

Democracy and Collective Identity: In Defence of Constitutional Patriotism

Ciaran Cronin

The heightened concern of liberal political theory over the past decade with issues of identity and culture has raised the question of whether particularistic identities are compatible with commitment to universal values such as freedom and equality and, more specifically, what forms of patriotic attachment are still possible in pluralistic liberal democracies. Liberals sympathetic to nationalism have argued that nationality is a central component of individual identity for modern subjects and that access to one's national culture is essential for realizing important liberal democratic values such as individual autonomy and social equality.¹ Some thinkers sympathetic to the republican tradition, by contrast, hold that self-governing political communities, or the constitutional principles on which they are based, can provide sufficient focus for forms of loyalty and patriotism that do not presuppose prior cultural commonalities.² Among prominent defenders of the latter view, Jürgen Habermas has proposed a model of loyalty to the principles and institutions of constitutional democracy, *Verfassungspatriotismus* or 'constitutional patriotism', as a viable democratic alternative to nationalism.

However, critics have questioned whether the idea of patriotism based on loyalty to the constitution is really coherent or, assuming it is, whether it could inspire sufficiently strong attachment to preserve the unity and stability of a democratic state. In one form or another these objections turn on whether constitutional patriotism strikes an appropriate balance between the universalism of principles and the particularism of identity and attachment. Anticipating this problem, Habermas has emphasized that he is not thinking of constitutional principles as disembodied abstractions but as embedded in particular democratic political and legal cultures, since only thus can they shape citizens' identities and loyalties. Yet this does little to resolve the apparent tension between nationalist particularism and democratic universalism, for stable democratic cultures have flourished exclusively within nation-states, which suggests that the fate of democracy may be tied inextricably with that of nationalism, at least under modern social conditions. The tension is exacerbated by the fact that Habermas seems to be in two minds over whether constitutional patriotism is supposed to supersede nationality as a form of political identification or whether constitutional patriotism can flourish within nationally differentiated political cultures.

In this paper I will argue that constitutional patriotism provides a coherent model of political identification for culturally pluralistic democracies once it is

understood in light of the account of modern identity that informs Habermas's political theory and his interventions in German political debates. If constitutional patriotism is to provide a viable alternative form of political identification to chauvinistic nationalism, it must be shown that allegiance to democratic principles can foster forms of collective identity that are capable of commanding allegiance while nevertheless remaining open to transformation in response to the demands of universalistic norms of justice. The basis for such an account was laid in the theory of individual and collective identity that Habermas developed in the 1970s; but only when the latter is read in light of his more recent deliberative theory of democracy will it become apparent how it can ground affective ties to particular democratic polities.

In the first part of the paper I will set forth Habermas's thesis that pluralistic democracies must cultivate a 'postnational' form of identification because nationalism is beset by an inherent ambivalence that fosters discrimination in the domestic sphere and chauvinistic self-assertion in international relations. But if constitutional patriotism is to provide a credible alternative to nationalism it must overcome at least three major criticisms that have been levelled against it: that it cannot anchor specific loyalties, that it tacitly presupposes substantive cultural identities, and that it rests on an untenable distinction between political and subpolitical identities and cultures. A first line of response can be found in his earlier work on identity, which, as I argue in the second section, laid the groundwork for a *procedural turn* in the conceptualisation of collective identity. What was missing at this stage, however, was an account of the social and political processes through which a rational collective identity can be generated in posttraditional societies, a gap which, as I will try to show in the third section, is filled by the deliberative theory of democracy. Democratic deliberation provides the medium in which citizens can forge a rational collective identity through participation in a democratic 'constitutional project' that can become the focus for non-chauvinistic forms of mutual recognition, solidarity and affective attachment. In the fourth section I show how this understanding of constitutional patriotism in terms of a procedural democratic account of identity enables us to offer plausible responses to the criticisms outlined in the first section. It remains to consider how we should understand the transition from nationalist to constitutional forms of identity and patriotism. Taking as my guide a procedural reading of Habermas's interventions in one key German public political controversy in the fifth section, I will argue in conclusion that constitutional patriotism does not necessitate a radical break with the nation-state. Instead it implies a transition to 'postnationalist' rather than 'postnational' forms of political identification and culture.

1. A Democratic Alternative to Nationalism

Nationalism presents us with contradictory aspects. On the one hand, it looks back nostalgically toward a fictive past of ethnically and culturally homogeneous

communities of shared descent; on the other, it looks forward to a world of modernized liberal democracies. Habermas detects an inherent and dangerous ambivalence in this Janus-faced character of nationalism.

The idea of the nation made possible a new, more abstract sense of collective identity for the deracinated and mobilized subjects of modern states, he argues, and homogeneous national languages and cultures enabled these states to forge their populations into disciplined armies and productive labour forces.³ In addition, national identification contributed to the legitimation of the modern state by providing an emotionally compelling answer to the question of who constituted the 'people' from whom the secular state claimed to derive its authority. Thus it played an important role in the consolidation of modern democracy following the French Revolution: 'In the melting pot of national consciousness, the ascriptive features of one's origin were transformed into so many results of a conscious appropriation of tradition. Ascribed nationality gave way to an achieved nationalism, to a conscious product of one's own efforts'.⁴ If democratic institutions were to take root individuals had to come to identify with a large, anonymous citizen body, and identification with the nation made possible this abstract form of solidarity among strangers. Nation-states did not spring from the ground fully formed, however, but emerged from the expansion and consolidation of existing states and kingdoms, and in the process pre-existing ethnic and cultural identities were forged into hegemonic national cultural identities.⁵ In particular, the resulting political identities and cultures retained elements of the conception of the nation as a *prepolitical* community of shared descent united by ties of place and geography and by commonalities of language, custom and tradition.⁶ The political conception of the nation inherited from its ethnocultural predecessors a tendency to stigmatise non-nationals as inferiors, aliens or enemies. This resulted in a double coding of citizenship – as a legal status defined by possession of equal rights, on the one hand, and as membership in an ethnoculturally defined community, on the other – and a corresponding split in the concept of sovereignty between internal sovereignty, defined in terms of citizen self-rule, and external sovereignty understood in terms of national self-assertion. And the ethnocultural component of nationalist conceptions of citizenship and sovereignty inspired or facilitated internal repression of 'aliens' and external aggression against 'enemies' in the name of national self-assertion.⁷

The question is whether modern democracy is essentially compromised by this inherent ambivalence of nationalism. On Habermas's analysis it is not because the original interdependence of nationalism and republicanism was a contingent, historical matter, not a conceptual one, as nationalists sometimes assume.⁸ Once the status of citizenship has taken root in the legal and political cultures of constitutional democracies, he argues, democracy can itself shape the identities of citizens while gradually sloughing off its historical dependence on the ambivalent concept of the nation. Constitutional patriotism represents such a *postnational* form of political identification and attachment for pluralistic societies. Loyalty to democratic constitutional principles and the political

institutions they structure – hence identification focused on the legal-political status of *citizenship* rather than on ethnocultural belonging – can ground a rational form of collective identity that overcomes the provincialism and chauvinism that have plagued national identification. He understands the legal conception of citizenship in republican terms as a status defined by basic rights implied by the citizens' practice of self-government, in contrast with classical liberalism, which represents individuals as bearers of pre-political rights and interests that the state is supposed to protect.⁹ On this model, the exercise of popular sovereignty becomes the medium in which citizens give themselves a collective identity in the process of making laws, and solidarity with fellow-citizens and affective attachment to the polity flow from participation in this system of political cooperation.¹⁰

Constitutional principles feature in this account of political identity and attachment not as moral abstractions but as *juridical* principles that define the rights constitutive of citizenship: they can shape citizens' identities only insofar as they are embodied in particular legal and political cultures. Unlike moral norms, constitutional principles are addressed *in the first instance* to individuals as citizens and legal subjects and define obligations toward fellow-citizens. They command loyalty and attachment under the specific interpretations given them in particular legal traditions and political cultures.¹¹ A form of political identity grounded in this way in the practice of popular sovereignty is consistent with the idea of individual autonomy enshrined in civil rights because, in contrast with the ascriptive character of national identity, it is voluntary, even though it is not generally a matter of individual choice. For most people citizenship is a birthright and their attachment to the institutions and political culture of their country is not the result of an act of choice. Yet a political identity can nevertheless count as voluntary provided that citizens are able to influence the political processes through which they collectively appropriate their traditions and interpret their history and values, so that they can freely affirm them as their own rather than an alien imposition.¹² On the other hand, the collective identity forged through participation in the political process must not subordinate individuals to the collectivity altogether, as on certain versions of republicanism. The civil liberties enshrined in democratic constitutions protect the freedom of individuals to pursue their own interests and ideals of the good and to cultivate non-political identities and memberships. Individual autonomy demands that the cultural embedding of constitutional principles be consistent with cultural pluralism below the political level; hence constitutional patriotism calls for a clear separation between political and subpolitical culture.¹³

