

Constitutional Patriotism, Nationalism, and Historicity

(Draft – please do not quote)

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Abstract

'Constitutional patriotism' has been proposed as a theoretical solution to the normative problem of national identity vis-à-vis the Enlightenment values of liberalism and democracy. In this article I seek to establish that the central ideas of constitutional patriotism share their conceptual roots with nationalism and modern democracy, and that they are fraught with the same tug-of-war between the values of universalism and particularism. Poorly understood, constitutional patriotism amounts to little more than a superficially sanitized version of nationalism – and may in fact prove especially harmful due to the fact that its particularism is hidden from view. If, however, the concept is construed in a more abstract fashion, taking account of the fact that identity is a matter not only of substance but also of process, it offers a normatively valuable as well as analytically useful approach to the problem of the relationship between democracy and national identity.

Introduction

'Constitutional patriotism' is a term that originated in Germany, where it was used, in a normative as well as a descriptive sense, to make sense of how German identity could be construed in the wake of the Nazi atrocities during World War II. However, as a concept it has proven well capable of 'travel' as it is not infrequently evoked in other national (or supra-national, cf. the European Union) contexts as a handy solution to the problem (if such a problem exists) of national identity in an age when ethnicity and culture are rendered suspect as sources of unity and solidarity. Put very briefly, constitutional patriotism is the idea that the sense of citizen community in a given polity should be hinged upon the very democratic constitutional principles of that polity, rather than upon any pre-political or ascriptive criteria such as birth, culture etc. The main attraction of the concept lays in the apparent consonance it elicits between, on the one hand, Enlightenment values of democracy and universal rights, and, on the other hand, the republican values of civic community and the belief in a common good. Constitutional patriotism has been proposed as an equitable solution to the perceived problem of social integration in societies of the West characterized by increasing cultural pluralism.

My aim in this paper is, firstly, to critically examine the normative theory of constitutional patriotism. The verdict will be that ultimately, constitutional patriotism does not deliver on all of its promises. While constitutional patriotism may very well prove useful in the process of engendering new sources of community in rapidly changing societies, it is of vital importance in this process to be aware of the failings and potential pitfalls of the theory, or constitutional patriotism may turn out to serve the purposes of new forms of chauvinistic nationalism. Not all the points I will make in scrutinizing the theory of constitutional patriotism will be novel, as quite numerous insightful contributions in this field have been made during the last decade or so. However, I will try to dig a little deeper than my predecessors, grappling with Habermasian constitutional patriotism and trying to nail down exactly what goes wrong in this argument.¹ Furthermore, the line of criticism that is pursued

¹ This analysis emanates from a reading of Habermas, Jürgen, 1989: *The New Conservatism*, Polity Press, Cambridge; and Habermas, Jürgen, 1996 [1990]: 'Citizenship and National Identity', published in

in this article is a constructive one, as it is argued that the theory of constitutional patriotism does indeed contain some valuable insights that are worth exploring further. Indeed, I contend that the problems inherent in the version of constitutional patriotism that Habermas presents stem from the fact that the theory is developed in a strangely simplified and convoluted way, which is not consonant with Habermas' more general ideas on deliberative democracy.

Before I turn to more theoretical points, I will, however, make a fairly thorough account of the background of the theory of constitutional patriotism in the debate on national identity and historical guilt in post-war Germany.

The Origin of the Theory of Constitutional Patriotism in Post-War Germany

Constitutional patriotism emerged in the Federal Republic of Germany as a consequence of, or response to, the general moral bankruptcy which characterized German society in the wake of World War II. As much of the German national tradition was compromised, the democratic constitution of the Federal Republic was seen by many as the only legitimate source of unity in German society. The theory of constitutional patriotism, originally put forward by political scientist Dolf Sternberger (although he did not invent the term itself) in the 1970s, may be regarded as the theoretical expression of this general notion.² Sternberger built on the republican tradition originating in the works of Aristotle, arguing that strong bonds of civic community as well as the inculcation of civic virtue in the citizenry were of vital importance for a functioning, vibrant democracy. The foremost value for Sternberger was *Staatsfreundschaft*, meaning loyalty and affective ties towards the democratic institutions of

the volume *Between Facts and Norms*, 1996, Polity Press, Cambridge. In outlining the Habermasian theory of constitutional patriotism, which is not always entirely clear in his own writings, I will also make frequent use of Müller, Jan-Werner, 2007: *Constitutional Patriotism*, Princeton University Press, Princeton and Oxford, and of a laudably succinct article on the subject; Cronin, Ciaran, 2003: 'Democracy and Collective Identity: In Defence of Constitutional Patriotism', *European Journal of Philosophy*, 11:1 (pp. 1-28). I will make it clear when I am referring to Habermas' original texts and when I resort to the interpretations of Habermasians Müller and Cronin, respectively.

