in the “new world order”, there is no need to adopt any specific language, but to impose on everyone the global language of “human rights”. These conclusions are also argued by Foucault who states: “from the eighteenth century until today, ‘human sciences’ have reintegrated the techniques of verbalisation into a different context, making of them [. . .] the positive instrument of the constitution of a new subject”. The politician who would be trained by Gorgias to speak better of human rights in the place where decisions are taken - the UN General Assembly -, would establish a democratic tyranny where everyone would speak the same language of human rights although without understanding their meaning. Plato and Aristotle were firmly in opposition to this *art of speaking* because it did not resemble the reality, but only the plausible. However, human rights are not only spoken; they are also written in international treaties. For some unspecified reasons, these treaties fall under the *juris-diction* of Laws, both at the international and regional level. These treaties are committed to local realities in the same ways as road signs that *indicate* the way without following it. The actor entitled to follow it is only the State or the individual. In this perspective, overeducated politicians meet the comprehensible diffidence from their electorate because there is no possible accession to human rights without having a minimum background of jurisprudence, religion and morality. Politicians, therefore, when referring to human rights, speak of a religious, legal and ethical form of knowledge that the electorate may perceive as inconsistent with their reality. Therefore, education on human rights through media seems to be provided only in a double-standard way, where human rights are accorded to *some* (foreigners) but not to “all” (citizens), and where human rights are respected only “here” and violated always “there”, thus creating the image that there are good national human rights and bad foreign human rights. Equally, some politicians find convincing arguments when speaking of laws that protect only “them” and never “the citizen”, that laws are applied to “some” and not to “all”. These double-standards of communication are based on the conception that human rights and laws are legal privileges, freedoms and religious *dogmata* detached from reality. It is not enough to assure, at the

¹³⁴ Gorgias, *Encomium to Helen*. He likens the effect of speech on the soul to the effect of drugs on the body: “Just as different drugs draw forth different humors from the body – some putting a stop to disease, others to life – so too with words: some cause pain, others joy, some strike fear, some stir the audience to boldness, some benumb and bewitch the soul with evil persuasion”

international level, that respect of human rights is provided by states to their local realities if 1) the individuals are not educated to human rights and 2) there are no places where human rights experts may interact with citizens at the local level. This is the conceptualization of the Platonic government of tyrants, which led the Athenians to kill Socrates, because they found him guilty to “corrupt the youngsters’ mind” by instilling in the teenagers the doubt that their leaders’ opinion could be different from what they may expertize. Therefore, Socrates downgraded the *juris-diction* of Athenian authorities on *human phenomena* like ethics, religions, laws, on which they declared to be experts. The problem for the Athenian leaders, in contrast, was the reasonable reluctance to accept the new *juris-dictions* and let it prevail over their exclusive opinion of *democracy*. This lack of new leaders able to contrast (within the due limits and within the proper places) the techno-expert politicians seems to be the *democratic deficit* of the EU.

“Research both in and beyond Europe has shown that ethnic conflict is less common, or more easily contained, where there are strong civil society groups bringing together people from different communities. [...] Thus the role of various civil society actors in answering all the questions [...] - the challenges to open and diverse societies, the difficulties of “living together”, and the future of European values - is more important than is generally recognised by the major decision and opinion makers in Europe.”¹³⁵

The International Bill of Human Rights contains at least two *loci* - rhetorical places – areas where politicians have *juris-diction* on human rights. I call them the *globalized* human rights, represented by the interpretation of the International Bill of Human rights according to English speaker community, and the *localized* human rights, representing the oppositions of this interpretation of the same text. Both views start from the principle that the counterpart has a translated, therefore betrayed, interpretation of human rights. However, both parties represent the leaders of a fundamentalism that does not open to any other possible interpretation of human rights because it clashes with their consolidated opinion of

¹³⁵Council of Europe, *Living together*cit., p.42.

human rights. Therefore, both are *speaking* global to their counterparts and *speaking* local to their electorate but either omit listening to them.¹³⁶

¹³⁶ In *Ivi* it reads as follows: “Policy makers only pay lip service to civil society’s role, and then go on to ignore it in practice”.