However, critics have questioned whether a political identity founded on constitutional principles and democratic procedures can really provide a viable alternative to nationalism for pluralistic societies. (1) Perhaps the most widely-shared concern is that constitutional patriotism is too thin and bloodless a conception of patriotism to inspire genuine attachment and solidarity. Liberal nationalists, for example, who stress the importance of national or societal cultures both for the exercise of individual autonomy and as a basis of

democratic solidarity, have questioned whether constitutional patriotism could account for attachment to any particular polity or political community over any other.¹⁴ Such critics have generally taken Habermas's idea of loyalty to constitutional principles quite literally and argued that rational assent to universal principles lacks the kind of reference to a particular community implied by patriotism;¹⁵ but even if we understand it in Habermas's preferred procedural terms, it is not clear how commitment to a set of discursive procedures could ground a substantive identity any more than could attachment to formal principles. Wouldn't an identity based on loyalty to democratic procedures, formally characterized, be as abstract and bloodless as one based on loyalty to formal principles? In other words, isn't the tension between the particularism of identity and liberal universalism likely to reappear as one between substance and procedure?

(2) A related concern is that Habermas fails to provide a credible alternative that could perform the role that identification with the nation has played in fixing the identity and boundaries of democratic political communities. Bernard Yack, for example, has objected that civic conceptions of identity like Habermas's tacitly presuppose a *prior* determination of who belongs to the polity. Democratic deliberation and decision-making could not even get off the ground unless those who undertake it already view themselves as belonging to a *prepolitical* cultural community, something Habermas tacitly concedes when he argues that constitutional principles must be embedded in the cultural horizon of particular political communities if they are to command loyalty.¹⁶ In general, neo-Kantian, contractarian theories of political legitimation such as Habermas's must tacitly assume some prepolitical definition of who belongs to the political community, since social contract arguments can legitimate social and political relationships only within a *predefined* group.¹⁷

(3) Furthermore, critics have questioned the tenability of Habermas's separation between political and subpolitical culture and the corresponding levels of social integration. How could the political culture of a modern mass democracy, in which participatory and majoritarian decision-making procedures must play a central role, fail to be deeply shaped by the culture of the majority? For example, the deliberative model of politics requires an official language of communication if citizens are to engage in mutually intelligible public communication over issues of common concern; but the choice of an official language represents an imposition on other language groups and could not be demanded of immigrants on Habermas's thin conception of political acculturation. Along these lines Thomas McCarthy has criticized Habermas's idea that political integration can be 'decoupled' from subgroup and subcultural integration as too simplistic given that legal and political systems cannot be culturally neutral and culture cannot be privatised in the way religion has been in modern liberal states.¹⁸

These objections ultimately turn on whether Habermas's models of democracy and republican citizenship can resolve the opposition between the universal and the particular that seems endemic to a form of political identification and

attachment grounded on supposedly universal principles. But before turning to his political theory I would first like to examine what forms of collective identity he thinks are still possible and appropriate for a posttraditional society, for collective self-understandings determine what forms of mutual respect among citizens are possible and how they wish to be recognized by others, and hence what forms of patriotism are available to them.¹⁹

2. From Substantive to Procedural Identity

Nationalist forms of patriotism presuppose a kind of dependence of individual on collective identity that is no longer possible in the disenchanted modern world.²⁰ Individuals develop their identities by internalising the norms, values and worldviews of their societies, which provide them with the interpretive resources to make sense of their inner experience and of the natural and social worlds. Collective identities, by contrast, are maintained over time through the interpretive practices of members in which they project public representations of the group, its history and its distinctive belief and values, which provide a focus for shared identification.²¹ Thus individual and collective identities are for Habermas distinct yet interdependent symbolic structures: 'The symbolic unity of the person that is produced and maintained through self-identification depends...on belonging to the symbolic reality of a group, on the possibility of localizing oneself in the world of this group. A group identity that transcends the life histories of individuals is thus a precondition of the identity of the individual'.²² Each of these symbolic structures undergoes a process of 'decentering' in the course of social modernization. As sacred sources of validity and legitimacy lose their binding authority and the conception of freedom as autonomy first theorized by Rousseau and Kant begins to exercise structuring effects both on the individual personality and on the organization of society, the practical components of individual personality and the institutions of the state undergo a profound transformation.

At the individual level this transformation takes the form of a transition from a conventional to a 'postconventional' identity in which social norms and conventions lose their taken-for-granted character for the adolescent as she becomes aware of their provinciality from a moral point of view. The resulting crises are resolved when she succeeds in integrating the impartial moral perspective with the other components of her practical identity. Just as the earlier transition to the conventional stage of moral-psychological development required the child to subordinate the satisfaction of her immediate needs to the demands of prevailing social norms, so the transition to the postconventional stage requires the adolescent to distance herself from the commitments and attachments that shape her concrete self-understanding and to subordinate their demands to those of impartial justice. This does not mean that she has to suppress her interests in satisfying her desires and in pursuing the good life completely in an altruistic manner; rather, these components of her practical

identity enter into a new constellation in which the complementary, though sometimes conflicting, demands of self-interest, self-realization and self-determination are accorded their due.²³ Such an identity is 'de-centred' in the sense that recognizing the force of moral demands involves standing back from one's immediate desires and identity-shaping commitments in order to judge conflicts from the perspective of the interests of all concerned, not just one's own or those of people to whom one has special attachments. However, decentring does not imply complete detachment from particular commitments: to judge a situation from an impartial perspective is not to judge it from 'nowhere', but from an enlarged perspective that relativises other commitments.

The corresponding transformation at the level of society takes the form of a transition from traditional to 'posttraditional' forms of social life in which universalistic normative principles develop structuring force for society as a whole in the shape of the basic human rights.²⁴ Collective identities also become decentred as sacred sources of meaning lose their power to legitimise political systems, which must henceforth draw their legitimacy from secular sources, a demand that first made itself felt with the advent of the world religions whose universalistic moral teachings conflicted with the need for legitimation of temporal power.²⁵ The only remaining source of political legitimacy is popular sovereignty, i.e. the consent of the governed, which is given effect through the civil and political basic rights embodied in the legal systems of constitutional democracies. However, social and political traditions are not simply abandoned *en bloc* in the transition to constitutional regimes but are reinterpreted and relativised in light of constitutional norms. Since the latter claim universal validity, they compel a society to recognize that it constitutes just one of a plurality of equally valid realizations of the same basic constitutional principles.

With the transition from traditional to posttraditional forms of social life the formation of collective identity can no longer rely on ascriptive characteristics and shared worldviews but must focus instead on the procedures through which individuals collectively generate representations of their identity:

Nowadays we can view a collective identity at best as anchored in the formal conditions under which projections of identity are produced and transformed. Individuals no longer encounter their collective identity as the content of a tradition (*Traditionsinhalt*) in which individual identity could find a fixed, objective representation; rather they themselves participate in the cultural and will-formation processes of an identity that is still to be sketched in common (*einer gemeinsam zu entwerfenden Identität*).²⁶

This account of modern identity involves a paradigm shift from one which represents it as a matter of identification with a specific content to one which represents it in terms of a collective practice of identity formation: 'Collective identity...can be conceived nowadays only in a *reflexive* form,

namely, in such a way that it is grounded in the consciousness of universal and equal chances to participate in the kind of communication processes in which identity formation becomes a continuous learning process'.²⁷ The decentring of individual and collective identity are complementary processes because a postconventional ego-identity is incompatible with unconditional identification with any particular interpretation of the identity of the group or of its values, and hence resists the institutional entrenchment of any such interpretations as unconditionally binding. Instead the communicative procedures through which cultural traditions are appropriated become the focus of identification and loyalty.