² This section owes much to Müller 2007.

the state on part of the citizens. Solely through the means of this affection or loyalty could democracy be upheld and the threats of extremism be averted which had so fatally influenced German society in the past.

The 1980s in the Federal Republic saw the advent of a conservative turn in the discourse on ethics and culture generally, associated with the chancellery of Helmut Kohl. Instrumental in this development were a group of historians, some but not all with an explicitly conservative agenda, of which one of the leading figures was Michael Stürmer. Stürmer, during the 1980s, argued in favour of a 'coming to terms with the past' (or 'mastering the past') which would enable the German people to heal the wounds in the national fabric by once and for all drawing the relevant conclusions and making the necessary amends, thereby casting off the yoke of collective guilt.³ These issues were the incendiary material which nourished the so-called *Historikerstreit* or 'Historians' Debate' which raged in the late 1980s, pitting historians (as well as some philosophers and social scientists) of the Left and Right against each other in a bitter and prolonged confrontation regarding the interpretations and present-day relevance of Germany's National Socialist past. Although much of the ensuing debate would concern the validity of various causal theories pertaining to World War II and the Nazi regime in general, it could be argued that the fundamental question was a normative or ethical one, as the protagonists of the Left accused the conservative historians of seeking to somehow relativize and thus normalize the darker aspects of German history. Ernst Nolte, one of the leading historians, indeed argued openly that the time had come to 'draw a line under the German past'.⁴ The leading figure on the Left was Jürgen Habermas, who criticized the perceived attempt by historians such as Stürmer to endow history with a 'higher meaning' and to subjugate the historical science to the function of an instrument to this end.⁵

³ See for example: Stürmer, Michael, 1993 [1986]: 'History in a Land without History', published in Knowlton, James & Truett Cates (trans.), 1993: *Forever in the Shadow of Hitler? Original documents of the Historikerstreit, the controversy concerning the singularity of the Holocaust*, Humanities Press International, Atlantic Highlands, New Jersey.

⁴ Nolte, Ernst, 1993 [1986]: 'The Past That Will Not Pass: A Speech That Could Be Written But Not Delivered', in Knowlton & Cates (trans.) 1993.

⁵ Nybom, Glans?; Cronin 2003.

The outcome of the *Historikerstreit* was a decisive victory for the Left and the retreat and marginalization of the right-wing historians.⁶ However, most importantly for our purposes the aftermath of the debate spawned the formulation by Habermas of his theory of constitutional patriotism, which differs from that of Sternberger in vital respects. The main contention by Habermas with respect to the Historians' Debate was that it was not, nor would it ever be, the time to 'draw a line under the German past'. No one actor could legitimately do so, as this would mean the suppression of new findings and interpretations regarding the German – and, in general, European – experience. Habermas opposed the Stürmerian ambition to create a consensus and a renewed national identity. According to Habermas, the only definitive consensus that is called for in a democracy is the general agreement with respect to the procedure regulating democratic discourse. The fellow feeling, patriotism or identity which should permeate a democratic society is properly to have as its point of reference the principles of this very procedure, as opposed to some specific substance. Habermas' theory of constitutional patriotism thus, quite purposively, has a more abstract quality than the earlier theory proposed by Sternberger, and it lacks the latter's conservative and vertical character. The position of Habermas is opposed to Sternberger's fierce defence of the institutions of the Federal Republic, and it entails a verdict of this defence as ahistorical. The democratic constitution of the Federal Republic was imposed from outside, and it is up to the German people to make it their own through a continuing process of public discourse (and, possibly, amendment) rather than to defend it dogmatically.⁷ However, it is of crucial importance that although the principles which form the civic glue of Habermas' constitutional patriotism are universal in character, they must in each specific political community be interwoven with the political culture of that community. This process serves to anchor constitutional patriotism in the local context and thus gives it an element of particularity.

Habermas describes constitutional patriotism as a 'postconventional' identity. In the postmodern condition, people still relate the social structures associated with nation, class, etc. in their construction of a personal identity, but they do not take these 'conventional'

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⁷ Cronin 2003??

identities as given. Traditional norms and identities are 'de-centered' and subjected to critical scrutiny from a universalist perspective. Constitutional patriotism is an example of how this process works on a national level, in each case building on a national tradition which is de-centered and transformed in sometimes radical or paradoxical ways. Germany is a case in point: 'Our form of life is connected with that of our parents and grandparents through a web of familial, local, political, and intellectual traditions that is difficult to entangle – that is, through a historical milieu that made us what and who we are today.'⁸ By means of this, as Ciaran Cronin has pointed out, paradoxically organic conception of nationhood, Habermas contends that the guilt of the Holocaust constitutes part of (post-conventional) German identity.⁹

While the above introduction of constitutional patriotism and its roots in the intellectual milieu of post-war (especially 1980s) West Germany may seem overly lengthy or laborious, it will, hopefully, become evident later on that it was undertaken for a good reason. In fact, some of the ideas articulated by Habermas in the specific matter of Germany's historical guilt and the normative status of the Federal Republic contain some valuable insights that, I contend, are not properly borne out in his general theory of constitutional patriotism.

