

Values, Intercultural Dialogue and Making It Pay to Be Good: More than a Research Agenda, but also a Policy Approach for the European Union to Promote in the World

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In September 2009 I was invited to address the assembly of the Jean Monnet professors in Brussels on the occasion of the 20th anniversary of the Jean Monnet Programme¹. I had been asked to speak about migration, euro-med relations and intercultural dialogue; but also to do so within the general theme of the future of the Jean Monnet Programme and the future of the European Union and its key policy choices. I have written elsewhere on migration and will do so again. But I thought it would be remiss of me to let that occasion pass by without focusing on the broader issues that encapsulate the single issues. I therefore focused on what I see as the key challenges for us all at this point in our history, and on the contribution that we as academics, in the course of projects such as this Jean Monnet European Centre of Excellence Project at Padua, may yet make to the evolution of Europe in the world. The answer to the questions: «What is the future of Europe, and what role for Europe in the world?» cannot be answered, in my view, by looking inwards.

As I said in Brussels in September 2009, we can only begin to know the answer by first asking: «What kind of a world do we want?». Europe can then decide to take the shape, to take the policy approach that will work in and for that world. But we need to «think global» first. And in answering this question, two points are central: first, there can be no answer worth anything without real intercultural dialogue, not least about values and virtue, that feeds into consensus at global level; and secondly, Europe has a degree of experience with inter-governmental and then deeper cooperation between sovereign and increasingly non-homogeneous states and their peoples that surely can be brought to the forum of dialogue about the future shape of our world, including the instruments and techniques of dialogue and decision-making at global level,

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¹ P.G. Xuereb, *Making It Pay to Be Good - Intercultural Dialogue, Virtue in the Public Sphere, the Common Good, Global Governance, and the European Experience*, Global Jean Monnet Conference, September 2009, available on the Jean Monnet website of DG Education and Culture, http://ec.europa.eu/education/jean-monnet/doc1567_en.htm.

and therefore about that of our Europe.

I emphasise the word «experience». I myself have used the word «model» in the past. This has been open to misinterpretation; to an interpretation that was never intended. The Union, the Europeans, have no ambition to expand to take over the globe (I think!). Nor can we imagine that our values/systems/techniques can be taken wholesale and transplanted. What we have is a chequered experience of seeking always – even when, as in recent times, we seem to be stumbling and falling back – to somehow keep the dynamic of further cooperation moving forward – with a large measure of success in these terms. What we can offer for consideration are the whole complex of experiences, good or bad, as they seem to us or have seemed at times, and some key elements of the way we work together, for thought and study and application in the global context – a context that cries out for some new framework for deeper cooperation and joint endeavour. I will therefore focus on functional (decision-making and therefore institutional) intercultural dialogue, ultimately taking a global as well as European and Mediterranean perspective, rather than focusing on migration and euro-med relations as such. We can only succeed even in these spheres through dialogue at the regional and cross-regional and at the same time the global level. My key phrases therefore remain dialogue, values and the European experience of «part-global» governance.

1. Towards a New International Order

Therefore, I will try to get across some main ideas that in my view remain of key importance in addressing the greatest challenge that faces us today as European and global citizens, and one that we share on equal terms of interest with our fellow world citizens – the construction of a new global order based on justice and intergenerational solidarity or, as it has been put, «a new order of relations in the world», a true international community characterised by shared responsibility for the «universal common good» while safe in each other's cultural achievements and differences. To this end, in Brussels, I proposed a research and policy agenda on which some of us have started to work, but which in my view needs to take

centre stage, for the participants in this joint endeavour will be very many. I hope that the Padua Project will bring some of these ideas to fruition.

2. The Need to Work towards a Common Understanding of the Common Good

It seems to me that what is required of us all at the present time is that we make a genuine and new commitment to the clarification of the philosophy of the common good in global, and then European, terms. I see this as *the key question* to be addressed by us all at this stage in our common history. *What do we mean by the common good? What is it in any particular context?*

I would argue, again, that we have to *think globally in the first place*, and that from this all else should and will follow, including for us a clearer view of the Union's role in the world, as well as in its internal policy-making, and this across a whole host of areas from energy to security to trade and aid to state and human rights, translating into a coherent set of new long-, medium-, and short-term policy objectives rooted in a new «deal» on state and human rights. Without a new and clear sense of the common good we will stumble from quick fix to late quick fix. On the other hand, focusing on the common good means focusing on *values to be observed at national, European and global level, with institutions and policies adapted, or newly-designed, for, and directed towards, that common good.*

And so, to *dialogue*. It seems to me that we can get to the point of *knowing the common good* only with proper dialogue about values. And this dialogue must evidently be intercultural. For this purpose, as several are doing, *the academic community could work on and through such concepts as the «common heritage of mankind» and the concept of «common goods», and other related concepts that will enable us to focus on preserving and sharing our scarce planetary resources, reducing and then eliminating the waste of resources and human potential that are currently absorbed in keeping a precarious power balance instead of their being channelled into the alleviation of poverty, misery and injustice in constructive ways in a spirit of solidarity, and then prosperity and thereby security and justice for all.* I argue

that a *new or renewed global architecture is clearly needed for these purposes*. Europe has «been there before» in many ways, with *experiences over the last fifty years that offer up a complex of concepts and elements* which can also be utilised in designing a new global institutional architecture. But first, and foremost, we must speak about values.

In and across Europe, as also outside it, a whole *new human rights discourse as linked to values is taking place*. Often, in the West this has taken place in terms that exclude religion, although I think that this too is changing. Yet, seen from a traditional cultural and religious perspective outside the core of Europe a liberal humanist relativist discourse is the language of social turmoil if not sedition. Suddenly (or less so), for societies unused to relativism or cultural pluralism, the very foundations of society seem to be rocking: the definition of «marriage» is up for discussion; the definition of «the family» is up for discussion; and within Europe as elsewhere the definition of «good capitalism», «good management», «good government», indeed it seems the definition of «good» itself – as accepted by most of us over the last few decades – is up for discussion. This in itself is not new in human history perhaps, but such soul-searching always poses a challenge to each generation. And as for any new challenge, a counter-reaction is experienced to any reaction. From the perspective of the liberal (neo-liberal?) relativist humanist in Europe, any challenge to accepted «European values» of pluralism and individual right and the economic and social progress that accompanied their evolution, and any call to dialogue about values, is then seen as a call to admit to a failure that is not felt by many, and the instinct is to dig in one's heels and reject the motion that «western» values and notions of human rights, proclaimed as universal, are being put «up for discussion».