Following this procedural turn, a modern collective identity can never be completely identical with itself since it is always in the process of being constructed; it must always remain an 'outline' that is in the process of being filled in. The procedures through which a society continuously remakes its identity ideally take the form of communicative learning process in which the critical standards and results of different disciplines are brought to bear on issues of common concern. Traditional authorities, be they sacred or secular, can no longer lay down collectively binding representations of identity. If they want to influence collective self-understandings, priests and philosophers must enter public debates along with experts who bring the critical standards of their respective fields to bear on questions that influence how a society understands itself and imagines its future. A complex web of interconnected and overlapping discursive learning processes in different dimensions – in the natural sciences, the social sciences, historiography and the humanities, criticism and the arts – are fed into public debates and contribute to the ongoing critique and elaboration of ideals of the good and principles of justice.²⁸

It may not be immediately clear, however, how this account of collective identity is relevant to the question of appropriate forms of identification, loyalty and solidarity for pluralistic societies. For example, what is supposed to play the role of the object of collective identification or the focus of political affect on the procedural model? An interpretation suggested by the future-oriented characterization of a rational collective identity as the product of 'ongoing learning-processes' is that the object of identification is in fact an anticipated future rational 'communication community'. Thus Patchen Markell, drawing on Habermas's communication-theoretical elaboration of the idea of postconventional ego-identity, suggests that, just as the individual at the postconventional stage ceases to look to actually existing others for recognition of her autonomous identity but instead appeals to an 'anticipated' or 'projected' ideal community, so too a postconventional collective identity would consist in identification with the norms and procedures of an idealized 'unlimited communication community'.²⁹ However, making an ideal communication community the object of identification would lend the idea of a rational collective identity a fatally fictive character. This concept features in the work of Peirce and Mead as an idealized counterfactual correlate of actual process of scientific investigation and identity-formation. But as a counterfactual idealization it cannot ground present identification

with any real community, and hence cannot explain how the communicative process to which Habermas appeals could foster patriotic attachment to one's own polity.

Fortunately, however, the account of individual and collective identity-formation proposed in the 1976 essay points to a more plausible interpretation. As we have seen, the transition from a conventional to a postconventional ego-identity involved a reorganization of different elements of the individual's cognitive and practical-rational makeup rather than their complete supersession.³⁰ The individual does not cease to identify with her desires and projects but comes to see them from an enlarged perspective that enables her to reflect critically on her attachments and commitments without having to deny 'who she is'. Analogously, the transition to a posttraditional society does not mean that members of modern societies must cease to feel strong affective attachments to their history and culture or commitment to distinctive national traditions and values. But as the critical-transformative power of impartial norms of justice makes itself felt, these attachments and commitments lose their taken-for-granted character and the boundaries of the political community become permeable to other cultural traditions and open to new, more inclusive interpretations of shared identity: 'Such an identity no longer needs *fixed* contents in order to remain stable; but it does require contents. Identity-confirming systems of interpretation that make human beings' situation in the world comprehensible differ from traditional worldviews not so much in being more limited in scope, as in being open to revision'.³¹ The concrete historical political community remains the object of attachment even as interpretations of its identity shift to accommodate the claims to recognition of oppressed minorities and as the contingency of all identities and national histories is revealed by critical historical scholarship and social research.

It nevertheless still remained unclear at this stage what form communicative processes must take if we are to be able to speak of a *shared* or *communal* learning process in the dimension of collective identity. In the absence of authorities who can prescribe collectively binding interpretations of identity, the communicative processes through which interpretations are generated must be organized in such a way that they can assure continuity of identity over time. Yet Habermas denied that the identity of a modern society could be grounded in *any* form of organization, be it the state, as Hegel claimed, the international worker's movement, or the nation-state.³² It seems that at this time the political process could not play this role for him either since he insisted that the communicative processes through which cultural contents are transformed generally have a *sub-political* character: 'they operate below the threshold of political decision-making; but they have an indirect impact on the political system because they alter the normative framework of political decisions'.³³

The theory of constitutional patriotism marks a decisive advance in this regard, I want to argue, by making the democratic political process, discursively conceived, the institutional locus for the production of a rational collective identity.

3. Deliberative Democracy and Procedural Identity

The central problem that must be addressed by an account of political identification for contemporary societies is: how can a collective identity become a source of binding identification and loyalty for citizens without undermining their autonomy as individuals? Nationalist conceptions of patriotism are incompatible with individual autonomy insofar as they authorize the state to make categorical demands on its subjects without regard to their individual needs and interests. The patriotic expectation that citizens should make sacrifices for the sake of the collectivity – and even, at the extreme, sacrifice their lives in its defence – is defensible only if it emanates from a political organization whose primary purpose is to secure the individual rights of its citizens. The latent tension between individual rights and duties to the collectivity can be overcome only if the latter are understood as flowing from the practice through which citizens realize their rights in common. Such an account is provided by Habermas's deliberative conception of democracy as the practice through which citizens confer rights on one another. For present purposes it will suffice to outline the features of his theory that bear on the issues of identification and patriotic attachment.

The guiding insight of the deliberative conception of democracy is that private and public autonomy must be treated as co-original once democracy is understood in terms of the realization of citizens' basic rights in the medium of law. A system of rights that must for functional reasons be realized in the medium of positive law is subject to constraints that flow from certain formal properties of this medium.³⁴ As *positive*, modern legal orders are artificial constructs, so those subject to them must be able to regard them as their own creation rather than an alien imposition; as *individualistic*, they accord primacy to rights over duties; and as *coercive* they ensure a sufficient level of compliance through a credible threat of punishment, backed up by the state's monopoly on the legitimate use of force. In light of these constraints, a system of rights, if it is to satisfy democratic standards of legitimacy, must include rights of private autonomy that create the status of legal subject or *addressee* of the law, including individual liberties and rights guaranteeing political membership and legal protection. But if the citizens are to be able to regard themselves in addition as *authors* of the law, they must also enjoy rights of public autonomy, that is, the right to participate in the process through which laws are debated and enacted.³⁵ The principle of the co-originality of private and public autonomy states that neither the rights of private autonomy, which establish the rule of law, nor rights of public autonomy, which lend the legal system a democratic form, can claim primacy over the other.³⁶ Democracy is not possible unless citizens have the legal protections that enable them to participate freely and openly in elections and in public debates over controversial legislative proposals; on the other hand, citizens can have the assurance that their rights are secure only if they have equal chances to influence the interpretations of their needs and interests enshrined in the law, since the effective meaning and content of the

individual rights inscribed in constitutional bills of rights is first fixed by their translation into law.³⁷

The procedural account of democracy as the simultaneous realization of private and public autonomy is informed by a communicative model of normative validity that accords public deliberation a central role in the legitimation of the legal-political system. The validity of legal norms, and hence their capacity to command assent in the eyes of their addressees, consists in their universalizability with respect to the needs and interests of all concerned, which Habermas interprets as the requirement that all citizens should be able to accept them as equally in their interest in a democratic discourse.³⁸ Legitimation here has a pronounced epistemic content, in addition to the volitional sense that laws have to count as an expression of the will of the people: the legitimacy of legislative processes is determined by the presumption that their outcomes are valid in the sense that they truly accommodate the interests of all concerned, and hence by the degree to which they are open to the influence of public debates in which all interested groups ideally have equal opportunities to shape public opinion. Moreover, since legal-political debates are addressed in the first instance to a specific citizen body, they involve, in addition to moral issues of concern to citizens simply as human beings and pragmatic issues that affect their material interests, ethical-political questions that bear on shared values and conceptions of the good life. If a body of citizens is to form a political community in a stronger sense than a universal community of world citizens, therefore, their democratic practice must be nourished by a political culture that reflects their distinctive traditions and values and can foster identification and loyalty to this particular constitutional project.³⁹

The legal-political debates in which citizens try to reach agreement on shared conceptions of the common good are unavoidably shaped by their particular religious beliefs and cultural memberships.⁴⁰ If democratic deliberation is to be genuinely open and inclusive, therefore, the constitution must guarantee all groups cultural rights that enable their members to cultivate their particular identities and give expression to the values that inform them, just as it must grant them welfare rights that enable them to enjoy the 'fair value' of their individual liberties. Democratic politics must take the form of a 'politics of recognition' that protects the integrity of individuals in the life contexts in which their identities are formed.⁴¹ But the price of participation in a politics of recognition in a pluralistic society is that, in seeking recognition for their distinctive culture and identity, members of religious, ethnic and other cultural groups expose themselves to the corresponding demands for recognition of other groups, and hence to the pressure to revise intolerant and discriminatory aspects of their own self-understanding. In this way a democratic political culture can shape the identities of its members to its universalistic principles by fostering mutual respect for the identities and cultures of others.⁴²