I will now proceed to undertake an analysis of this general theory. The analysis begins with a discussion of the civic/ethnic distinction on which constitutional patriotism can be said to rely, resulting in the conclusion that this distinction is untenable. The following section expands on this conclusion, pointing out in further detail the problems inherent in the idea of a purely 'political' communal identity. The section which follows contains the central argument of the article, concluding that the connections between the concepts of nation and democratic political community in general are deeper than Habermas would like to admit, as well as making a general point on the ambivalent role of collective identity in relation to democracy, a point which deepens and clarifies our understanding of the normative status of constitutional patriotism. The argument is further developed in the next section, which spells out the fundamental relation between constitutional patriotism and historicity, and then

⁸ Habermas 1989, p. 233.

⁹ Cronin 2003, p. 17.

summed up in a concluding section, the main point of which is that constitutional patriotism ought properly to be understood in terms of process rather than substance.

The Troublesome Concept of the Civic

A useful starting point is the article 'From Constitutional to Civic Patriotism' by Cécile Laborde. In this article, Laborde contends that many of the theorists who have sought to develop and apply Habermas' theory of constitutional patriotism fail to take seriously the need for cultural mediations between citizens and their institutions and thus to provide a strong motivation for citizens to take part in the practice of deliberation in a particular political community. She argues in favour of a more 'civic' interpretation of constitutional patriotism, which gives more scope for the formation of a particular political culture.¹⁰ Thus, Laborde builds on those aspects of Habermas' concept which are rooted in a republican tradition. Laudably, in her account of identity and republican virtue she does not rely on the normative dichotomy of 'civic' vs. 'ethnic', criticizing this simplistic distinction, often utilized by liberals seeking a form of identity not compromised by the darker aspects of nationalism, for failing to provide a nuanced account of the complex phenomenon that is national identity.¹¹ Instead, Laborde offers a four-layered approach to national identity, ranging from 1. ethnic, 'primordial' links based on birth and kinship, over 2. broad cultural patterns, language and way of life, and 3. political culture as embodied in political institutions, practices, symbols etc. to 4. abstract, universalist political ideals and procedures. (As may be predicted, Laborde draws the line between levels 2 and 3 when determining which factors may permissibly be used to generate and sustain a sense of political community.) Thus, Laborde basically seems to have no argument with the theoretical dimension of ethnic vs. civic but rather with the conceptualization of this dimension in terms of a (discrete) dichotomy. This limits her understanding of the problems of constitutional patriotism.

¹⁰ Laborde, Cécile, 2002: 'From Constitutional to Civic Patriotism', *British Journal of Political Science*, vol 32, p. 592, 595f.

¹¹ Laborde 2002, p. 598.

Another valuable aspect of Laborde's article is her argument that culture, and identity-forming processes generally, inevitably permeate politics as well as society at large.¹² A political process guided exclusively by rationalism and by universalist principles will remain a liberal idealization. Indeed, Laborde argues, a liberal politics must make efforts to harness and contain these identity-forming processes within the framework of a civic patriotism; else, the ensuing 'identity gap' runs the risk of being filled with less savoury forms of (culturally or ethnically based) nationalism.¹³ However, while correct in its premises, I believe this conclusion is premature, a point I will return to shortly.

There is something confusing about the use of the term 'civic' in Laborde's article. In one context, 'civicness' is associated with republicanism and contrasted with a conception of constitutional patriotism which is based in abstract principle rather than in practice; in another context, it is contrasted with 'ethnicity' as a source of political community. This confusion reveals a blurring in the concept of the 'civic' as used in the literature on constitutional patriotism and national identity in general. We are in fact dealing with two separate dimensions here. The blurring of these two dimensions means that liberals seeking to make normative sense of the bewildering concept of (national) identity may, by utilizing the concept of the civic, conceal the critical movement from universalist abstraction to culture and practice beneath the much less controversial movement from traditionalism (associated with ethnicity) to post-traditionalism (associated with 'civicness' and political community) with regard to the reference point of any specific instance of identity. Laborde makes this mistake when she, while asserting the opposite, sticks to the traditional civic/ethnic distinction, merely rejecting the dichotomous polarization of the two concepts and replacing it with a continuous variable. She finds herself stuck in conceptual mire as she tries to flesh out the distinction between (permissible) political culture based in universalist principles and (impermissible) general or comprehensive culture. Interestingly, Laborde, one may surmise approvingly, cites the United States and France as examples of 'civic nations' that 'have anchored their liberal principles to a particularist legacy'.¹⁴ United States foreign

¹² Laborde 2002, p. 601.