Therefore, no one is happy; for everybody's fundamental societal underpinnings are «up for discussion». Yet, they are! And increasingly so in the global as well as the regional and the national spheres. Surely, these must be discussed in the open and with full respect for difference if we are to create a better international order.

On a broader canvas, let us ask: How universally moral is it: to set up and use systems for the non-payment of one's dues to society; to pillage or pollute the environment that is everyone's

heritage; to lure youngsters into self-damaging behaviour; to exploit the weak, the desperate and the vulnerable; to hold back the development of other nations who are perceived as potential competitors; to withhold needed resources including medicines from those in need of them for their health and even survival; to put people's lives or health at risk in numerous ways, often in the name of progress and scientific advancement; to keep women and children and others in servitude; to permit millions to go without access to basic human necessities; to put profit before caution in the face of possible harm? I could go on. These are among the many moral dilemmas that face us all and that call for a principled response to the complex considerations at play. *And it is increasingly clear that it is the international community that must address them.* It seems to me that we must all «evolve» (perhaps there is a better word?) together before our differences pull us any further apart. *Only a major historic effort of real dialogue about virtue in the public sphere, while valuing and respecting our differences, holds out the hope for the creation of a new common understanding around values, one that will work to reduce tension and heighten justice in the world.* It seems to me that what we must search out is not uniformity in all cases, but a *new explicit basic common understanding of virtue in all contexts.*

3. Virtue and the Socio-Economic, Business and Finance Model - An Example

We have come to accept that when it comes to values below the level of core human rights (sometimes even there!) there is often no single, fixed, Union «view» on each and every issue, so that when it came to dialoguing with neighbours and the wider world we could not take «one view» on an issue to any regional or global dialogue forum. And if there were, the presentation of it would need to be sensitive and correct. However, perhaps, we can identify broadly accepted viewpoints in particular contexts. For example, as it was put in March 2009 at the University of Padua by Luc Van den Brande, as President of the Committee of the Regions, «Our model is not a model of concentration of wealth, but a model of solidarity, equal opportunities, cooperation and partnership». More broadly, it

is an example – an experience – of flexible multi-level or multi-sphere cooperation. However, and crucially, it is also an example of a construct that tends inherently towards ultimate enforceability and the rule of law – of a sense of «belongeness» – of commitment to what has been agreed. Our great challenge as human beings is to create the trust – through the construction of workable institutions and processes – that will allow such order to prevail beyond our particular sphere(s).

The fact remains that, although there has been much convergence if not integration, there is no one view on all things in Europe, but indeed still lack of consensus, for example, over any one economic or managerial or social model. Of course, there is room always for divergence but, utilising all our knowledge and experience and those of our fellow citizens of the world, *can we not come closer to a core basic common ethical understanding of what is right and what is wrong in terms of the common good?*

We must first agree, then, in the commercial context, that values – «virtues» as it is often referred to in business ethics, taking us beyond the «value of profit-making» – should permeate our trade and our commerce. Recent catastrophic events are indeed spurring us in this direction. But can we then fail to also address together some of the harder issues about which we have for too long agreed to disagree, with the result that ethical considerations have perhaps given way to «market realities» *sans* ethics? For agreeing on core values means taking a hard look at our national models, and the ways in which our own convictions and institutions prevent us from working a common understanding of virtue into our economic activity. Surely we cannot accept on the one hand that trade and commerce are not ends in themselves, and that justice and human rights demand the pursuit of wealth in a proper manner, and then its proper use, without on the other hand also facing and resolving questions of social justice in the production and distribution of wealth created and generated by a market supported by the efforts and resources of all. And this will mean looking with an open mind at one another's «models», and again at our own.

Subsidiarity, a principle often interpreted and employed in the EU context in order to keep social political discourse at national level, seems today to be pointing us in the direction of

requiring action *at the EU level*, and it certainly seems to me to point to the need for discussion and consensus on a number of issues *at global level if we are to create a level moral playing field at global level, in other words if the aim is to «make it pay to be good» at global level*. This makes it all the more important to involve regional and local actors. For again, such a moral playing field must be universal or it will not work, for if not universal the playing field will not be level – and it will pay to be bad when others are trying to be good. And it will not pay to be good when others are allowed to be bad; indeed to be good then would be market-place suicide. This is the real lesson of the market failures that we have suffered: greed is infectious and will spread if unchecked. This goes beyond concluding that while markets must be allowed to operate state, regional and even global bodies must be allowed to regulate in new ways; for it means *re-organising our ideas of «good» market operation* not only in technical terms but especially in virtue (ethical) terms, and dialoguing about this in order that appropriate rules be put in place at all relevant levels (or spheres).

In this challenging context, academics have noted the changes required of their disciplines. None more so in recent times than our economist colleagues. But similar «doctrinal crises» have presented themselves to international relations specialists, to political scientists, to social anthropologists, to moral theologians, to management and business scientists, to scientists in general, and even to law professors. Key debates have been coming to a head: Constitutionalism or not? Regulation or self-regulation, or no regulation, de-regulation or re-regulation? Free market or social market? Freedom of religion or freedom from religion? And so on. *And through all this, the underlying question: are supposed alternatives such as these false antagonists? Is the matter not so complex that we need to be able to employ a mix of strategies and tools, and the appropriate mix at the appropriate time and in the appropriate context? So, when is the appropriate time for what; what makes the right mix for which context?* Some writers in the economics field use the phrase «complexity economics» to signify the complexity of the arguments and the fact that no one idea or theory can provide a full explanation and basis for action, unless it be perhaps a super-theory that gives due play to each

relevant theoretical standpoint. If this is a new awakening to a truth in economics, are we not all guilty, to some degree, of mono-disciplinarity, and worse, within that mono-disciplinarity, of mono-theory? *Call what is needed «complexity studies», call it «cross-disciplinary-complexity studies». But even these notions may not encapsulate the fullness of the idea. For underpinning all these efforts must also be the overriding preoccupation with values dialogue with a view to identifying the common good – which all disciplines should ideally serve.* Again then, *what is the common good as far as the business world is concerned?* This approach and these kinds of questions are surely of prime relevance for the agenda of this Padua Jean Monnet Centre of Excellence Project, featuring a cross-disciplinary search for the criteria of the common good, of which (the common good *in concreto*) there surely can only be one in any particular context.