III.I

Glocalized Human Rights

Refusing to accept that human rights encompass *human phenomena* rather than treaties and laws, policy makers use the logic of fundamentalism that if these *human phenomena* are in agreement with the *International Bill of Human Rights*, they are useless and need not be preserved; if they disagree, these rights are considered pernicious and should be abandoned. However, there is also a much proficient way of looking at human rights as something different than merely legal regulations? According to Averroè, there are three levels of human understanding of the mysteries of religion. In our time, one level may encompass human rights through the classic literature of hospitality; a second level may encompass human rights through their historical antecedents (freedoms); a third level of understanding may be related to legal systems. In each case, human rights do not change their value; it is the language adopted to define them that changes. Illiteracy is much more pernicious than having overeducated experts of human rights holding opinions with the arrogance to call them truths. This was particularly pronounced in the Yugoslav case, which started as a civil war fought by different national groups speaking the same language and ended to be a religious war. Whether human rights are not present at the local level, the individuals may not form their critical opinion whether their politicians are respecting international standards on human rights:

“According to the Council of Europe’s 2008 *White Paper on Intercultural Dialogue*, “*Living together as equals in dignity*”, in order to live together in peace people need skills or “competences” which are not automatically acquired, but if they are to be maintained for life, they need to be taught and practised from an early age. School teachers obviously have a vital role to play in helping children develop these skills, but informal education and life-long educational programmes can also play an important role in sustaining them, as well as helping adults who have missed out on this aspect of full-time education.”¹³⁷

¹³⁷ Ibid. p.38.

The legal framework of the CoE stands as the golden mean, which I refer to as *glocalization* of human rights, which stands between the extreme positions adopted by globalized and localized interpretations of human rights. *Glocalized* human rights sums up the panoply of texts that adopt new conceptions, new ideas, and new human rights like self-identification, local self-identification, decentralization, internationalization etc... These rights are not in service of people, minorities or citizens, but since they are referred to *human phenomena*, they are in service of *humans*. *Glocalized* human rights are apolitical and pluralistic ideas that give a meaning to traditional words opened to pluralism of opinions and critics, among which new terms, new concepts, new interpretations, and new meanings may affect the imagination of the readers. Since local realities cannot access CoE conventions, the local authority is obliged to follow mainstream national party's directives rather than creating a conscious and informed local society. The word is powerful until its meaning to the public opinion *changes*, as the semiologist Umberto Eco quotes: *stat Rosa pristina nomine, nomina nuda tenemus* - the ancient Rose remains by its name, and naked names (are all that) we have.¹³⁸ Human rights do make a change only if they are not detached from the language used within a civil society. Indeed, politicians who use to nominate only localized human rights on their speeches tend to trace a distance between their electorate and human rights, rather than empower the civil society with them.

“Too often those who lead “mainstream” political parties and are elected to high office, knowing that their opponents and the media are waiting to pounce as soon as they make a false move, seem to believe that their only hope of remaining in office lies in following public opinion rather than leading it.”

Equally, politicians who use globalized human rights in their speeches seem to protect their jurisdiction from any other diverging interpretation. The EU is therefore dangerously

¹³⁸ This verse concludes the Eco masterpiece “the name of the rose” and it comes from the poem *De contemptu mundi* (“On the Contempt of the World”), written by Bernard of Cluny (Bernard of Morlay). This poem is mainly a satire against the moral corruption of the world in general (and of the Catholic Church in particular) in the 12th century. Among other things, this long poem (3000 verses) stresses the transitory nature of this world's pleasures and glories, and uses the great cities of the past (Babylone, Rome) as an example. The most coherent reading for the verse that Eco cites is actually : “Stat ROMA pristina nomine”, etc. Here is the context: Nunc ubi Regulus aut ubi Romulus aut ubi Remus? Stat ROMA pristina nomine, nomina nuda tenemus