¹³ Laborde 2002 p. 600f.

¹⁴ Laborde 2002, p. 607.

policy and French integration policy may perhaps serve as indications that the constellation of liberal principles and particularist heritage does not always result, as Laborde believes, in the cleansing of the latter in the purgatory of the former, but on occasions in the bloating of the latter by the rhetorical bombast of the former.¹⁵ (This is an argument against the theory of an 'identity gap' which must be filled with wholesome material, lest it will run the risk of being occupied by darker forces.) Simply put, these examples in fact seem to imply that the troublesome (exclusionary, chauvinistic) aspects of national identity cannot be neatly sequestered or quarantined by referring to an 'ethnic' identity as opposed to a 'civic' one. I will attempt to develop this line of argument in the following section.

Political Culture and Identity

Proponents of constitutional patriotism argue that the locus of citizen solidarity and bonding is properly the political culture of a given polity, as opposed to the 'general' culture of that polity.¹⁶ It is not immediately apparent how this distinction between political and general culture is to be construed. Jan-Werner Müller is very broad in his conceptualization of political culture, including not only institutions and symbols but also more 'abstract' phenomena such as 'certain practices of conducting debate in a public and civilized manner'.¹⁷ In this context he expresses his preference for the term 'culture' than 'identity' precisely because identity conjures up the image of 'fixed' institutions and symbols. (It must be noted that Müller uses the term 'constitutional culture' rather than 'political culture', but I venture to say that this distinction is not relevant for the argument I make in the following.) However, the weakness of this definition is that it provides no guidelines as to what separates the political culture of one particular democratic polity from its neighbours, thus avoiding the fundamental question of theorists of constitutional patriotism; namely, how properly to link the universalism of Enlightenment values and a particular political community. Indeed, it is surprising that Müller discards the concept of 'identity' in favour of

¹⁵ An insightful discussion of the ethnic/civic distinction is offered in Yack, Bernard, 1999: 'The Myth of the Civic Nation', in Beiner, Ronald (ed.), 1999: *Theorizing Nationalism*, State University of New York Press, Albany.

¹⁶ Müller 2007; Laborde 2002; Cronin 2003.

¹⁷ Müller 2007, p. 57.

‘culture’, because it is only if (in itself amorphous) ‘culture’ takes the form of a discrete ‘identity’ that we may meaningfully talk of a constitutional patriotism.

It is evident that we need something slightly more tangible than the ‘civilized practices’ that Müller speaks of in order to underpin an identity. We immediately turn to the ‘institutions and symbols’ he also includes in his definition of political/constitutional culture.¹⁸ It is a common assertion in the literature on constitutional patriotism that it is now a matter of distinguishing ethnically charged institutions and symbols (unacceptable) from civic, political, non-ethnic institutions and symbols (acceptable).¹⁹ I argued in the previous section that the concept of the ‘civic’ is ambiguous and that the civic/ethnic dichotomy is misleading, and hinted that the form of nationalism prevalent in the United States, the civic nation *par excellence*, is a case in point. Although the Enlightenment values expressed in the Constitution and the Declaration of Independence – ‘the American creed’ in the words of Gunnar Myrdal – form the core of American self-understanding, this creed has over time become encapsulated by a grand narrative, if not mythology, of exceptionalism and manifest destiny. Robert Bellah, in a classic 1967 article, even goes so far as to speak of an American ‘civil religion’, with its own ceremonies, rituals, venerated objects, and places of pilgrimage.²⁰ A similar interpretation of American self-understanding is offered by John Schaar, by means of the concept of ‘covenanted patriotism’: ‘We are a nation formed by a covenant, by a dedication to a set of principles and by an exchange of promises to uphold and advance certain commitments among ourselves and throughout the world. Those principles and commitments are the core of American identity, the soul of the body politic.’²¹ Margaret Canovan, one of the sharpest critics of the theory of constitutional patriotism as a benign alternative to nationalism, notes that although Schaar describes the American conception of political membership as ‘transcending the parochial and primitive fraternities of blood and

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²⁰ Bellah, Robert N., 1967: ‘Civil Religion in America’, *Journal of the American Academy of Arts and Sciences*, from the issue entitled ‘Religion in America’, Winter 1967, Vol. 96, No. 1, pp. 1-21. ??