4. Articulating and Pursuing the Common Good: The Institutional and Decision-making Dimensions

Our experiences in Europe must surely be relevant to a world that is crying out for a new international order. The successes, the failures, the «non-linear» evolution of the Union and its institutions and the relations of these with the member states and their citizens – yet who are also Union «citizens» – all this, surely, can provide lessons and almost certainly some possible elements for consideration by those entrusted with developing a new international order. My argument is that we need to consider seriously, all of us together, whether the international order can develop as such on the basis of values, tools, instruments and institutions of a kind that the European experience has shown to be workable among sovereign states and peoples. But also that we need to ally future developments to real inter-cultural dialogue about values. Europe has an obligation, reflected also in the Treaty on European Union, to further the (appropriate) development of international law. This must be done on the basis of agreed universal values.

4.1. The Elements

The equality of all «members» or «partners»; the principle of subsidiarity (to be applied at all levels from local to global); citizen representation and civil society dialogue; decision-making centred around cohesion (the pursuit of the common good together) allied to real and justifiable procedural and substantive solidarity and instruments of cohesion, yet with all necessary and proportionate flexibility and differentiation (including the use of soft law such as typified by the open method of co-ordination, regulated enhanced cooperation); the ultimate bindingness in principle of legitimately taken «majority» decisions arrived at in dialogue; the direct effect of clear and unambiguous norms; judicial review: so, the rule of law on the basis of general principles of law; institutions to match. *These and other elements of the European experience could transform governance at world level for the better, based as they are on fair, equal and solidary processes.* Fair rules based on the equality of nations and peoples and individuals (but allowing for majority decision-making) must be agreed *dialogically*, but with a view to their being followed and ultimately enforced. Studies on the fight against poverty, on business ethics, on international trade, on overseas development aid, on external relations and sustainable development in all its aspects, all point to this conclusion and I argue this way also later in this paper in connection with euro-med and wider cooperation (and therefore express the hope for some rapid evolution in this sense of the *Union for the Mediterranean* construct).

4.2. The «Vision»

Allow me to repeat the vision. The international order would be rendered more orderly, it would be rendered more fair, it would be rendered wholly inclusive if all players, major and minor, were brought together to devise new institutions, and affirm the values and adopt the general principles that will point these institutions towards the common good. Equals producing a new international (global) order.

Of course, such an initiative cannot be driven or pursued unilaterally by the EU. And similar experiences exist elsewhere!

And in any case, the European elements are only some of the elements that could find their way into the ultimate result of serious joint effort. However, whoever takes the lead, it must be clear from the outset that this has to be a joint global project.

It is equally clear those values, including moral values and ethics, not least those inspired and taught by the main religions, must be the subject of deep study and taking into account. I repeat this fundamental point. The main religions are far more than after-life and heaven and hell and so on. He who sees them in this way misses the point. They are about values to be practised in this life – between individuals, in society, in government, in international relations, in international governance; they propose a set of social values that promote justice, peace and order – the ideals (and goals) that all of us speak of, and lament the absence of, day after day. To debunk religions, to dismiss them as dangerous or at best useless, is to debunk a primary source of the values that can source the virtuous international order that we in fact seek.

In a secular society, even and especially in a multicultural pluralist «European» society-in-the-making, some values can be hidden or even camouflaged, perhaps because they go by a neutral name. To many it can then appear as though they do not exist. Yet the more recent research done in many places has uncovered several such values beneath the layers of secular rules, and this in many policy areas. And it is vital that these values be teased out into the light of day, lest we forget that they are at the base of our national and European construction, lest our younger generations fail to learn their salience, and lest our neighbours near and far imagine that they do not exist or that we do not honour them. Of course they exist, but their salience has been diminished by the exclusion of moral language from our political discourse.

Recent and not-so-recent writing has also increasingly uncovered that in some cases we ourselves have committed the wrong of relegating certain moral values and ethics to the realm of the private, or at least to the non-material non-public sphere. Short-termism in economic and financial activity is one symptom of this phenomenon. Turning a blind eye to the underlying causes (including breaches of human rights) of the ever-growing divide between rich and poor regions, states,

peoples and people is another. It is possible for a state or its rulers to be rich while the people are (kept) poor. It is possible for some states to be (at least relatively) rich while their neighbours are poor. One key theme of much recent writing is the relevance of values – and not least religion-inspired values – to policy making, to internal politics and increasingly to external relations, and as the most valid subject of intercultural dialogue but also of political discourse within our individual member state polities, the emerging European polity, and, not least, in our external relations. Several writers have noted a moral, even spiritual resurgence in Europe, a phenomenon increasingly visible worldwide. United States President Obama himself has written that the politician ignores the fact of religious faith as the guiding light of hundreds of millions in their public as well as their private lives at his peril, and at the peril of the common good. I highlight this because this shows, assuming that many are right and that indeed this kind of thinking is acquiring mass support and is growing across the Atlantic and beyond, that we are entering a new historic era, and facing a great historic opportunity and challenge. John Boli calls it the challenge of «rationalising virtue and values». Politics remains the art of the possible, and what is possible is constrained by differences, but if there be common ground among religions, our common humanity and our innate good will and love for peace, then the great players in the «West» (the USA and the EU) appear to have decided to remember to make values and virtue count. There is reason to be hopeful, for openness to dialogue is much on the increase. However, dialogue is only possible if we use the same «language», and the coyness of the West about using the language of moral values must be set aside if we accept that it is time that we did so for our own good as well as that doing so is likely to remedy misperceptions of the West and establish a closer dialogue and better cooperation across the globe.

Of course, it is not just a question of language. As Tsinisizelis and Xenakis have put it, «Accordingly, a new “hermeneutics of civilisational dialogue” emanates as a *praesumptio juris et de jure*; a dialectic of cultural self-realisation through a reciprocal exchange based on a philosophy of mutual understanding that does away with the subjectivist approach that wants the “West” to act as a universal civilising force based on an almost

metaphysical obligation to humanity»². The same applies in reverse. We must strive to move forward together towards the global moral economy³. In his book on Islam and the «moral economy», Charles Tripp concluded: «For Muslims and non-Muslims alike, part of the challenge for the future (is) to create the space, imaginative and actual, in which acceptance is not read as subordination and in which active engagement becomes part of a process of self-definition»⁴.