becoming the place where an audience is educated to accept as true the fundamentalist opinions of leaders about human rights: on one hand, they are as a surplus of civil rights accorded to non-citizens by the international community, on the other hand, they are a limitation of the privileges that Constitution is alleged to provide only to citizens. This contrast is based on the absence of education to what glocalized human rights represent at the international level of the Council of Europe. This is especially true when the electorate is considered to be a homogeneous group of citizens. In fact, the Eurobarometer shows that 62% EU citizens already *feel* European, but no local European leader represents them! The creation of identity between citizens and a single *demos* is a commitment to create new minorities, and therefore, new national secessions. European identity has resulted in formation of new minorities consisting either of extreme supporters of the EU (around 3%), or another minority around the 6% of those who feel European and National, while 49% identify themselves as national and European with the remaining 39% considering themselves only national.¹³⁹ The issue whether Europe does or does not need a Parliament to represent it as a new nation was also considered by Habermas who said that when it comes to the question of European identity “it is neither possible nor desirable to level out the national identities of member nations, nor melt them down into a “Nation of Europe”.”¹⁴⁰ The CoE has done much more than any other international organization to return to the individual the dignity to self-identification. It offered to member states legal instruments to protect them from the power of *globalized* and *localized* interpretation of human rights. States are obliged 1) to ratify the ECHR and interpret its provisions with their margin of appreciation, with the advisory opinion offered by the Court of Strasbourg, and 2) open the possibility for member states to adopt human rights at the local level. The CoE, however, remains inaccessible to local authorities. In addition, states are debating whether the obligation to respect human rights accorded to *demos* shall be *localized* - *rebus sic stantibus* - or *globalized* - *pacta sunt servanda* -. Insofar, the problem of Universalism and Cultural Relativism brought an army of European and American scholars aiming at finding the best legal argument that would convince the other party to interpret human rights as *localized* or *globalized*. This dichotomist/schizophrenic view on human rights seems to justify the

¹³⁹ see in appendix fig. 4

¹⁴⁰ Jurgen Habermas, “The Postnational Constellation”, London: Polity Press. 2001. pp.99

complaints of those who denounce this discussion as unnecessary, because it does not affect non-state actors that continue to conduct their economic interest regardless of any obligation towards human rights. This dilemma has led *de facto* to impoverishment of the world's natural resources as it allowed non-state actors to cut half of the Amazon forest in order to produce tons of paper needed to be filled with rivers of ink (produced from oil) needed to win this ideological battle. However, contrary to the public imagination, to debate on "the sex of angels" is extremely important for the consequences of people's everyday life, because recognition of dignity of angels in the metaphysic spheres to be women could grant the existence of the same dignity for women in flesh and bones down to earth. Palermo argues that a third set of rules, not laws, is needed to be implemented in order to render not only democracy inclusive, but also pluralist, and according to this thesis, pluralism is represented by the participation of local authorities of the *demos* to be included among the category of *human phenomenon*. These public figures shall not only administer local communities, but also educate them in human rights before waiting for the paternalistic final decision whether human rights are universal or relative. This thesis adheres to the liberal understanding of education on the principle that whether an angel is female, male or of *other status*, only the angel itself rather than the international community of scholars shall tell! Within the literature of Greek hospitality described in the Iliad and Odyssey, which resembles *ante litteram* human rights, there is the famous episode describing the meeting between Odysseus and Nausicaa. Odysseus, as a guest, could withhold his name as long as he pleased.¹⁴¹ *Glocalized* human rights encompass many aspects of hospitality described in the Odyssey and Iliad. Moreover, hospitality can be delivered by *demos* rather than nation-states. *Glocalized* human rights are not international or local laws, but share and imitate similitudes with them, they are not relative ethical precepts, but share similitudes with them, they are not religious *dogmata*, but share similitudes with them, and human rights are not freedoms, but share similitudes with them. In addition, the conduction *ad unum* of human rights among the categories of *laws* is much similar to a religious problem than a legal one. Mylène Bidault, vice-special rapporteur for the Committee on the Elimination of Racial Discrimination, stated during an informal meeting in Geneva that the challenge regarding minorities is related to the identification of

¹⁴¹ Odyssey, books VI and VII.