Democratic deliberation, thus understood, can function as the medium through which members of diverse subgroups come to identify with the shared constitutional project and its culture, provided that they can recognize the latter

as compatible with equal recognition of their distinctive identities and cultures. A collective identity grounded in the shared political culture can win the allegiance of members of diverse religious and cultural subgroups without subsuming their distinctive identities and cultures into a homogenous national culture that effaces their differences. The system of rights frees individuals to pursue their self-realization through their individual life plans and memberships and also to make whatever use they want of their liberties, including opting out of the political process. The integrity of a deliberative democracy is not contingent on everyone giving priority to his or her citizen identity, though it does presuppose a sufficient level of commitment to the political process on the part of the citizenry as a whole. A vibrant public sphere provides a counterweight to the unconditional demands for loyalty traditionally raised by the nation-state because the cultural reproduction of society becomes increasingly detached from the state organization. The decentred character of a democratic collective identity, a reflection of the spontaneous, anarchic character of democratic discourse, is tailored to the decentred identities of modern subjects because it allows for plural identifications.⁴³

4. Response to Criticisms: Narrativity, the 'Demos', and Postnationality

Whether the foregoing actually constitutes a viable model of political identification can be judged by examining how it could deal with the three main lines of criticism outlined in the first section of this paper. (1) The first objection was that commitment to democratic constitutional principles alone, whether understood in formal or in procedural terms, cannot ground a distinctive identity or loyalty to any particular polity. But whereas the theory of constitutional patriotism rejects the assumption that political identification must be founded on belief in a shared *prepolitical* cultural identity, it does assume that democratic constitutional projects must be rooted in the traditions and values of particular political communities if they are to continue to secure the loyalty of members of these communities. The traditions and values in question are not viewed as fixed contents, however, but as open to transformation in the medium of democratic discourse; they retain their vitality and meaning for members by being continually reinterpreted both in response to specific political challenges, such as integrating minorities or immigrants, and to cultural developments not directly related to politics, such as those in the arts. Though it does not have fixed contents, such a politically constituted identity can possess the kind of coherence and specificity proper to a culturally and historically situated interpretive practice. When faced with dilemmas that challenge established conceptions of identity, citizens must seek to reinterpret their history, traditions and self-understandings in ways that preserve their integrity, though certain traditions may have to be renounced as inconsistent with requirements of justice.

One way in which discursive practices can confer continuity on a society's collective identity over time is by representing its various shapes as stages of an

unfolding historical narrative, so that they can be understood as successive manifestations of *the same* identity.⁴⁴ In reinterpreting their history – for example, to grant due recognition to the contributions of previously denigrated groups such as women or minorities – citizens can recount important historical events and developments from the standpoint of the excluded or oppressed; if successful, this could inspire both identification on the part of groups previously alienated from the dominant majority culture and a more inclusive sense of solidarity in erstwhile dominant groups. The unity and coherence of an unfolding narrative does not depend on any contents remaining fixed but on revision taking forms that preserve the integrity and continuity of the narrative as it is revised. There is no conflict between substance and procedure here because the discourses that sustain the process do not operate in a cultural and historical void; as part of a constitutionally entrenched system of political institutions, they are nourished by the democratic impulses that citizens acquire through their political socialization. Public discourse and the narratives it produces are indeed prone to ideological distortion and subversion; but the deliberative model has the capacity to counteract ideological influences because it requires that the preconditions for free and open discourse, in which groups harmed by such distortions can voice their concerns, be legally secured.⁴⁵ Representations of collective identity can make a credible claim on the allegiance of all citizens (though not necessarily of all in the same degree or in the same way) provided that the historical narratives of which they are a part are progressive by democratic standards, not in the sense of converging on an ideal but of the increasing inclusion and recognition of previous oppressed or marginalized groups.

None of this implies that some social groups might not reject the project of elaborating a shared identity altogether. Minorities who have suffered injustices at the hands of the majority may reject the shared identity offered them as humiliating and instead embrace an oppositional identity based on a separatist narrative. In the case of national minorities and indigenous peoples a multinational federation or secession may even represent a superior aspiration from the point of view of justice. However, the main issue for our purposes is whether an identity founded on a democratic constitutional project can inspire forms of identification and patriotism of comparable or superior integrative power to those based on belief in shared nationality. Insofar as a constitutional project can be viewed as a shared activity or practice, it represents at least as plausible a source of identification and solidarity as belonging to an imagined prepolitical community. There is ample evidence from empirical social psychology that participation in shared tasks can generate a strong sense of solidarity even when those involved are not aware that they share any prior cultural, social, or ethnic commonalities. Correspondingly, insofar as citizens view themselves as engaged in a shared practice of self-rule, this can itself become a source of mutual identification and solidarity, even when they are divided by class, culture, or religion. It is, of course, dangerous to extrapolate from the behaviour of individuals in small groups in which they can form direct

personal relations to the dynamics of mass societies. But it seems likely that the solidarity-generating power of shared activities depends less on the size of the group than on whether participants believe that these activities are truly cooperative and mutually beneficial; hence a democratic process can indeed promote social cohesion provided that a sufficient proportion of the citizens regard it as largely fair and in their interest, or, if not, at least as providing them with genuine opportunities to make it more just and equitable.⁴⁶ And whereas existing injustices and inequalities may inspire apathy rather than identification, as long as citizens possess effective political rights they must regard the political culture as in part their own creation and acknowledge some responsibility for its parlous state. Thus the inevitable imperfections of existing democracies are not in principle a bar to political identification and commitment provided that the constitution is understood in procedural terms as an on-going project.⁴⁷

It is true, however, that constitutional patriotic identification will find expression in different more complex forms of political affect than those associated with nationalist patriotism. As identification with the polity becomes conditional on its securing a more extensive range of individual rights and providing opportunities for pursuing more diverse conceptions of individual interest, and as political identities lose their presumption of primacy and are relativised by a plurality of sub- and supra-national memberships, so too patriotic feeling must become more complex, encompassing a range of emotions beyond simple pride in one's country. Constitutional patriotism may find expression in a sense of shame or anger at discrimination toward minorities or immigrants, for example, or in a heightened sense of responsibility for global injustices in light of the awareness that one's country occupies a position of privilege in a radically unequal global political and economic order. Instead of a redirection of political affect from one object to another (i.e. from the nation to the constitution), therefore, constitutional patriotism implies its transformation into more complex forms.⁴⁸

(2) The strong connection I have made between constitutional patriotism and democratic proceduralism make seem to exacerbate the circularity objection raised by Yack and others: is constitutional patriotism not ultimately parasitic on a prior, *prepolitical* definition of the people or *demos*, since a democratic project could get off the ground only if its prospective members identified themselves as belonging to the same people on the basis of shared cultural characteristics? This objection can be read either as making an empirical point about the historical origins of modern democracies or as making a conceptual point about democracy as such. Understood in the former sense – namely, that belief in shared nationality was necessary for modern democratic institutions to take root – Habermas, as we have seen, grants the point. However, he rejects the conceptual claim that democratic self-determination presupposes a prepolitical definition of who belongs to the *demos*, and hence that it is synonymous with national self-determination. This nationalist myth of origins can be dispelled once we recognize that the definition of the *demos* is open to reinterpretation as the democratic constitutional project unfolds. The *demos* as the subject of democratic

self-determination cannot be thought of as fixed or given at any particular moment in the unfolding of the constitutional project. Even where democratic constitutions can be traced back to a founding act, as in the American and French cases, the identity of 'the people' or 'third estate' in whose name the founders claimed to be speaking was defined only in general terms. In the course of their subsequent history, the meaning of 'the people' has undergone periodic reinterpretations as legal and cultural definitions of citizenship have changed. The *demos*, therefore, cannot be regarded as a concrete entity whose identity over time is fixed but should be seen instead as the imagined subject of the historical process of democratic self-rule that can never be fully represented, in either the cultural or the political sense.⁴⁹ Since no cultural representation of collective identity can ever count as final, the definition of who qualifies for citizenship may expand or contract over time. In a democracy no individual, party or movement can claim to represent the will of the people without qualification, since all legislative and administrative programs must remain open to revision in light of the people's shifting understandings of its history and identity.⁵⁰

Yack's more general critique of contractualist accounts of democratic legitimacy seems to rest on an overly literal understanding of the idea of the social contract, which leads him to interpret the idea of popular sovereignty in reductive terms. Historical democracies were not established in a state of nature in which stateless individuals first had to identify those with whom they could enter a civil condition,⁵¹ they arose out of peaceful or violent constitutional revolutions of those opposed to an existing monarchical, colonial, or authoritarian regime who were united by one or more of a range of factors, such as subjection to an existing state or regime, incipient nationalism, religion and ethnicity. Once democratic institutions gain a foothold, the idea of popular sovereignty does not necessarily encourage citizens to think of themselves as members of a cultural community that is logically and historically prior to the political community, as Yack alleges.⁵² On the contrary, if popular sovereignty is understood procedurally, citizens can regard their shared political identity as something they themselves construct.