My wish for this Padua Jean Monnet Centre of Excellence Project is that deep study and reflection will lead us all, in the context of some of the most relevant global debates (human debates), to practical results for the sake of justice, peace and prosperity in a truly new world order. It is where we – as Europeans and as Europe – decide that we stand in these debates that define the essence of our citizenship, of the Union and of the world.

4.3. The Really Big Question: What Does Europe Stand for?

We have placed the citizen, and in a special way, civil society, at the centre of our inquiry in previous Padua Projects. The really big question is: What does it mean to be a citizen of Europe and of the Union, with our particular identity and culture and therefore our particular values, not least religious, but also democratic, family, and social, and this in view of the relationship between all of these in our particular identity mix? And: How can this identity mix be made relevant in the task of meeting this great challenge of the 21st century to which I have just referred? What makes us proud to be European? What identifies us as European? What does Europe stand for?

In the European Year of the Fight against Poverty, I wish to apply some of the above thinking to this scourge of largely innocent, and dying, humanity. This raises issues about the world order. We increasingly think not of nation-states or even of groupings of states but in global terms. Poverty is a global challenge. This has implications for the disciplines of law, economics, international relations, anthropology, sociology, philosophy, theology and so on. Poverty is also a multi-dimensional challenge; it can only be addressed by a coherent, comprehensive strategy that is rooted in principle and driven by the common will. The fight against poverty remains

² M.J. Tsinisizelis, D.K. Xenakis, *Unity in Heterarchy: Security Complexity and Systematic Change in the Mediterranean*, in F. Prausello (ed.), *Sustainable Development and Adjustment in the Mediterranean Countries Following the EU Enlargement*, Milano, Franco Angeli, 2006, pp. 73-101: p. 84.

³ See C. Tripp, *Islam and the Moral Economy: The Challenge of Capitalism*, Cambridge, Cambridge University Press, 2006.

⁴ *Ibidem*, p. 201.

essentially a moral issue, however. If we truly (increasingly) not only are, but also feel, morally responsible for each other across borders, then law also, in the sense of universal rights and institutions that recognise such, must follow to this practical utopia⁵. The international regimes of international trade are under scrutiny. The UN framework, institutional and political, is under review. The policies of the World Bank and of the IMF are constantly questioned. The role of the EU in the world is a matter of debate, and for many the practical implementation of the Lisbon Treaty holds forth the promise of a European Union that will play out its true vocation on the world stage as a beacon of practical solidarity. Some, perhaps not many any more, see the possibility of «the end of poverty» beyond achieving the Millennium Development Goals, through the use, with or without adaptation and with our without further development, of already existing mechanisms. Others quite simply do not see it («the poor will always be with us»), and throw up their hands in defeat, whether through scepticism about the possibility of reform or about the reforms proposed.

We can ask the following questions: what are the values that should inform policy making at all levels? Do these differ according to level and scope of the initiative in question? Are new values emerging to inform policy making in the area of poverty? Has experience given new insight into the definition, the causes, the sufferers (the «faces of the poor»), the manifestations, the symptoms or results (flight/immigration), our understanding of the way in which the poor see themselves and are perceived in turn, thus causing a change in the values applied to the categorisation and judgement of the situation of the poor by the policy maker and his or her electorate? What have we learned in the last few years about how we do trade, how we do aid, how we do business, how we work with others (or fail to) in the search for prosperity and security? Have we learned the lessons, often hard, of an often unrestrained «short-termism», and what mechanisms can be employed to keep free the entrepreneurial spirit while at the same time curbing the excesses of the short-term pursuit of wealth on the individual, corporate, and even national, planes?

Of course, it is implicit that it is vital that we all work from the same values. Do such universal values exist, or do we need to

⁵ M. Midgley, *Towards an Ethic of Global Responsibility*, Chapter 5, in T. Dunne, N.J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, 1999, pp. 160-165.

discover them through intensive inter-cultural dialogue? Bhikhu Parekh, for one, thinks the latter⁶. In this sense the call is for a full and frank dialogue in institutional and other fora that guarantee it. Such are the main themes of a volume published in Malta recently⁷. *Solidarity* is the key *value* at play. It is assumed, of course, that we want a solidary world rather than one at war, that we want security rather than insecurity, and that we want equality and justice rather than inequality and injustice. «We» in this are the ordinary citizens, rather than the profit-seekers and exploiters, those politicians who crave power above all else, and all those who would put their own personal power and wealth before the common good of mankind, however much they may protest that they are acting in the interests of the economy, of prosperity, of progress and on with their list.

On these bases, the questions become ones of an instrumental nature. What instruments are available to address the key causes of poverty? What are the obstacles to their mobilisation or implementation? Not all states can (or wish to) join the EU, but the EU should wish them to wish to join something similar, and global solidarity should find in the EU something of a model for its own ordering. This must be done around agreed values as based on the dignity of the human person. Of these, the principal one is *equality*, implying equal access to opportunity, to the resources of security and economic independence. The right to freedom from fear and insecurity, freedom from want, is the first right of the human being.

Even the EU has its problems with identifying its optimal model. There is none such as can simply be taken and offered to the rest of the world. We all need to learn from the EU experience and think in ever-increasing circles. It is increasingly agreed that a multilateral approach is required, covering the EU member states and their neighbours. I have argued for this before and have suggested that the EU model of evolution of relations should guide us in devising the model for these relations, not least for the Euro-Mediterranean area but also for the Pan-Euro-Mediterranean area and beyond⁸. We should not be in too much of a hurry, but nor can we afford to dally. This will require institutions that have the capacity to act as institutions for the common good.

Just as capitalism owes its origins to economic development

⁶ B. Parekh, *Non-Ethnocentric Universalism*, in T. Dunne, N.J. Wheeler (eds.), *Human Rights in Global Politics*, cit., pp. 128-160, especially p. 139.

⁷ P.G. Xuereb (ed.), *The Fight Against Poverty*, Malta, EDRC - PEG Ltd., 2008.