the legal definition of *Human*. Whether there would be agreement regarding/on this definition in legal terms, it could be possible to establish the legal limits to define who is entitled to have jurisdiction over human rights. The UDHR is the most translated document of the world, but the UN Security Council adopts a unique and paternalistic interpretation of it without leaving any margin of appreciation to others.¹⁴² The problem related to any paternalistic approach of who holds the power and who introduces a new interpretation is represented by the memory of Giordano Bruno, 1600, who identified his ideas *ex tunc*, against the opinion *ex nunc* of the powerful authorities. The memory of the ashes of Bruno in Campo dei Fiori compelled René Descartes, who covertly criticized the Aristotelian paternalism for publishing his “Discours de la Méthode” anonymously. Finally, a productive example of the importance of finding a legal agreement on *Human* stands in the proclamations adopted by slave traders. Stanley Cavell provides an intriguing and productive examination of this concept of slavery undertaken in the *Claim of Reason* (1979) where he reports claims made by slave owners in defense of their property in men, that their slaves *are not fully human*.¹⁴³ In legal terms, the problem of slavery is not addressed whether slaves are Humans, but whether they receive an inhuman treatment.¹⁴⁴ In conclusion, the consequence of unsolved obligations towards human rights can be widely seen. The Arab League has been facing a deep socio economic and political crisis as a result of the events taking place there since December 2010. Major protests broke out in Algeria, Iraq, Jordan, Kuwait, Morocco, and Sudan; the governments had been forced to step down from power in Tunisia, Egypt (twice), Libya, and Yemen; civil uprisings had erupted in Bahrain and Syria. Yet, the worst humanitarian emergency, which is still ongoing, can be observed in the civil war taking place in Syria, and in Iraq which is being fought by the militias of governments and the Islamic State in Iraq and the Levant (ISIL). Yet, Europe has not been immune to those atrocities, facing social unrest due to the economic crisis and a civil war that is still ongoing in Ukraine. Towards the national minority living in Crimea,

¹⁴² See at length Manokha I, “Foucault's Concept of Power and the Global Discourse of Human Rights”, in: *Global Society*, January 2009, pp.1-55.

¹⁴³ Mark Blackwell, *The Secret Life of Things: Animals, Objects, and It-narratives in Eighteenth century*, England 2007, p. 106.

¹⁴⁴ The 1926 Slavery Convention established concrete rules and articles to advance the suppression of slavery and the slave trade. Slavery was defined (Art.1) as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Moreover the UN, in 1956 Supplementary Convention on the Abolition of Slavery, states that art.1 “The parties commit to abolish and abandon debt bondage, serfdom, servile marriage and child servitude.”

the Russian President addressed Duma deputies, Federation Council members, heads of Russian regions and civil society representatives in the Kremlin Russia invoking the jurisdiction of the International Law¹⁴⁵ rather than any Ukrainian violation of the ECHR or violation of the Charter of Self Government. It demonstrated much more a practice to oppose an interpretation of human rights, rather than a real *glocalized* humanitarian intervention towards a *human phenomenon*. Whether minority's rights may become *glocalized* within Europe, it may possible to start from setting some rules to commit the EU and its politicians to adopt a vast-scale education on human rights at the local level.

¹⁴⁵ The Russian President declared the Crimean case similar to Kosovo, providing that the United Nations International Court of Justice handed down an advisory opinion in 2010 saying unambiguously that the unilateral declaration of independence in Kosovo (for which there was no referendum nor agreement from Belgrade) was not prohibited by international law. Cfr: "Address by President of the Russian Federation". <http://eng.kremlin.ru/news/6889>.