(3) Finally, there is the question of whether Habermas's distinction between political and subpolitical social integration is practically tenable and, in particular, whether the shared political culture founded on the constitution can be sharply distinguished from the majority culture in a democracy. Some of Habermas's statements give the impression that the transition from a nationalist to a 'postnational' constitutional order entails a radical break with national political traditions. Indeed, the term 'postnational' suggests that constitutional democracies must lose all of their national cultural peculiarities if they are accommodate cultural and religious pluralism fully and turn their back on their chauvinistic pasts. But this picture of radical political-cultural discontinuity is difficult to reconcile with the institutional prerequisites of deliberative democracy, in particular with the existence of vibrant public spheres in which national languages are likely to remain the primary medium of communication. As long as German remains the medium of public communication in Germany,

for example, its political culture will be nationally 'marked' and increased political participation by its large ethnic minorities will depend on their becoming proficient in German, thereby assimilating elements of German national culture. At times Habermas draws a strong contrast between the political integration of citizens based on allegiance to the universal norms of the constitution and their 'ethical' integration into religious and other groups on the basis of values and ideals of the good that others cannot be expected to share. Yet at other times, as McCarthy points out, he speaks of the unavoidable 'ethical permeation' of political culture, thereby acknowledging that the legal and political cultures of democracies are inevitably shaped by particularistic values and conceptions of the good that reflect the traditions of their major component groups.

Faced with this apparent ambivalence in his accounts, Habermas's interventions in German political debates offer a more nuanced picture of what he understands by the transition from a nationalist to a constitutional political culture. They suggest that a constitutional political culture and the corresponding collective identity should be seen as 'postnationalist' rather than 'postnational', in the sense that they would reject chauvinistic interpretations of national identity while preserving a distinctive national character.

5. The Historians' Debate: A Case Study in the Proceduralisation of Identity

Habermas's interventions in German social and political debates provide valuable insights into what constitutional patriotism means in practice. On the position defended here, they can be seen as self-conscious attempts to loosen the hold of substantive, chauvinistic conceptions of German identity on the national political imaginary, thereby contributing to the proceduralisation of identity.

Perhaps most emblematic in this respect, since it marked his initial embrace of the concept of *Verfassungspatriotismus*, was the so-called Historians' Debate, which Habermas launched with an attack on a number of conservative historians for propagating revisionist interpretations of the Nazi period in writings aimed at a popular audience.⁵³ Though it tended to be submerged by the waves of rejoinders and recriminations that radiated from his polemic, the central issue for Habermas was not the correct interpretation of National Socialism, which he deemed a matter for professional historians, but the use these historians were making of historiography to advance a conservative political agenda. He made this clear in his initial public statement on the topic:

I am interested in whether and, if so, to what extent historical scholarship can still perform the task of ideology planning... I wonder what functions for the formation of ideologies can still be assigned to the human sciences after the end of fascism... First of all, having been torn out of continuities, we are constrained to adopt an exclusively reflexive relation to the past; but in that case every interpretation yields an ambivalent picture of tradition. Second, now we can assimilate traditions

only in light of just those universalist normative orientations that were violated in such an unprecedented fashion at that time. And third, we must live with a dynamic, antagonistic pluralism of interpretations of our own history..., which assumes that the historical consciousness of the whole population must now take a decentred form.⁵⁴

These remarks recapitulate the themes of reflexivity, the critical assimilation of tradition and the decentring of historical consciousness that have featured centrally in our examination of the concepts of constitutional patriotism and posttraditional collective identity. In recounting the German defeat by the Red Army exclusively from the perspective of the German soldiers and officers on the Eastern Front,⁵⁵ for example, or in arguing that the Nazi crimes were not unique but differed from earlier genocidal pogroms only in the 'technical procedure of gassing',⁵⁶ the revisionists were attempting to re-establish an undivided relation of Germans to their past by relativising the Nazi period and reaffirming allegedly unbroken traditions extending before and after that period.⁵⁷ For Habermas this represented an illegitimate attempt to reconstitute a conventional national identity by harnessing history for the purposes of nationalist identity creation. But the instrumentalisation of history is inconsistent with the methodological canons of historiography, which forbid the subordination of historical interpretation to the imperatives of nation-building, and with the ethos of public debate in a democracy, in which all traditions must be opened up to criticism and academic experts cannot simply prescribe generally valid interpretations of national history for popular consumption.⁵⁸

It was the danger that public political discourse in West Germany might be short-circuited by the reinvesting of national myths with binding meaning, thereby conferring a false legitimacy on the neoconservative agenda of the Kohl regime, that led Habermas to launch his polemic. And it was in response to the claim of neoconservatives that an integral national identity was indispensable for a functioning democracy that he embraced the idea of constitutional patriotism. Particularly instructive for our concerns are the arguments in which he fleshed out this idea in addressing the questions of what responsibility Germans should continue to accept for the Nazi atrocities and of how the post-war orientation of the Federal Republic to the West should be understood.

Karl Jasper's important distinction between the personal guilt of the perpetrators and the collective liability of bystanders, he argued, has lost its immediate relevance to the question of German guilt because both perpetrators and bystanders are quickly dying off. What nevertheless remains true for later generations is that they too 'grew up in a form of life in which *that* was possible'. Somewhat ironically, Habermas invoked the idea of a historically rooted communal identity, but for purposes diametrically opposed to those of the neoconservative advocates of tradition:

Our own life is linked to the life context in which Auschwitz was possible not by contingent circumstances but intrinsically. 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. None of us can escape this milieu, because our identities, both as individuals and as Germans, are indissolubly interwoven with it.⁵⁹

This striking passage, which might easily be read as supporting a substantive rather than a procedural conception of German collective identity, implies that contemporary Germans bear a special responsibility to preserve the memory of the victims of Auschwitz precisely in virtue of the continuity between their identity and that of their forbears. The political significance of this claim becomes evident once we ask what can count as an *authentic* German identity after Auschwitz. Contemporary Germans who had no personal involvement in the Nazi crimes might simply reject any responsibility by denying continuity with the Nazi regime, as the communist regime in East Germany tried to do; but apart from the familial and local ties to earlier generations invoked by Habermas, this would require a false interpretation of the political history of the Federal Republic as a completely new beginning – a democratic constitutional state built out of the rubble, but not on the foundations, of the German Reich. But, of course, post-war German democracy was not the result of a collective act of self-determination but of the imposition of a democratic constitution by the Allies.⁶⁰

This brings us to the question of how Germany's post-war turn to the West should be understood. For Habermas's neoconservative adversaries, the national 'shame' of an imposed constitution continues to cast a shadow over the Federal Republic that can only be dispelled by an interpretation of Germany's post-war orientation to the West in terms of an anticommunist alliance with NATO based on national self-interest.⁶¹ By contrast, Habermas defends a constitutional patriotic interpretation of the turn in terms of commitment to the basic rights and political principles of constitutional democracy. Auschwitz and the Allies' imposition of a democratic constitution represent both obstacles and opportunities on the path to such an interpretation. Auschwitz stands as a grim reminder of how shallow the historical roots of respect for human rights are in German political culture, whereas the absence of an indigenous democratic revolution bars the way to an interpretation of the German constitution as a genuine expression of collective autonomy.

But these obstacles can be overcome provided that the constitution and German identity are understood in *procedural* terms. Regardless of how the constitutional project got started, the public deliberation that forms its core provides a medium in which citizens can autonomously transform their relation to their past in the course of translating constitutional principles into law. Collective autonomy is not realized once and for all through a revolutionary founding act but through engagement in the practice of democratic self-rule. It is a matter for German citizens themselves to determine through this practice which of their traditions they want to preserve, and whatever understandings of their identity emerge from this process can claim authenticity provided that they

promote democratic inclusion. Thus on the procedural interpretation of constitutional patriotism democratic deliberation itself becomes the indispensable medium in which Germans can forge a rational collective identity, i.e. one that is at once authentic, in that it acknowledges historical continuities, and morally defensible. It is only through the critical appropriation of its history in the practice of self-government that the German political community can overcome the tyranny of a traumatic past. Ironically, the moral evasions and historical revisions advocated by neoconservatives in the name of shaking off the Nazi past would instead ensure that future generations would remain subjected to its tyranny and that the repressed would continue to return in the shape of anti-Semitism and xenophobia.

6. Conclusion: Toward a *Postnationalist* Identity

Habermas's interventions the Historians' Debate might best be described as those of a *German* constitutional patriot. This formulation may seem paradoxical in light of connection he makes between constitutional patriotism and a 'postnational' identity. Indeed, from his work on individual and collective identity onward, Habermas has consistently associated the idea of a rational collective identity for posttraditional societies with cosmopolitan conceptions of citizenship and sovereignty that uncouple them from national membership and national self-assertion. However, I want to argue in conclusion that the gradualism implicit in his democratic proceduralism implies that 'postnational' is something of a misnomer and that constitutional patriotism would be better characterized as *postnationalist*.