⁸ P.G. Xuereb, *Pan-Euro-Med Co-operation and Integration - Looking Ahead to Infusing the Euro-Med Partnership and the European Neighbourhood Policy with the Supranational Dynamic*, in E. Lannon (ed.), *The European Neighbourhood Policy Challenges*, Brussels-Berlin-Frankfurt-New York-Oxford-Vienna, Peter Lang (forthcoming). I here reproduce some passages from my contribution to this volume.

and the political reforms that led to the emergence of the nation-states of Europe, the financial scandals of the last century and of this one are testimony to greed, the herd instinct and the opportunities presented by globalisation to render all operations, including those predicated by greed and speculation, global. They are testimony to the failure to regulate or re-regulate at national, regional or global levels to dampen such behaviour and foster responsible and moral behaviour.

Values, and especially the key value of solidarity, expressed through practical solidarity at every level of society, from local to regional to world society, and through (new) institutions that lead and implement this practical solidarity via good governance, democracy and justice, are indispensable for the creation of a just world order. Underlying everything is the value of solidarity.

So what does the European Union stand for? And, equally (and realistically) we must ask another question, for as we strive for global justice, and as we seek justice for others too, we must ask: what is it that matters most to the citizen of Europe? How would a European citizen answer this question in relation to his/her expectations of the European Union?

If I am honest and practical, I would answer this way for most: What finally matters to most people in Europe is the answer to this question: *will decisions that might have an impact on the essence of my own individual identity, on my culture, on my habits, on my beliefs, on my way of life, on my life just as much as my livelihood, on my children's education, and most of all on my values, be decided with all due respect being accorded to them and without any imposition upon me to discard my loyalty to my country, my values and my community?* If those who lead the Union can answer this question honestly and truthfully in the sense that the citizen of Europe has nothing to fear, a vitally important question for the peace of mind of the citizen will have been answered. The leaders of Europe will then be able to count upon the support of the citizen of Europe in developing the policies and taking the decisions that will advance the aims and objectives of the Union while remaining true to its declared values, whether the Union is acting internally or externally, that is whether the acts or decision are intended to have effect within the Union or to be operative in the wider

world as part of the Union's external relations policy. However, one thing must be understood. Our common values are the starting and the end points. We need to ask whether the Union can adopt a neutral role in the field of values and ethics, leaving to others the duty of upholding its declared values, and still remain credible as an internal and external actor. As between ourselves, we must all decide to permit the Union to act to uphold our declared values (democracy, dialogue, human rights protection) in the outer world while of course demanding that the Union remains true to our pact of respect for the identity of each member state and its people, subsidiarity and proportionality. I now take two main issues to illustrate the nature of dilemmas facing us: the first is that of combating people smuggling and trafficking as linked to asylum protection; the second is the putting into practice of our values in the Euro-Mediterranean region through what I call «doing with our neighbours as we do among ourselves» via the creation of institutions and decision-making paradigms that truly respect our neighbours and involve them in the practice of common values in pursuit of the common good.

5. We Europeans and Our Treatment of Irregular Immigrants

The work of Matthew J. Gibney on the ethics and politics of asylum⁹ addresses the fundamental question as asked in this paper of: Where does the Union (and where do the Europeans) stand on asylum? Is the Union guilty of engaging in full rhetoric about human rights while in effect in some way denying full play to the right to asylum? I do not go here into the merits or demerits of the new Stockholm Programme of the European Union. Rather, for the moment and the purposes of this paper, I pose the fundamental question.

It seems clear that the member states – and particularly the small and «vulnerable» states – are increasingly, if not exclusively, looking to «the Union» to resolve what Gibney terms their «asylum woes». I take this phrase to refer to the logistical and financial burden, coupled with the «integration of the (im)migrant» burden, and all submerged under the political burden of governments in office of reassuring their

⁹ M.J. Gibney, *The Ethics and Politics of Asylum*, Cambridge, Cambridge University Press, 2004.

citizens that immigration is under control, that their citizens' jobs and futures and very identity and culture are not being put at risk by the national policy and practice relating to the treatment of asylum seekers.

The principle of burden-sharing solidarity among the member states of the Union, a principle now enshrined in the Treaty on the functioning of the European Union (Article 80), is capable of being seen at once as a device for the extension of solidarity with the asylum seeker where otherwise this might be withheld, and at the same time one that might be used as a screen for less than proper individual state action on the ground that such inter-member state solidarity is lacking. Some member states such as Malta have in any event contended that there has been insufficient demonstration of inter-member solidarity in the past (the Lisbon Treaty should change this).

What do member states expect of themselves and of each other, then, as they seek to ensure their security and at the same time act in accordance with respect for human rights and in accordance with European values towards all human beings? After all, we say that the Union exists in order to make certain objectives which we share in common attainable and sustainable, and this does mean that we have to collaborate in spheres such as immigration and asylum policy in order to achieve our security aims, but primarily in order to be true to our values by acting appropriately in the human rights sphere. The treaties therefore give the Union competence in these areas and now, with Lisbon, move decision-making in the Council of Ministers, as in the European Parliament, further into majority mode¹⁰.

From an ethical standpoint, certainly a Christian one, one could and should argue that the right of asylum is a fundamental human right to be respected at any cost; that human dignity and safety have no price. Yet, it seems that, in practice, this cost has to be explained and justified to their electorates by governments in office, although the entire political class bears the burden in this matter, and even though the same ethical principles apply, or assumed to do so, at the individual citizen level. Or are the citizens of Europe free, then, to pressure their governments away from asylum granting for the same reasons as Gibney professes? Are they (we) really so lacking in conscience and citizen formation that they (we) will punish

¹⁰ The so-called «ordinary legislative procedure», formerly called «co-decision» has been extended to all areas of immigration policy.

their (our) governments for abiding strictly by international and other legislation, or acting beyond them even, in accordance with such moral precepts as bear on the question? What indeed do we stand for? Can we really be expected to «stand» for more than we do (the pun is recognised)? Is our burden-sharing principle aimed at, and is it up to the task of, maintaining a proper balance between the claims of citizens to «protect» their identity and culture and their very communities and, on the other hand, the human dignity and equality claims of the bona fide asylum-seeker? But if solidarity between member states is not truly a principle to be employed in practice, then is reference to it in the treaties worse than useless, obliging individual states to take matters into their own hands and either support (arguing ethical self-defence justification) a restrictive Union policy or defy (again arguing an ethical self-defence justification) a non-restrictive or non-effective Union policy that appears to ignore their legitimate claims? After all, the Treaty on European Union itself in Article 4¹¹ obliges the Union to respect the identity of each member state. Its policies may not push such identity aside. One could argue then that the Union should take as many (true?) refugees *as deserve protection*, while giving them every opportunity to seek it, and should at the same time ensure that no single state is pushed beyond any justifiable limit by being asked to do more than its fair share. And no one has suggested, far less proved, that the Union as a whole cannot fulfil the international moral obligation towards all deserving cases.