III.II

The EU and the CoE

It is generally taken for granted that the Council of Europe and the European Union coexist without any real links between them.¹⁴⁶ The Council of Europe is the continent's leading human rights organization. It includes 47 member states, 28 of which are members of the EU. It works to set common legal standards for its member states by drafting conventions and treaties opened to ratification to its member states and international organizations. Therefore, the Coe, contrary to the UN Security Council, holds the power to monitoring the commitment of member states to human rights, but does not have any coercive procedural mechanism to ensure their implementation. In contrast, the EU does it. The Commission is the “guardian of the treaties” and has the power to oblige Member States to enforce European law on any matter within its competence, such immigration and asylum seekers for instance. Moreover, the EU decisions are largely taken by consensus by all member states. However, the EU law establishes the administration of the power among states rather than their commitment to human rights. However, the preamble of the Treaty of Lisbon (TEU) reads as follow: “European Union of 27 (now 28) Member States with a stable institutional framework for the foreseeable future. The EU will be better able to tackle the challenges we face, including globalization, climate change, energy security, terrorism and organised crime”. The neo elected president of the Commission, Jean-Claude Juncker, declared that “the Council of Europe and the European Union were products of the same idea, the same spirit and the same ambition. They mobilized the energy and commitment of the same founding fathers of Europe.”¹⁴⁷ In 2009, through the Treaty of Lisbon (TEU), the EU achieved the legally binding Charter of Fundamental Rights that brought together, in a single document, the fundamental rights that are also protected in the EU. The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice, which however applies to the institutions and bodies of the EU with due regard for the principle of subsidiarity and the national authorities only when

¹⁴⁶ Borchardt K., *The ABC of Community cit.*,p.11

¹⁴⁷ The Council of Europe's Relations with the European Union (http://www.coe.int/t/der/eu_EN.asp) contains all the documents relevant to the collaboration among these two organizations.

they have implemented and will continue to implement the EU law. Article 200 of TEU states: “the Community shall establish all appropriate forms of cooperation with the Council of Europe.” Therefore, in order to encompass everyone living or crossing through the EU, including citizens as well as and non-citizens, the TEU has established the EU obligation to access the ECHR. Moreover, the EU is bound to take into account human rights in the economic negotiation and conclusion of international trade and investment agreements on behalf of its Member States.¹⁴⁸ To achieve these human rights actions in the largest possible way, the Treaty of Lisbon has significantly increased the number of areas in which decisions are brought by regular legal procedure, which now applies to 40 new areas, 30 of which are permanent areas modified by co-decision procedure. Among them are counted borders control, asylum, and immigration, judicial cooperation in criminal matters, issues of minimum sentences in defining organized crime, measures to encourage prevention of crime, Eurojust, police cooperation, Europol and civil protection. Secondly, as it was mentioned, the Treaty of Lisbon made significant changes in another area, increasing the political control of the Parliament over the Commission. Furthermore, the key meeting point among the EU law and the CoE is represented by art. 165 which reads: “the Union and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe”, art. 220 which reads: “(4) The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development and (5) In order to contribute to the achievement of the objectives referred to in this Article:– the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States”.

Therefore, the EU is legally bound to the CoE in the economic and educative development and shall adopt incentive measures that are in accordance not with a single interpretation of

¹⁴⁸ For a detailed legal analysis of the EU accomplishments with human rights on trade partners see http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/droi_20100304_51fidh_/droi_20100304_51fidh_en.pdf

human rights, but with the aim to nurture a favorable background for the education of European leaders.

Conclusions

European Politics

The ECHR's obligation to respect human rights offers an indication, a *vademecum*, that human rights are necessary rules that must be respected by democratic governments in order to meet concrete needs of persons. Human rights, therefore, shall not be imagined as detached from the political reality, as if a *just society* could not be also *stable*,¹⁴⁹ or as if human rights exist only in the treaties as if they were powerful relics or salami pending from the roof. Human rights share, instead, similar properties with numbers. Indeed, once numbers, considered as detached from reality, were applied to physics, it was possible to land on the moon. The application of numbers to mathematical models of the Universe let Kepler discover that the Earth was not at the center of the universe. Regardless of Galileo's demonstration in 1635, the earth continued to remain at the center of the universe in the official university text-books almost until the 1757, when the Inquisition recognized the validity of Galileo's mathematical demonstration. However, his mathematical model could not become official if curious *novatores* would not make Galileo discoveries of public interest, therefore growing the number of adherents to the new mathematical discoveries. These *novatores*, almost unknown to the public, were not the best educated, neither uneducated, but they were curious persons with different backgrounds, living their time within its contradictions and its paternalistic authorities. Their role has been fundamental for the Enlightenment to establish new models, new ideas, and new scientific discoveries. These *novatores* helped the affirmation of the just and stable knowledge that brought stability not only in the mathematical models, but also in the practical life of persons. Once the mathematical proportions of the cosmos could be updated in the books, the world finally started to rotate around the sun to the eyes of everyone. Therefore, human rights shall not remain a copyrighted property of overeducated elites, but divulged as much as possible among the public, as mathematics is taught nowadays at elementary schools. Human science does not follow the same rules of mathematics but they both hold the same value. If applied to politics, human rights may reduce unemployment by bringing more local talents to work on the realization of the 2020 goals. For instance, to achieve social