²¹ Schaar, John H., 1973: ‘The Case for Patriotism’, *American Review*, No. 17, May 1973, p. 69.

race’, he in the same breath articulates ‘an almost Roman sense of ancestral piety towards the inherited “mission established in the founding covenant”’.²² Canovan continues: ‘The point is that the principles of the constitution are not just liberal principles but (for Americans) “our” principles, handed down to us by our forefathers, biological or adopted’.²³ The conclusion that Canovan comes to is that the coexistence of liberalism, on the one hand, and patriotism, whether in its ‘civic’ or its more ‘ethnic’ and nationalist guise, on the other, is always an uneasy one.²⁴

With the example of American patriotism in mind, we may begin to see the general claims of theorists of constitutional patriotism in a new light. Canovan quotes yet another follower of Habermas, Attracta Ingram: ‘The idea of post-national identity is of a political identity founded on recognition of democratic values and human rights as these are *contextualized* in a particular constitutional tradition. Citizens are bound to each other by subscription to these shared values rather than by the more *traditional pre-political ties* that nation-states have drawn on as sources of unity ...’ (my emphasis).²⁵ The United States indeed appears to provide a fine example of what Ingram calls the ‘contextualization’ of democratic values and human rights. If that is so, it should, however, by now be clear that this process is far from innocent, as the embedding of the constitutional values in a particular socio-cultural context – in other words, the construction of identity – is in this case achieved through the elaboration of a quasi-mythological narrative. If weaved too thick, this mythological shroud may obscure the fundamental values of the constitution. In this situation, it seems that these

²² Schaar 1973, p. X; Canovan, Margaret, 2000: ‘Patriotism is Not Enough’, *British Journal of Political Science*, vol. 30, pp. 413-432 [425].

²³ Canovan 2000, p. 425. By ‘adopted’ Canovan is referring to the fact that a huge portion of the American people descend from people who have immigrated to the United States since it achieved independence and thus are not related by blood to the original population to which the Founding Fathers belonged.

²⁴ Canovan 2000.

²⁵ Ingram, Attracta, 1996: ‘Constitutional Patriotism’, *Philosophy & Social Criticism*, Vol. 22, No. 6, pp 1-18 [p. 2]. See also Canovan 2000, p. 418.

values themselves merely serve as the 'stuff' of national identity and therefore constitute an epiphenomenon in relation to identity.

Bernard Yack provides some further insights on the topic of civic vs. ethnic national identity. Yack argues that the concept of 'civic nationalism' has become popular due to the perceived need by liberal theorists to find some normatively acceptable form of nationalism, but that the distinction between civic and ethnic national identity is superficial and misleading.²⁶ An exemplar of this liberal group, according to Yack, is the Canadian historian and politician Michael Ignatieff, whose thoughts on the subject of nationalism was widely publicized in the 1990s in the wake of ethnically based warfare in former Yugoslavia and elsewhere.²⁷ According to Ignatieff, 'ethnic nationalism' is pernicious because it by definition rests on inherited or ascriptive criteria such as birth, culture and religion, while by contrast 'civic nationalism', based on freely chosen membership in a community dedicated to a particular political creed, is not only compatible with, but in fact conducive to liberalism and democracy.²⁸ Yack argues that this contrast is simplistic, drawing attention to the fact that the 'political' identities of, for example, France and the United States, are culturally inherited artifacts no less than those of 'ethnic nations'.²⁹ What defines the political communities of France and the United States, respectively, is not solely certain political values, but also 'the contingent inheritance of distinctive experiences and cultural memories that is an inseparable part of every national political identity'.³⁰ An American citizen cannot be expected to be ready to change his political membership as soon as he perceives that there is some other liberal democracy which appears superior in realizing the political values on which the United States were founded. The following quote from Yack is illuminating: 'The myth of the ethnic nation suggests that you have no choice at all in the making of your national identity: you are your cultural inheritance and nothing else. [...] The myth of the *civic*

²⁶ Yack 1999. Margaret Canovan provides a similar but less theoretically focused argument (Canovan 2000).

²⁷ Yack 1999; Ignatieff, Michael, 1993: *Blood and Belonging: Journeys into the New Nationalism*, Farrar, Straus & Giroux, New York. ??

²⁸ Ignatieff 1993.

²⁹ Yack 1999, p. 105.