On the proceduralist model of democracy, the rights constitutive of citizenship are represented as being implemented gradually within a historically unfolding and self-correcting constitutional project; it is only in the course of a protracted, conflictual and sometimes bloody history that the transformative potential encapsulated in bills of rights can gradually come to shape the identities of citizens and the political culture that sustains their practice of self-government. Egalitarian and pluralistic democracies could not conceivably have sprung from the ground fully-formed without protracted social struggles in which marginalized groups gradually became politically enfranchised and achieved higher levels of substantive equality.⁶² It was inevitable given the functional imperatives of the modern state that modern democracy would enter into an uneasy alliance with forms of nationalism built on whatever existing cultural commonalities could be appropriated by ruling elites to mobilize support behind ambitious regulatory programs. Habermas is surely correct that there was no necessary *conceptual* connection between democracy and nationalism; however, their historical, social-psychological interdependence may be deeper than the concepts of postnational, cosmopolitan citizenship and identity suggest. Indeed given the residual element of Hegelianism in his account of identity, it is reasonable to assume that the transition to culturally pluralistic, cosmopolitan political

identities that cast off the chauvinistic particularism of traditional forms of nationalism will have to take place within national polities, hence in the context of constitutional projects that retain distinctive national characteristics.

In a world of historically, territorially and institutionally distinct societies, cosmopolitan citizenship cannot mean unmediated membership in a global polity, since one does not as yet exist, nor can it require that citizenship of existing democracies be opened up to anyone who wants it (currently open borders are, at best, a distant prospect). A cosmopolitan extension and enrichment of the meaning of citizenship, by contrast – which is what Habermas is surely advocating – implies adopting asylum and immigration policies that respect the human rights of those who seek residence and membership, coupled with a willingness to grant them substantial cultural rights in determining the terms of integration and citizenship. Correspondingly, a cosmopolitan extension of sovereignty does not necessarily require the dissolution of nation-states but the construction of transnational and supranational constitutional orders, perhaps on the model of the European Union, in response to problems of international and global justice that even the most powerful and wealthy states cannot resolve alone. These developments are compatible with the continued existence of nationally distinct democratic states, each with its own constitution and more or less discreet citizenry. However, they are not consistent with *nationalist* interpretations of citizenship and sovereignty, where these imply a systematic privileging of one's own form of life simply because it is one's own.

There is nothing in Habermas's conceptual and historical analysis of nationalism, national identity and the nation-state that excludes the possibility that nationally distinctive political cultures can foster cosmopolitan conceptions of citizenship and sovereignty. Indeed he seems to affirm this very possibility when he asserts that 'the idea of the nation-state that emerged from the French Revolution had a thoroughly cosmopolitan meaning... This cosmopolitan element must be revived and further developed today, in the direction of multiculturalism'.⁶³ The point is not that national states with their historically distinctive interpretations of basic rights must be superseded, but that their conceptions of citizenship must be pluralized and their legal systems and borders must become permeable to the legitimate claims of immigrants and non-citizens.

In conclusion, the procedural conception of identity that I have advocated in this paper does not provide the kinds of security and reassurance that nationalism seems to promise. An identity that frankly acknowledges historical contingency, mutability and cultural pluralism does not offer the consolations of unreflective identification that make nationalism so attractive: it does not promise emotional tranquillity in the restless modern search for identity nor the transcendence of individual mortality implied by membership in a transhistorical community. But the history of nationalism demonstrates, if anything, that the emotional tranquillity and security promised by ethnocultural identities were purchased at the price of gross injustices against groups stigmatised as aliens or enemies, and were in any case often illusory because they fostered uncritical

identification with sometimes ruinous national causes. A conception of identity that makes commitment to a democratic constitutional project central to identification, by contrast, acknowledges that secure identification in culturally pluralistic societies and in an increasingly interconnected world is possible only in a form that respects the rights of all human beings, not just fellow-citizens, and the equal right to coexist of all cultural forms of life that are not predicated on the destruction or denigration of others.⁶⁴

Ciaran Cronin
 Department of Philosophy (M/C 267)
 University of Illinois at Chicago
 601 South Morgan Street
 Chicago, IL 60607-7114
 USA
 cpcronin@uic.edu

NOTES

¹ See Miller (1995), Kymlicka (1995), Canovan (1996).

² See Viroli (1995), Ingram (1996), Barber (1996), Mason (1999).

³ Habermas (1989), pp. 253–4. Cf. Gellner (1983) who posits an interconnection between the process of industrialization, the resulting need of the modern state for a skilled and mobile workforce, and the spread of nationalism.

⁴ Habermas (1990b), p. 495. Cf. Habermas (1998), pp. 111–2.

⁵ Hobsbawm (1990) and Anderson (1991), among others, have argued that a crucial role in the construction of nationalism as a form of political identity was played by cultural producers who ‘invented’ the traditions and promoted cultural commonalities that enabled individuals to imagine themselves as members of large anonymous communities. But this process of invention was successful only where cultural producers could draw upon pre-existing ethnocultural commonalities (cf. Schulze (1996), Smith (1999)).

⁶ See Habermas (1998), pp. 109–10.

⁷ See Habermas (1998), pp. 111–14. On the double meaning that freedom and self-determination take on under nationalism, see Habermas (1989), pp. 254–5. The history of German nationalism represents an extreme example of the discriminatory potential of an ethnocultural definition of the nation.

⁸ See Habermas (1990b), p. 495; Habermas (1998), pp. 114–7.

⁹ Habermas (1990b), pp. 497–8. As a historical matter, the concept of citizenship has undergone a shift in meaning from membership in a state recognized in international law to a status defined by civil rights and duties (*ibid.*, pp. 496–7).

¹⁰ Cf. Ingram (1996), p. 2.

¹¹ See Habermas (1988), pp. 487–90; Habermas, (1990b), pp. 499–500. Cf. Habermas (1998), p. 118: ‘The political culture of a country crystallizes around its constitution. Each national culture develops a distinctive interpretation of those constitutional principles that are equally embodied in other republican constitutions – such as popular sovereignty and human rights – in light of its own national history. A “constitutional patriotism” based on these interpretations can take the place originally occupied by nationalism.’

¹² Voluntariness is understood here in the first instance in collective rather than individual terms. In conceptualising how a political community can be viewed as a voluntary association, constitutional patriotism gives priority to collective self-determination over individual choice and consent, and hence does not rest on a 'myth of consent' (cf. Yack (1999), pp. 104, 106ff.).

¹³ This distinction becomes particularly urgent when it comes to integrating immigrants whose religious traditions and cultural practices diverge significantly from those of the majority and to accommodating the claims to recognition of national minorities and indigenous peoples. In the case of immigrants, for example, a democratic state can demand only their *political* acculturation, not that they must adopt the culture and values of the majority, and hence must avoid the assimilation of the political culture to the majority culture. See Habermas (1990b), pp. 513–4; Habermas (1998), pp. 118, 159–60, 225–6.

¹⁴ See Kymlicka (1995), p. 200, n. 15; Miller (1995), pp. 162–5. Canovan (1996, p. 88) is not alone in seeing *Verfassungspatriotismus* as an 'abstract' and 'bloodless' ideal, although she acknowledges that Habermas's version of constitutional patriotism rests on a substantive conception of republicanism (*ibid.*, pp. 92ff.).

¹⁵ This is to take constitutional patriotism as an example of what Markell (2001, p. 39) aptly calls the 'strategy of redirection' whereby advocates of civic nationalism try to evade the chauvinism of ethnonationalism by redirecting attachment and sentiment away from ethnocultural commonalities toward liberal-democratic principles and values. The strategy of redirection fails to resolve the tension between universality and particularity (though Markell argues that Habermas ultimately eschews this strategy).

¹⁶ Yack (1999), p. 108. For example, Yack believes that Habermas cannot explain or justify German reunification without recourse to the idea of a 'prepolitical community of shared memory and history', a concern echoed by Canovan (2000, pp. 423–4), and Viroli (1995, p. 175).

¹⁷ Only on this assumption can citizens identify those whose arguments they should take seriously in democratic deliberation (Yack (1999), pp. 108–9). A forceful variant of this circularity objection is offered by Canovan who argues that a polity that manifests the kinds of liberal virtues Habermas prizes needs to be underpinned by a 'people' or 'trans-generational political community' who recognize the state as 'our' state 'and thereby confer upon it the legitimacy and power it needs' (Canovan (2000), pp. 422, 426–7).