¹⁴⁹ Weller, Nobbs K., *Political Participation of Minorities cit.*, p.77.

cohesion and reduction of poverty, the EU has disposed the European Social Fund (ESF), which is not an employment agency because it does not advertise jobs. Rather, it is funding tens of thousands of local, regional and national employment-related projects throughout Europe: from small projects run by neighbourhood charities to help local disabled people find suitable work, to nationwide projects that promote vocational training among the whole population. Therefore, people are the focus of the ESF. And among people there are future European leaders. Where there is an European democratic deficit, it is due to the lack of figures educated in human rights and brought up to face the practices of life of their communities. These are the European leaders that cannot be currently found at any level of the EU. Local communities are not entitled to use human rights, nor to form leaders that may introduce local communities to the practices of local NGOs, or to small and little enterprises or foreign communities living in the ghettos. Local authorities, the EU and the CoE play a fundamental role in the formation of a critic opinion towards human rights. European leaders shall be involved in advertising and opening to citizens as well as to noncitizens, the *new minorities* of Europe, public spaces where NGOs, associations, enterprises, and university professors may share their knowledge, their projects, their needs, offering more opportunities and inspirations for those who lack a local self-identification. Not only a place of shared experiences and public discussions, but especially places offering informal education in human rights and international standards, where human rights are nominated in the local language and everyone is invited to draft projects, express ideas, form groups and be empowered with the know-how of how to create projects which meet the requirements of the 2020 goals. Mainstream European politicians shall deliver to citizens the freedoms to travel along with the concrete opportunity to all the Europeans to enter in social practices with local communities. The EU is not alone in attempting to achieve those goals. There are many *demoi* where European leaders may be formed and help local communities to share their European Perspectives. There is no point to form an European generation of overeducated Europeans free to travel but without a destination, or a generation of overeducated Europeans all employed in the public administration of the EU. What Europe really needs is a generation of Europeans living Europe's local realities.

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DICHIARAZIONE DEI DIRITTI, E DEI DOVERI DELL' UOMO, E DEL CITTADINO.

Il Popolo Cavarzerano proclama in faccia a Dio la seguente dichiarazione
dei diritti, e doveri dell' Uomo, e del Cittadino.