³⁰ Yack 1999, p. 106.

nation, in contrast, suggests that your national identity is nothing but your choice: you are the political principles you share with other like-minded individuals.³¹ Yack follows Ernest Renan in concluding that there are two things which make a nation: a rich cultural inheritance of shared memories and practices, along with present-day consent (Renan's famous 'daily plebiscite').³² If this conclusion is correct, as I believe it is, the forming and maintenance of the national identity of a modern liberal democracy consists of an ongoing process of deciding what to accept and what to reject, the subject of which is the polity's citizens. Defending and further developing this contention requires a closer reading of Jürgen Habermas, the writings of whom contain the formative ideas of constitutional patriotism and some of the most influential statements on civic nationalism generally.

Constitutional Patriotism, Republicanism, and the Nation

One of the seminal articles in which Habermas sketches his theory of constitutional patriotism is 'Citizenship and National Identity', first published in 1990. The thrust of Habermas' argument is that (republican, democratic or constitutional) patriotism is distinct from nationalism and lacks the dangers concomitant with the latter. He is, however, aware that the distinct nature of these respective phenomena is a far from self-evident fact. Habermas notes that, as has frequently been pointed out, democracy and the nation-state (and therefore, one must presume, nationalism) are the twin children of the French Revolution.³³ The process of democratization that broadly characterizes macropolitical development during the 19th century occurred in conjunction with the development of nation-states, and in this process France provided the model for other European countries.³⁴ According to Habermas, the nation-state 'laid the foundation for the ethnic and cultural homogeneity that made it possible, beginning in the late 18th century, to forge ahead with the democratization of government, albeit at the cost of excluding and oppressing minorities.'³⁵ Implicit in Habermas' argument is the recognition that this linkage between

³¹ Yack 1999, p. 107.

³² Yack 1999, p. 116.

³³ Habermas 1996, p. 493.

³⁴ Habermas 1996, p. 493.

³⁵ Habermas 1996, p. 493.

democracy and nationalism is a troublesome fact for any liberal or progressive defender of any kind of communal ethos or identity pertaining to a particular democratic polity. Habermas, however, argues that this link is not conceptual but *functional*.³⁶ Historically, nationalism has served as the vehicle for the burgeoning republicanism associated with democratization, rather than being implicit in this republicanism.³⁷ The self-determination of free citizens, as first conceived by Rousseau, is coterminous with the republican ethos but conceptually prior to nationalism, as nationalism consists in the *appropriation* by the self-determining community of citizens of certain cultural traditions which, through this act of appropriation, are imbued with political significance.³⁸ In the next stage, these cultural traditions, 'filtered by historiography and reflection', are communicated through the mass media and serve to provide the public discourse with structure, depth and coherence; yet they are of relative rather than absolute significance with respect to the democratic community.³⁹ Democratic republicanism, of which Habermas is a champion, is thus, correctly understood, free of all charges of being coterminous with nationalism. Instead, democratic republicanism presupposes a liberal political culture, where citizens afford each other a threefold mutual recognition as individuals, as equal political subjects, and as members of ethnic or cultural communities.⁴⁰

Habermas' account of the relation between democracy and nationalism, which is simultaneously a statement on the normative status of constitutional patriotism, is in my opinion quite illuminating. However, there seems to be some element missing from his argument. While it is true that national identity is dependent on the act of appropriation of cultural traditions on the part of the political community, an act which if you will constitutes the *creation* of identity, this act cannot be construed without its referent, or object, which amounts to the substantive element of identity. In other words, on an abstract level every

³⁶ Habermas 1996, p. 495.

³⁷ Habermas 1996, p. 495.

³⁸ Habermas 1996, p. 493-499.

³⁹ Habermas 1996, p. 493. It should be noted that the account of the role of tradition in democratic discourse is my interpretation and not found verbatim in Habermas' article.

⁴⁰ Habermas 1996, p. 496, 499.

identity must at a given point in time refer to *some* substance or content, even though this content may be replaced over time.⁴¹ Furthermore, if this is correct, each historical instance of republicanism, even before modernity and the advent of nationalism, must contain some form of 'proto-nationalism'.⁴² We are now in a position better to understand Bernard Yack's contention that a nation is formed by consent, on the basis of cultural heritage. Each political community shapes its identity from the materials of its cultural traditions, which are either rejected, accepted or remodelled.

A preliminary conclusion is therefore that we are in a sense misguided in seeking a 'purified', normatively acceptable version of national identity, patriotism, republicanism, or whichever term we prefer. Rather, democracy is a process which generates these identities; expressions of the values of the community, which successively crystallize and, over time, are discarded and replaced by new ones. While in place, each identity generates a sense of community and provides meaning and structure to public discourse, but also serve an exclusionary function, as the historical record of nationalism reminds us.