¹⁸ See McCarthy (2002), pp. 254–5. McCarthy further argues that the 'neutrality' of political culture vis-à-vis internal ethical differentiations is not the appropriate concept to capture what is at issue, 'which is rather impartiality or fairness in the sense of equality of respect, treatment, and opportunity to participate in the political process' (*ibid.*, p. 257). Cf. McCarthy (1996).

¹⁹ Cf. Habermas (2001a), p. 28.

²⁰ Habermas's fullest account of the relation between individual and collective identity appears in the important essay, 'Können komplexe Gesellschaften eine vernünftige Identität ausbilden?' ('Can Complex Societies Form Rational Identities?') (1976); an earlier, abridged version appeared in translation under the title 'On Social Identity' (1974) (however, translations from the 1976 essay are my own). This essay remains essential for understanding his treatment of nationalism and political culture, since his most important subsequent writings on identity (Habermas (1979, 1990a, 1992a, 1993a)) have focused on individual rather than collective cognitive- and moral-psychological development.

²¹ Societies, of course, are not only symbolic structures but also institutional complexes pervaded by relations of power that are also reproduced by coercive mechanisms and, in the modern world at least, through impersonal institutions such as markets and bureaucracies whose operations do not rely on shared interpretations. Identities too are shaped by power, since power entails the ability to impose or influence interpretations of social reality, and collective identities are as a consequence subject to distortions and pathologies, a topic I cannot explore further in the present context.

²² Habermas (1976), pp. 93–4. The identity of the group ‘transcends’ the life histories of its members only in the temporal sense of outlasting their life-spans, not in the sense that it exists independently of their interpretive acts.

²³ See Habermas (1993a). This is a highly schematic reconstruction of a complex process that may break down in various ways, resulting in pathologies of identity. It assumes that that each of the practical-cognitive components of mature moral personality (which can be broadly correlated with self-interest, self-realization and self-determination) represents an analytically distinct aspect of practical rationality that can exercise motivating effects provided that it is successfully integrated into the individual’s personality.

²⁴ Habermas sometimes speaks of ‘postconventional’ collective identities (e.g. Habermas (1989), p. 227); but in order to avoid misleading assimilations of the individual and collective levels he generally uses the term ‘posttraditional’ in connection with the cultures and identities of modern societies.

²⁵ Habermas distinguishes four stages of social evolution: archaic societies, early civilizations, advanced civilizations and modern societies. Legitimation problems become acute at the stage of advanced civilizations when a gap opens up between the need for legitimation of monarchical political systems and the universalistic moral beliefs of the world religions, a gap that had to be bridged by ideologies (Habermas (1976), pp. 97–101; cf. Habermas (1974), pp. 91–4).

²⁶ Habermas (1976), p. 107. Habermas is here distancing himself from Hegel’s answer to the question of whether under modern conditions ‘some subsystem can replace the religious system such that in it a complex society as a whole can be represented and integrated into a unified normative consciousness of all members of society’ (*ibid.*). For Hegel, idealist philosophy and its expression in the modern state constituted such a system. For Habermas, no such reconciliation is possible: neither philosophy nor the state can provide modern societies with a unifying core; a radically different kind of social unity must be generated that can accommodate irreducible value and cultural pluralism, one which must be understood in *procedural* terms.

²⁷ Habermas (1976), p. 116 (emphasis added). Cf. Habermas (1974), p. 99, which continues: ‘Here the individual is no longer confronted by collective identity as a fixed objectivity on the basis of which self-identity can be built. Rather, individuals are the participants in the shaping of the collective will underlying the design of a common identity.’ Thus both individual and collective identity become in a sense procedural matters that gain their coherence from a practice of self-creation rather than a fixed content.

²⁸ A debate constitutes a learning process when it is informed by standards of rationality in light of which it can be reconstructed retrospectively as progressing toward truer or more valid results.

²⁹ See Markell (2001), p. 42 (drawing on Habermas’s discussion of Mead in Habermas (1992b), pp. 182–8).

³⁰ In this respect Habermas's account of cognitive- and moral-psychological development remains true to the Hegelian model of *Aufhebung*, on which earlier stages in the development of subjective and objective spirit are preserved within a more rational constellation as they are overcome (cf. Hegel (1991), p. 60).

³¹ Habermas (1976), p. 117 (emphasis added); cf. Habermas (1974), p. 100.

³² Habermas (1976), p. 111; cf. Habermas (1974), p. 98.

³³ Habermas (1976), p. 116; cf. Habermas (1994), p. 99.

³⁴ See Habermas (1996), pp. 111ff. Positive law is functionally indispensable for regulating social relations in modern mass societies because it alone can render interactions among strangers sufficiently predicable and secure by instituting a public and coercive system for impartially adjudicating conflicts.

³⁵ Cf. Habermas (1996), pp. 122–3.

³⁶ Thus the procedural theory of democracy represents an attempt to synthesize the insights of both the liberal and the republican traditions. See Habermas (1998), pp. 239–52.

³⁷ See Habermas (1996), pp. 414–27, on the dialectic of formal and factual equality.

³⁸ The discursive principle of normative legitimacy states that: 'Just those norms are valid to which all possibly affected could agree as participants in rational discourses' (Habermas (1996), p. 107). Applied to legal norms this yields the democratic principle that 'only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted' (*ibid.*, p. 110).

³⁹ See Habermas (2001a), pp. 107–8.

⁴⁰ In contrast with Rawls's (1999) conception of the public use of reason, democratic deliberation does not require participants to stand back from their commitments to particular 'comprehensive' religious or metaphysical doctrines and formulate their contributions in terms that are acceptable to others. It is not tied to the subjectivity or rationality of individual participants or groups, but exhibits an impersonal or anonymous kind of rationality bound up with its reflexive character: every opinion and viewpoint has an equal chance of finding expression; but, equally, every contribution is open to criticism and must convince others if it is to exercise influence.

⁴¹ See Habermas (1998), pp. 208, 216–9, 221–2.

⁴² The revisions in the cultural self-understandings of individuals and groups required by a democratic political culture must ultimately come about through the uncoerced creative and interpretive acts of the groups themselves, rather than being imposed by administrative means; otherwise they will not be accepted as authentic by their members. This is a precarious process that is prey to defensive reactions when members feel that their identities are threatened.

⁴³ However, it runs up against its limits in the case of fundamentalist religious groups or ideological movements that are intolerant of other viewpoints and seek to suppress them by coercive means. See Habermas (1998), pp. 223–4.

⁴⁴ I am indebted to a paper of Cillian McBride, 'National and Citizen Identities', delivered at the Joint Sessions of the European Consortium for Political Research in Turin, March 22–27, 2002, for some of the ideas in this and the following paragraph.

⁴⁵ Here, as elsewhere, there are no guarantees. How successful a discursive public sphere is in counteracting ideologies depends in part on how well the social institutions that support it – the education system, pluralistic and open media, transparency of government, etc. – are legally protected. As a coercive institution, the law can undermine as well as promote the integrity of public discourse, and thereby the legitimacy of the whole legal-political system. But the interdependence of law and public discourse would only become a vicious circle if citizen's political rights were so hollowed out by repressive

legal constraints that public opinion ceased to exert any influence on a self-programming governing elite.

⁴⁶ Habermas has recently argued that patriotic attachment and social solidarity in a posttraditional society is conditional on democratic citizenship 'paying off' in terms of social, ecological and cultural rights, in addition to civil and political rights (Habermas (2001a), p. 77).

⁴⁷ The proposed response to the first objection admittedly rests on empirical conjectures concerning how coherent collective identities could be fostered by a deliberative democratic political culture. For present purposes, however, it suffices to show that the procedural conceptions of identity and culture that inform constitutional patriotism are at least as plausible as the prepolitical conceptions of identity and culture on which the objection implicitly relies.

⁴⁸ For an illuminating discussion of the pluralization of political affect implied by constitutional patriotism, see Markell (2001), pp. 54ff.

⁴⁹ See Markell (2001), p. 50. Much the same response could be made to Canovan's claim that the state must draw its legitimacy and power from a specific historical 'people' who recognize the state as their own (cf. above n. 17). The question is how this 'trans-generational political community' is to be identified over time. Since national identities are in part artificial constructs, existing democratic political communities can reconstitute their identities around allegiance to inclusive and egalitarian democratic procedures, and thereby make their shared political culture hospitable to cultural pluralism. In other words, 'the people' is a shifting signifier whose meaning is defined anew by each new generation. This, at any rate, is the possibility envisaged by constitutional patriotism.