- I. I diritti dell' Uomo, che vive in società, sono la Libertà, l' Uguaglianza, la sicurezza, la Proprietà:
- II. La Libertà consiste in poter fare ciò, che non nuoce ai diritti altrui.
Nessuno può esser costretto a fare ciò, che la Legge non comanda.
Ciò che non è vietato dalla Legge non può esser impedito.
Niuno può esser impedito a dire, scrivere, e pubblicare anche colle Stampe i suoi Pensieri, fuorchè nei casi denunciati dalla Legge, e non può se non in questi essere responsabile di ciò, che ha scritto, o pubblicato.
- III. L' Uguaglianza consiste in questo, che la Legge è la stessa per tutti, e quando protegge, e quando punisce. Essa non amette veruna distinzione di nascita, nè alcun potere ereditario.
- IV. La sicurezza risulta dal concorso di tutti per assicurare i diritti di ciascheduno.
- V. La Proprietà è il diritto di godere, e di disporre de' propri Beni, delle proprie rendite, del frutto del proprio lavoro, e della propria industria.
Ognuno può impegnare il tempo, e l' opera sua, ma niuno può venderli, nè esser venduto. La Persona è una Proprietà inalienabile.
- VI. La Sovranità risiede essenzialmente nella universalità de' Cittadini. Nessuno individuo, e nessuna unione parziale di Cittadini può attribuirsi la Sovranità. Senza delegazione legittima non si può esercitare alcuna funzione pubblica. Ogni Cittadino ha un eguale diritto di concorrere immediatamente, o mediamente alla formazione della Legge, alla nomina de' suoi Rappresentanti, e de' pubblici Funzionarj. Le pubbliche Funzioni non possono passar in proprietà di quelli, che l' esercitano. Niuno può portare de' segni distintivi, che ricordino funzioni antecedenemente esercitate, o servigj prestati.
I Funzionarj pubblici non hanno altra superiorità, che quella ch' è relativa all' esercizio delle loro Funzioni.
- VII. La Legge è la volontà generale espressa dal maggior numero o de' Cittadini, o de' loro Rappresentanti. Nessuna Legge può essere giusta quando sia in opposizione ai diritti dell' Uomo vivente in società. Nessuna Legge Civile, o Criminale può avere un effetto retroattivo.
La Legge non deve imporre se non pene strettamente necessarie, e proporzionate quanto più si possa al delitto.
- VIII. Niuno può essere chiamato in giudizio, accusato, arrestato, o detenuto fuorchè ne' casi determinati dalla Legge, e secondo le forme dalla Legge prescritte.
Qualunque trattamento, che aggravi la pena determinata dalla Legge, è un delitto.
Qualunque rigore non necessario per assicurarsi di un delinquente, o indiziato, deve essere severamente represso dalla Legge.
Quelli che sollecitano, spediscono, firmano, fanno eseguire atti arbitrarj, o arbitrariamente li eseguono, sono colpevoli, e debbono esser puniti.
- IX. Niuno può essere giudicato, se non se a norma della Legge dopo esser stato ascoltato, o legittimamente citato.
- X. Ogni contribuzione è stabilita a norma de' pubblici bisogni, ed interessi. Ogni contribuzione diretta viene ripartita fra i contribuenti in proporzione delle loro facoltà.
- XI. La Garanzia sociale non può esistere se i poteri non sono divisi, ed equilibrati, se i limiti de' medesimi non sono circoscritti, e se non è assicurata la responsabilità de' Funzionarj pubblici.
- XII. La conservazione della società richiede, che tutti gli individui della medesima conoscano, siccome i propri diritti così pure i propri doveri, e li adempiano.
- XIII. Tutti i doveri dell' Uomo, e del Cittadino derivano da questi due principj. Non fatte agl' altri, ciò che non vorreste fatto a voi. Fatte costantemente agli altri quel bene, che ne vorreste ricevere.
- XIV. Ognuno ha l' obbligo colla società di difenderla, di servirla, di ubbidire alle Leggi, e rispettare coloro, che ne sono gli organi.