All reasoning contrary to a truly principled approach is premised on the alleged overriding moral priority of maintaining the culture, identity, polity of our societies. Such is Gibney's «credible ideal» for state (and Union) action – a «desirable goal»¹². Gibney argues that the guiding principle leading to practical implementation programmes and action as well as providing the justifiable measure is the principle of *humanitarianism*. This is «simply stated» by him as follows: «States have an obligation to assist refugees when the costs of doing so are low»¹³. Would we go along with this? Is there a moral obligation to assist only when it does not matter to us, only when the costs can be taken by us in our stride? Are we to reduce individual human rights and human dignity to this? And what if climate changes and other disasters require more

¹¹ Although its wording remains as yet untested.

¹² M.J. Gibney, *The Ethics and Politics of Asylum*, cit., p. 230.

¹³ *Ibidem*, p. 231.

to be done? Again, does this mean that the definition of «refugee» cannot change over time to cover all manner of causes of desperate migratory movement even if this is to raise the costs to higher (than «low») or «high» or even «very high», but where to fail to widen the definition is to condemn others to poverty, starvation, disease, and even death? Is there really a moral imperative and a justification to safeguard the status quo in our societies beyond ensuring that security, democracy and human rights prevail and continue to prevail in our polities? How far can we go in defence of our social mores, social rights, traditions, etc., which Gibney emphasises as most importantly in need of protection? Is Gibney's the right answer when looking for the «credible ideal»? Credibility is the stuff of practical politics perhaps, but Gibney's approach is open to the charge that principle is to be determined by the standards of utilitarianism, not least in national politics. Is his view, his criterion, truly shared by Europeans?

To be fair, Gibney's study concludes with this statement: «*the current response of Western states to refugees and asylum seekers is characterized by a kind of "organized hypocrisy" (a term borrowed from Stephen Krasner). Liberal states publicly avow the principle of asylum but use fair means and foul to prevent as many asylum seekers as possible from arriving on their territory where they could claim its protections*»¹⁴. He argues, then, that his guiding principle or test would oblige us to do more or better, but still only as long as the costs are «low». At the same time, Gibney appears to leave open the ethical question of the treatment of the economic migrant, as opposed to the migrant fleeing persecution, when he writes that the barriers that Western states have put in place to stem the rising numbers of refugees «may well be justified in order to prevent the arrival of economic migrants, but they also halt the movement and punish the entry of those fleeing persecution and great danger»¹⁵. This would appear to have been precisely the case for example in the turning back (the «push back») by the Italian navy of boats carrying potential entrants to Italy from Libya in May 2009, an action that appears to have had the approval of other member states including the apparent approval and support of the Maltese government. The crucial question is this: Is Gibney's analysis applicable to Union policy; that is, is Union policy based on this minimalist idea of assisting when

¹⁴ *Ibidem*, p. 229.

¹⁵ *Ibidem*.

the cost is low? Is another test applicable, for example that the Union's policy is to assist when it suits, when in fact there is no overall cost, for example because we stand to gain much needed skilled workers? What appears to be the guiding principle of Union policy? These are questions to be asked, and repeatedly so, as we formulate and implement our policies.

It is clear that post-Lisbon the European Union must be bold. It must find the tools to match its values. In the next section, I draw on the rather sad experience of our experiments with various Euro-Mediterranean initiatives to make the case for «doing with others as we do among ourselves», for in my view until we begin to do so we do less than our values require, and will fail to achieve what it is in our power, together with our neighbours, to achieve. I lay out a proposal for further study also, although in my view the time has come for us to put into place at Euro-Med level a framework for the rule of law inspired by the European experience. This approach is also in our interests. I would argue that only in this way, through a multilateral and supranational framework of law, can we, together with our neighbours, resolve the root causes of the scourges and threats that we face together, while securing justice for the individual.

6. The Rule of Law and Institutionalised Dialogue and Cooperation in the Euro-Med Region

The thesis is that there are significant lessons to be learned from the evolution of the Union, and the impact of Union enlargement, themselves. Primary among these is the institutional and decision-making «incrementalism» that have drawn the member states ever closer together in a dynamic that has proceeded from close to closer cooperation to the formulation of common policies and a degree of integration that surpasses anything seen in our global experience to date (although it still continues). It is argued here that while it may indeed still be that a bilateral approach and differentiation remain the key to the deepening of relations between the EU and each neighbour¹⁶ in many areas, we must be alive to the huge potential of the «supranational dynamic» and seek to employ it as and when the opportunity arises. In my opinion,

¹⁶ This is most certainly the basis of all the Commission's reasoning; see, for example, Communication from the Commission, *A Strong European Neighbourhood Policy*, COM (2007) 774 final, Brussels, 5 December 2007. See also COM (2006) 726 final of 4 December 2006. These and more recent ENP documents are available from the Europa site via http://ec.europa.eu/world/enp/strengthening_en.htm.

we should go much further and, now that the Union for the Mediterranean is itself faltering, we should actively seek to put it in place. The argument is that we can provide for as much differentiation and forward movement as is necessary, but do so in a more coherent and focused manner, while also ensuring policy coherence, by relying on the tried and tested mechanisms that we are used to employing among ourselves within the Union, namely decision-making that leads to binding measures, albeit with the possibilities on a temporary basis of enhanced cooperation, temporary opt-outs or opt-ins, temporary derogations, unilateral exemptions based on justifications on accepted grounds.