Identity, Modernity and Historicity

In this section, I will attempt to defend and further develop the idea, introduced in the paragraphs above, that temporality and historicity are crucial elements in the working of national identity. I will also argue, building on the insights provided by Anthony Giddens, that the intensification of the relationship with time which occurs with the advent of modernity does not only coincide with nationalism, but in fact constitutes a vital element in the modern concept of the nation. Furthermore I argue, contrary to Habermas, that this concept of the nation is central to a proper understanding of constitutional patriotism, and that the latter

⁴¹ Thus, the connection between democracy and nationalism is neither functional nor purely conceptual, but may, using Kantian terminology, be described as 'transcendental'.

⁴² Anthony D. Smith is a leading proponent of the idea that nations, that is, politico-cultural communities, are more universal in their occurrence than is widely believed and predate the age of modern nationalism starting in the late 18th century. See Smith, Anthony, 2001: *Nationalism*, Polity Press, Cambridge.

phenomenon thus has distinctly 'modern' as opposed to 'postmodern' (or 'postconventional') features.

During the late 18th century, the concept of the *nation*, up until then simply signifying 'a people who share origin and culture', takes on a new and richer meaning, coloured by Rousseau's ideas about popular sovereignty, themselves in part derived from the republican tradition of which Aristotle is the founder.⁴³ The central democratic notion of 'self-government by and for the people' requires a delimiting of 'the people' as well as a *telos*, both of which functions the concept of 'the nation' from now on fulfills and in turn deepens the meaning of this concept.⁴⁴ Thus, the intellectual and political movement of nationalism is born, the chief idea of which may be summed up as the moral right of a people of the same origin, or with the same culture (or both), to collective self-rule. This means that democracy and nationalism have some important conceptual and intellectual-historical roots in common, and the two concepts have remained to a large extent intertwined ever since.

In this same period of time, the late 18th century and the early 19th century, the concept of historicity, too, undergoes some crucial changes. Older, cyclical notions of history are replaced by an idea of progress as the fundamental force of history.⁴⁵ The modern concept of the nation is developed in conjunction with this change: as has frequently been pointed out, nationalism is a fundamentally modern phenomenon, related to the development of large-scale systems of communication and bureaucratic control which occurred during the 19th century.⁴⁶ 'The nation' was thus closely tied to the idea of progress. Furthermore, the

⁴³ The general source of inspiration of the following analysis is the works Reinhart Koselleck, the founder of the method of conception history. See for instance Koselleck, Reinhart, 2002: *The Practice of Conceptual History. Timing History, Spacing Concepts*, Stanford University Press, Stanford; Koselleck, Reinhart, 2004 [1979]: *Futures Past. On the Semantics of Historical Time*, Columbia University Press, New York.

⁴⁴ Miller, David, 1995: *On Nationality*, Oxford University Press, Oxford. ?

⁴⁵ Hansson, Jonas, 2007: 'Den historiska världsdelen. Hegel, européerna och världshistorien', in Broberg, Gunnar, et al, 2007: *Europas gränser. Essäer om europeisk identitet*, Nya Doxa, Nora. To be replaced with an English language source

⁴⁶ Gellner, Ernest, 1983: *Nationalism*, Cornell University Press, Ithaca.

qualitative change in the notion of history brings with it an alteration in the very concept of subjectivity which is of crucial importance for the development of the modern concept of the nation. Anthony Giddens' theory of modernity and identity may shed some light on this process, even though this theory does not focus primarily on national identity.⁴⁷ According to Giddens, the condition of modernity is one of insecurity, opening up ever-widening horizons of opportunity as well as the corresponding risk, in which the subject is faced with a continuously changing environment.⁴⁸ This insecurity results in a certain preoccupation with identity, as the subject is no longer embedded in a given social context, but is continually forced to, reflexively, reconstitute his identity in order to adapt to, and in some instances exert control over, his new or prospective circumstances.⁴⁹ In the words of Giddens, 'the discovery of oneself becomes a project directly involved with the reflexivity of modernity'.⁵⁰ In my opinion, this is an apt description of the circumstances in the modern condition of not only the individual subject but also of the self-governing polity as subject.

Thus, the late 18th century sees the birth of the concept of the nation as a self-aware political collectivity, constructing its identity successively over time through a dialectical process. It is now evident that the fundamental role of historicity for the development of national identity, and the strong link between nationalism and democracy, mean that the central features of constitutional patriotism are also present in nationalism.⁵¹ Habermas' insistence on a clear distinction between constitutional patriotism and nationalism seems superficial; an unsuccessful attempt to, by means of definition, rid constitutional patriotism of any overtones of the more troublesome aspects of community. The corresponding assertion that

⁴⁷ Giddens, Anthony, 1991: *Modernity and Self-Identity*, Polity Press, Cambridge.