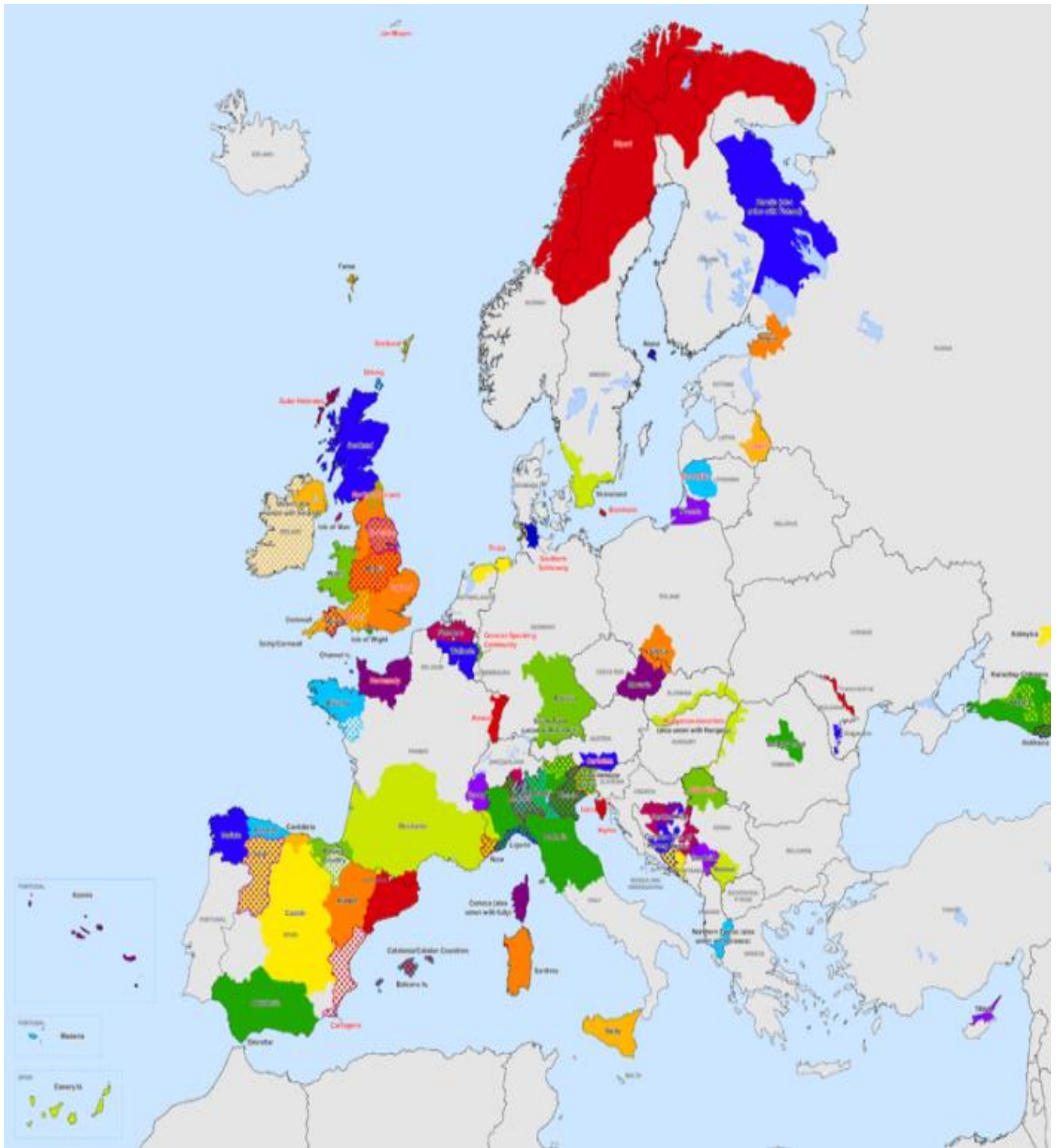


fig.2

EUROPEAN IDENTITY

Symbols of EU identity



9 May
Europe Day

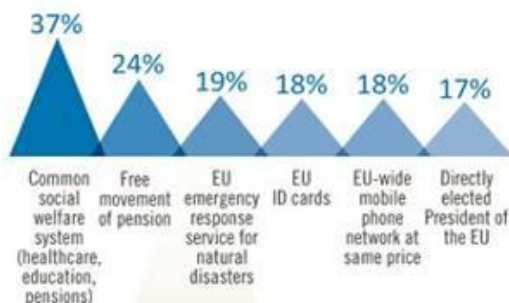
Ode
to Joy
EU Anthem

Unity in
diversity
EU motto



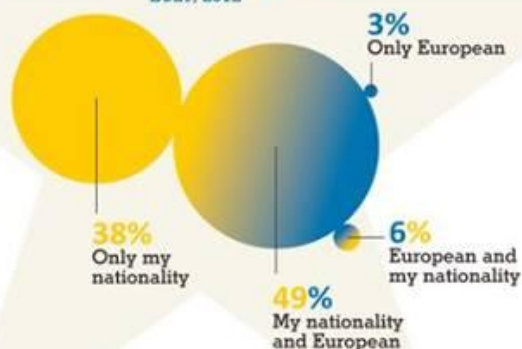
What would strengthen your sense of EU identity?

EU27, 2012



In the near future, I see myself as...

EU27, 2012



Cultural contributions to European unity



Sources: Eurobarometer, European Commission, September, 2013

fig.3

To my beloved Elena who inspires my life.

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