Writing, when all is said and done, as a lawyer, I would highlight the importance of *the rule of law* in the development of our relations with our southern neighbours. While membership of the Union is not, and may never be, in prospect for many neighbours, the thesis is that the «Community» model of integration (I prefer to call it our «European experience»¹⁷) can serve to accelerate the achievement of the ultimate objectives of the Euro-Med process and of the ENP¹⁸ in key common areas. This could be deployed, if not immediately across the board (the ideal), at least in many key areas of policy where there was a clear and tangible common interest and the possibility (as well as the need) to identify the common good and fasten on a common policy. The key ideas here would be those of heightened multilateralism and supranationalism, common values and general principles of law, common institutions, common mechanisms, dialogue, joint decision-making, binding decisions with differentiation and assistance in solidarity, enforceability and judicial review. I also emphasise here that while aiming to reduce poverty can involve the taking and adoption of manifold «measures» or initiatives, and taking a thematic or policy-wide approach is of course vital, we lose the real context if we forget that poverty is in no small measure, if not wholly, due to the lack of personal freedom and the possibility to exercise basic and fundamental rights, so that human rights and fundamental freedoms, touchy as this core might be, is indeed just that – the core issue. Yet our initiatives to date still offer no clear prospect of remedying this central deficit¹⁹.

It has been assumed by the Commission that there already

¹⁷ P.G. Xuereb, *Making It Pay to Be Good*, cit.

¹⁸ For example, the Commission argued for the extension of aspects of the internal market policy through the ENP, increasing benchmarking of rules against practices in non-EU countries and promoting European standards in ENP partner countries.

Communication of the Commission on a Single Market for Citizens, COM (2007) 60 final, 22 February 2007. In its March 2007 statement, the Civil Society Contact Group emphasised the urgent need for «benchmarks for policy coherence within and between all (the) domains, and a new framework for transparency, accountability and participation of civil society», which I cite lest we forget the vital civil society aspect of our relations with our neighbours.

¹⁹ See, for example, a number of contributions in L. Bekemans, M. Karasinska-Fendler, M. Mascia, A. Papisca, C.A. Stephanou, P.G. Xuereb (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007.

exists an «assured» multilateral/bilateral «balance» «in the South» via the Euro-Mediterranean partnership, while such balance is lacking in the East. The Commission has in the past stated: «In the South, the Euro-Mediterranean partnership has been essentially multilateral and the ENP has added a bilateral dimension. Towards the East, the ENP has no multilateral dimension²⁰. The thematic dimension can be seen as contributing to optimizing the ENP's balance»²¹. Indeed. But it is also said, rightly, for example, that: «The very nature of economic integration calls for a high degree of regulatory convergence [...] *and to reap maximum benefits from the process of regulatory convergence would require the EU and ENP Partners to commit themselves fully to going down the same path*»²². This is precisely the point being made here. The rapid progress that is now urgently needed arguably requires that, while retaining policy dialogue forums, we consider whether we should not institutionalise further for the purpose of collective decision-making. Transport, energy and other ministerial conferences producing recommendations and even regional action plans is all very well if that is all that can be done, but we need to ask ourselves whether this is enough²³.

Is a framework treaty covering at least the prime areas for thematic cooperation not to be contemplated? Of course, ministerial meetings and senior officials meetings can produce recommendations and even move us toward some regional policy, but it is suggested here that this basic multilateralism needs to be built upon actively and can be pushed forward through further institutionalisation of the Euro-Med partnership, and why not within the wider ENP context? The time is certainly right for the Mediterranean, or as right as ever any time will be, to broach this idea with our neighbours, and together work it out.

We cannot continue to discount the real multilateral Euro-Med gains achieved so far, as also the real «standardising» potential of a more ambitious role for the EMP, and the ENP too. This in the sense of fostering maximum cohesion among the partners, allowing for the development of true common policy with joint implementation. Even so, the nature of «standards» is that they are non-binding²⁴. I hypothesise in this paper that we should think twice before turning our backs not only on the potential for an incremental increase in the

²⁰ COM (2007) 774 final, p. 8, citing the Centre for European Policy Studies (CEPS) Paper, *European Neighbourhood Policy After Two Years: Time Indeed for an «ENP Plus»*, 21 March 2007.

²¹ *Ibidem*.

²² *Ibidem*, p. 12 (my italics).

²³ *Ibidem*, pp. 14, 16 for example.

²⁴ See G. Ahrne, N. Brunson, *Organising the World*, Chapter 4, in M.-L. Djelic, K. Sahlin-Andersson (eds.), *Transnational Governance - Institutional Dynamics of Regulation*, Cambridge, Cambridge University Press, 2006, pp. 74-81.

binding element, but also for joint rule-setting. Ahrne and Brunson write as follows: «Many standardisers try to combine their rules with more elements of organisation. They may try to recruit members and enrol presumptive rule-followers in rule-setting processes in order to secure their commitment»²⁵. I see virtue (as well as truth to our own declared values) in so respecting one's interlocutors – one's «partners» – enough to invite them to consider partnering us in a new framework where we are joint standard-setters. This requires «organisation» – in my view, appropriate institutions – based on the Community (Union) «experience». I hypothesise that it is only by moving beyond «standards» to binding common «rules» through «organisation» that the necessary cohesion can be achieved within the proposed thematic dimension. «Standards» denotes voluntarism and opt-out as well as opt-in. Already, the bilateralism of the EMP and the ENP ensure some binding elements, but enforcement and sanction require «recognition» of rules, and the acceptance that recognition presumes can ultimately rest only on the fact that the rules be made jointly by equals. As Ahrne and Brunson warn²⁶, failure of decision or of implementation is most often to do, in meta-organisations, with significant differences among members. Organisation, however, can be the answer to addressing those differences. I feel that we should seriously consider «organisation» before reinforcing our differences by continuing to rest our approach upon them, wide as they appear to be.

Arguably, it is the perceived greatness of the differences that has prompted the EU to emphasise the bilateral over the «organisational». Big differences often result in consensus demands, to prevent the large or powerful from dominating. Yet, consensus-building is not incompatible with the cohesion dynamic. Indeed, it must be its basis. It was consensus, in the form of unanimity, which prevailed at the start of the EEC. But the all-important further organisational step was taken – eventually. I hypothesise that we must try to find a similar way in the EMP and then the ENP contexts. Voluntarism may underlie the system; non-bindingness, even when the standards are arrived at by unanimity, will continue to feature in many spheres, but bindingness based on consensus should *be* bindingness. The many positive features of «the organisation» appear at the moment to be denied to EU-Med relations, and