⁴⁸ Giddens, Anthony, 1990: *The Consequences of Modernity*, Polity Press, Cambridge.

⁴⁹ Giddens 1990.

⁵⁰ Giddens 1990, p. 122.

⁵¹ By claiming that there is a fundamental link between nationalism and democracy I do not, of course, mean that where there is nationalism there is also democracy. However, since the advent of the modern concept of popular self-government in the late 18th century, even authoritarian regimes have felt the need to legitimize itself with reference to 'the people' as the highest authority. The fundamental democratic impulse may find its expression in a Caesarian move.

constitutional patriotism is an expression of a 'post-conventional' form of identity, one step removed from the nationalism of the 'modern' era, and that this change means that inherited national identity is 'de-centered', is confusing. As indicated by the quote on page 6 ('our form of life...'), Habermas views the identity of the constitutional patriot as at least in part constituted by the nation's past. As has been remarked, this may amount to a kind of 'negative nationalism'.⁵²

Conclusions: Constitutional Patriotism as Process

Early on in this article, I argued that the civic/ethnic dichotomy with regard to national identity, a dichotomy which underlies the normative thrust of the theory of constitutional patriotism, is grossly simplified and that there is no such thing as a 'purely civic' national identity. Other scholars have pointed this out before, yet many of them in different ways remain trapped by this very dichotomy. Theorists of constitutional patriotism (including, at least in some of his writings, Habermas) more often than not make a distinction between 'political' and 'general' culture, which on closer inspection appears untenable and in fact overlaps the civic/ethnic dichotomy.⁵³ Yet the use of the concepts of civic and ethnic is not entirely misleading, because they mirror the dichotomy of universalism/particularism which is indeed fruitful when it comes to providing an illuminating theoretical account of the problems of national identity vis-à-vis democracy. The crucial point is that this dichotomy has to be conceptualized on a higher level of abstraction than most previous theorists have realized. We cannot speak of a 'civic' or universalistic identity as distinct from an 'ethnic' or particularistic one, since identity is by definition particularistic. What we are dealing with is not two distinct kinds of substance; it is a matter of substance versus process. I suggest that it is only over time, through a quasi-Popperian process of continuous reflection over new experience, if you will of conjecture and refutation, that an identity can be 'purified' or dealt with rationally. Furthermore, this is a process which must always be understood as unfinished, and all conclusions must remain tentative. Because of the procedural character of this conjunction of democracy and identity which the concept of constitutional patriotism

⁵² Selling, Müller?

⁵³ Habermas (?)

emanates from, temporality and historicity become central aspects of the understanding of national identity.

While liberal nationalists such as Margaret Canovan realize that there is no such thing as a 'purely civic' identity, they do not grasp the fundamentally dynamic character of identity but perceive it as static, thereby construing identity as a perhaps functionally necessary yet 'alien' or indigestible element in liberal democracy. In my opinion, it is more fruitful to conceptualize national identity as (part of) the substantive object of the ongoing deliberative process that democracy ideally constitutes. Another very important point is that by equalizing the 'civic' character of the national identities of countries such as the United States and France, for instance, with an ideally 'universalistic' identity we lose sight of the cases where the universalist revolutionary traditions of these countries are reduced to mere phraseology, cloaking a particularistic or imperialistic practice. Such particularism *may* in fact be especially dangerous because it may not be recognized as such, perhaps not even by its own adherents.

Understood in this perspective, which I believe is the most fruitful one, 'constitutional patriotism' oddly enough becomes something of a misnomer, since it no longer refers to an identity, but rather a 'superideology', a way of dealing with identity. The conclusion of this article is, thus, that while the concept of constitutional patriotism is a valuable one, it does not provide a simple solution to the problem of achieving a sense of political community while nevertheless adhering to the principles of liberalism.

We can now begin to see that the underlying logic of the analysis undertaken in this article has consisted in a criticism of Habermas' theory of constitutional patriotism from the perspective offered by his own, more general ideas of deliberative democracy. The analysis reveals that the concept of constitutional patriotism is not only normatively valuable, but also theoretically so as it helps shed some light on the complexities of the relationship between democracy and national identity. However, in order for the concept to serve these functions it has been necessary for us to undertake a 'deconstruction' of the theory of constitutional patriotism, which is presented in Habermas' own writings in a crude and simplified form. Only through this process is the analytical potential of the concept realized.

The crude version of constitutional patriotism, on the other hand, may turn out to be more harmful than beneficial as it shares the flaws and hazards of traditional nationalism, albeit in a veiled form.

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