²⁵ *Ibidem.*

²⁶ *Ibidem.*

also to EU-«other partner» relations because of this lack. Organisation is needed. This, it has been said, is also the model that explains much of the global order that currently exists²⁷. It certainly explains the EU itself. Perhaps, it can explain the future of the EMP and the ENP. There can be no «order» without «organisational elements»²⁸ that bind. Certainly, «soft law» (including the EU's Open Method of Coordination) has a major role to play where consensus about objectives is *found to be* lacking²⁹, so that the very basis for joint formulation of a «common policy» is not there, but on the other hand the existence and functioning of institutions committed to the search for supranationalism, it is argued here, *can be fundamental for the emergence of such a basis*. At the same time, the pattern of global re-regulation (including in the EU itself) suggests that new institutional linkages are necessary to take account of the repositioning of the nation-state and «societal actors». This besides the urgent need to fully involve civil society, in particular, more directly in «governance»³⁰. This is a crucial factor in the Mediterranean region. It is emphasised by the Commission in yet another non-paper³¹. The potential for cross-border cooperation projects here is ever on the increase. Typified by dialogue, the soft law dynamic has everything to commend it when *real* differences prevent arrival at what I may call «basic agreement». The various modes of regulation interact and reinforce each other, so that agenda- setting, monitoring and auditing can develop through and beyond basic agreement into integrative rules. Jacobsson and Sahlin-Andersson write that it is clear that «we have a case in which the soft approach could be seen as a stage in a development, the end-point of which may be that all actors agree about best practices»³². With this «basic agreement» can come the willingness to bring in tighter methods of integration, for which the essential Community «model» and methods offer themselves as candidates. A blueprint for such might well involve a combination of the original EEC/EC and the current Union mix of methods and institutional utilisation, dependent on policy area and state of «agreement». The whole history and experience of the EC/Union institutional and functional development is there for possible input into such a blueprint. Nor does this exclude or diminish inter-relation and inter-linkage between Pan-Euro-Med governance and global

²⁷ *Ibidem*.

²⁸ *Ibidem*, especially p. 93.

²⁹ At the end of a process that has sought it out.

³⁰ B. Jacobsson, K. Sahlin-Andersson, *Dynamics of Soft Regulations*, in M.-L. Djelic, K. Sahlin-Andersson (eds.), *Transnational Governance*, cit., pp. 247-265; p. 251. See also COM (2007) 774 final, p. 11.

³¹ Commission non-paper on *Strengthening the Civil Society Dimension of the ENP*, at http://ec.europa.eu/world/enp/str engthening_en.htm.

³² B. Jacobsson, K. Sahlin-Andersson, *Dynamics of Soft Regulations*, cit., p. 257.

governance³³. Quite the opposite. In the concluding chapter to their book³⁴, M.-L. Djelic and K. Sahlin-Andersson provide some insights into the question of institutional dynamics in a re-ordering world. They emphasise «transnationalisation» as explaining this global «re-ordering». They emphasise the role of *persuasion* around the ultimately unifying concepts of the *common good* and win-win dynamics, thus balancing prosperity for all with sustainable development, and with all that these promise, including peace and security, equal opportunity for states and people and so on. Therefore, soft rules act either as a buffer from harder rules or as a first step towards harder forms of regulation, the latter often depending on the success of the softly-softly approach as allied to the increasing urgency for effective common action. Their studies show that there is a tendency towards «organisation». By the way, they also argue that this re-ordering is marked by what they call «marketisation»³⁵, a phenomenon that apparently helps in persuading all to play the game but that many see as antithetical to the parallel phenomenon of moral resurgence in what has been described as an «increasingly rationalized global moral order»³⁶ as well as an order characterised by deliberative and participatory democracy. In any case, they propose the «good news» that we are witnessing «an apparently unstoppable escalation of regulation and governance». After all, it is order and not anomie that we all crave.

We are moving beyond *international law* and along a continuum to *transnational law* to *trans-regional law* (soft and hard) and governance. The pieces of the jigsaw are coming together. Yet, while some law will be hard and some will be soft – always, yet *there must in the end be law*, there must be right and obligation, and there must be the threat of sanction³⁷. Without this, all gains are fragile and apparent order can descend into disorder and worse. This appropriate mix of legal order must be sought actively and purposefully, and we must ask at every stage whether «soft» has worked to an extent that justifies and calls for harder regulation. In my view, *proper institutions that can play both soft or hard as needed, with a range of instruments at their disposal, and perhaps with ease of movement from the one to the other*³⁸, are the means to providing the essential supranational dynamic. These institutions would need to be representative, participatory, and transparent. In the

³³ See M. Likosky, *Transnational Legal Processes - Globalisation and Power Disparities*, London, Butterworths LexisNexis, 2002, and especially the contribution therein by F.G. Snyder, *Governing Globalisation*, pp. 65-97.

³⁴ M.-L. Djelic, K. Sahlin-Andersson, *Institutional Dynamics in a Re-ordering World*, in Id., *Transnational Governance*, cit., pp. 375-397.

³⁵ Take the example of CO₂ emissions trading.

³⁶ On this point see the Chapter by J. Boil, *The Rationalization of Virtue and Virtuosity in World Society*, in M.-L. Djelic, K. Sahlin-Andersson (eds.), *Transnational Governance*, cit., pp. 95-118. See also P.G. Xuereb (ed.), *Business Ethics and Religious Values in the European Union and Malta - For a Moral Level Playing Field*, Malta, EDRC, 2007.

³⁷ On sanctions and «conditionality» generally in the still current context, see E. Lannon, K.M. Inglis, T. Haenebalcke, *The Many Faces of Conditionality in Pan-Euro-Mediterranean Relations*, in M. Maresceau, E. Lannon (eds.), *The EU's Enlargement and Mediterranean Strategies: A Comparative Analysis*, Basingstoke (UK)-New York, Palgrave, 2001, pp. 97-138.

³⁸ This particular technique would mark a departure from the past and current models of the «European» treaties.

«end-game» about which I hypothesise here (the wider trans-regional picture), they would need to gather the EU, its north, its south and its east in the eventual Pan-Euro-Med construct. Intermediate stages might have to evolve first. On the other hand, if representation and participation is to be by «blocs», the first step is to mould the «blocs». This seems a very difficult task at the moment, but some blocs are taking shape. Closer cooperation appears to me to demand this. But the crucial elements in building such blocs, judging by the European experience, are common aims, the pursuit of the common good, dialogue, respect for identity and equality, respect for human rights, with «bindingness» and the rule of law. And in all this, values, and intercultural dialogue about values, as well as the human rights paradigm, are key.