⁵⁰ In general, Habermas argues that it is a mistake to look for a normative answer to the question of the composition of the *demos* in terms of a presumed right of national self-determination. The question of boundaries is largely a matter of historical and geographical contingencies that have no bearing on the legitimacy of a democracy (Habermas (1998), p. 115; cf. Ingram (1996), pp. 7–8).

⁵¹ Habermas's version of the contractual thought experiment – that of participants in an unconstrained discourse arguing about what rights they must grant one another if they are to regulate their coexistence legitimately by means of positive law – is not, strictly speaking, a contractualist one at all since it does not involve the idea of an explicit or tacit voluntary undertaking to submit to a legal order. Thus it differs from hypothetical consent models (cf. Ingram (1996), p. 6), which cannot explain why laws that 'all free and equal persons could in principle endorse' are binding on you and me. Legitimacy flows from the integrity of the deliberative process, not from an implicit contract.

⁵² Yack (1999), p. 109; see also his elaboration of this idea in Yack (2001).

⁵³ Habermas's principal contributions consisted of a series of articles published in the German liberal weekly *Die Zeit* in 1986 and 1987 – 'Apologetic Tendencies', 'On the Public Use of History' and 'Closing Remarks' – and a lecture, 'Historical Consciousness and Post-Traditional Identity', delivered in Copenhagen on May 14, 1987 (collected in Habermas (1987), pp. 120–179; English translations: Habermas (1989), pp. 212–267). A fine analysis of the debate can be found in Torpey (1988) and an excellent account of Habermas's concerns in Holub (1991), pp. 162–189. Two contrasting accounts from the perspective of academic historians are Wehler (1988) (a polemic in support of Habermas's position) and Maier (1988) (somewhat more sympathetic to his adversaries).

⁵⁴ Habermas (1989), pp. 209–210 (translation amended). These comments at a colloquium in Frankfurt were a reaction to a newspaper article by one of the chief figures in the debate, Ernst Nolte, '*Vergangenheit, die nicht vergehen will*' ('The Past that Refuses to

Pass Away'). At the beginning of 'On the Public Use of History' Habermas insisted that, despite appearances, his quarrel with Nolte was not over the details of history but over 'the translation into politics of the revisionism in fashion in contemporary historiography, a translation impatiently urged on by the politicians of the right-wing government [of Helmut Kohl]' (Habermas (1989), p. 229) (translation amended). Cf. Torpey (1988), p. 6.

⁵⁵ Habermas criticized Andreas Hillgruber (1986), among other things, on the grounds that his insistence on adopting the perspective of participants in the conflict was methodologically suspect and precluded moral evaluation of German resistance in light of what is known in hindsight (Habermas (1989), pp. 216–20; Habermas (1992b), pp. 237–8; cf. Holub (1991), pp. 166–170).

⁵⁶ With this provocative assertion in a newspaper article (cf. above n. 54), quoted in 'Apologetic Tendencies' (Habermas (1989), p. 212), and the claim that the murder of the Jews was a response to a legitimate fear on Hitler's part that his Bolshevik and Zionist enemies wanted to annihilate him as well (never backed up by credible documentary evidence – cf. Wehler (1988)), Nolte was attempting a much more thoroughgoing revisionism than anything envisaged by Hillgruber.

⁵⁷ Habermas (1989), pp. 235–6; cf. Torpey (1988), pp. 6–9. At the level of history, neoconservatives sought to breath new life into the nationalist myth of the *Sonderstellung* (special place) of Germany as a 'land in the middle' whose geopolitical situation destined it to serve as a bulwark against Asiatic and Bolshevik threats to Western civilization. This myth could be conveniently invoked to justify the West German alliance with NATO as part of a shared opposition to communism.

⁵⁸ A pluralistic historiography is both a methodological imperative and an important support for deliberative democracy. Cf. Torpey (1988), p. 10.

⁵⁹ Habermas (1989), p. 233. Cf. Habermas (2001a), p. 28: 'In their forms of thinking and feeling, their gestures and expressions, and in their ways of seeing, past and present generations are woven together in a tapestry composed of countless cultural threads.'

⁶⁰ In a recent commentary on Daniel Goldhagen's controversial book on the Holocaust, Habermas (2001a, pp. 36–7) asserts a close connection between historical judgments concerning individual and collective responsibility and culpability for the Nazi crimes and contemporary German's ethical-political self-understanding, in particular their understanding of themselves as responsible agents and of their scope for political action.

⁶¹ This 'realist' political ideology could be deployed by neoconservatives at a number of different levels in an attempt to launder Germany's dirty historical linen. The German war effort could be invested with a positive valence that bypasses the issue of mass criminality by portraying Hitler's offensive war as a logical continuation of great power politics, or as legitimate self-defence against age-old British plans to neutralize the Prussian threat in *Mitteleuropa*. And having lost out in this struggle, West Germany could at least claim the consolation prize of being a stalwart member of the Western alliance against communism.

⁶² This process is not complete even in the most well-established liberal democracies; indeed, given the tension between 'facticity' and 'validity' that Habermas takes to be constitutive of the very idea of a legally structured constitutional order, it must be regarded as a never-ending process that can nevertheless exhibit a progressive tendency over time.

⁶³ Habermas (1992b), pp. 240–1.

⁶⁴ Work on this paper was supported by a travel grant from the DAAD and a research fellowship from the Institute for the Humanities at the University of Illinois at Chicago.

REFERENCES

- Anderson, B. (1991), *Imagined Communities*. 2nd rev. edn. London: Verso.
- Barber, B. R. (1996), 'Constitutional Faith', in J. Cohen (ed.) *For Love of Country: Debating the Limits of Patriotism*, pp. 30–7. Boston: Beacon Press.
- Canovan, M. (1996), *Nationhood and Political Theory*. Cheltenham: Edward Elgar.
- (2000), 'Patriotism is Not Enough', in *British Journal of Political Science*, 30, pp. 413–32.
- Gellner, E. (1983), *Nations and Nationalism*. Ithaca and London: Cornell University Press.
- Habermas, J. (1974), 'On Social Identity', in *Telos*, 19, pp. 91–103. (Partial translation of Habermas (1976).)
- (1976), 'Können komplexe Gesellschaften eine vernünftige Identität ausbilden?', in Habermas, *Zur Rekonstruktion des Historischen Materialismus*, pp. 92–126. Frankfurt am Main: Suhrkamp Verlag.
- (1979), 'Moral Development and Ego Identity', in Habermas, *Communication and the Evolution of Society* (trans. T. McCarthy), pp. 69–94. Cambridge, Mass.: MIT Press.
- (1987), *Eine Art Schadensabwicklung. Kleine politische Schriften VI*. Frankfurt am Main: Suhrkamp Verlag.
- (1988), 'Popular Sovereignty as Procedure', in Habermas (1996), pp. 463–90.
- (1989), *The New Conservatism: Cultural Criticism and the Historians' Debate* (ed. and trans. S. Weber Nicholson). Cambridge, Mass.: MIT Press.
- (1990a), *Moral Consciousness and Communicative Action* (trans. C. Lenhardt and S. Weber Nicholson). Cambridge, Mass.: MIT Press.
- (1990b), 'Citizenship and National Identity', in Habermas (1996), pp. 491–516.
- (1992a), 'Individuation through Socialization: On George Herbert Mead's Theory of Subjectivity', in Habermas *Postmetaphysical Thinking* (trans. W. M. Hohengarten), pp. 149–204. Cambridge, Mass.: MIT Press
- (1992b), *Autonomy and Solidarity: Interviews with Jürgen Habermas* (ed. Peter Dews). London: Verso.
- (1993a), 'On the Pragmatic, the Ethical, and the Moral Employments of Practical Reason', in Habermas, *Justification and Application: Remarks on Discourse Ethics* (trans. C. Cronin), pp. 1–18. Cambridge, Mass.: MIT Press.
- (1993b), 'The Second Life Fiction of the Federal Republic: We Have Become "Normal" Again', in *New Left Review*, 197, pp. 58–66.
- (1996), *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (trans. W. Rehg). Cambridge, Mass.: MIT Press.
- (1998), *The Inclusion of the Other: Studies in Political Theory* (ed. C. Cronin and P. De Greiff; trans. C. Cronin). Cambridge, Mass.: MIT Press.
- (2001a), *The Postnational Constellation. Political Essays* (trans. M. Pensky). Cambridge, Mass.: MIT Press.
- (2001b), 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?', in *Political Theory*, 29/6, pp. 766–781.
- Hegel, G. W. F. (1991), *Elements of the Philosophy of Right* (ed. A. Wood; trans. H. B. Nisbet). Cambridge: Cambridge University Press.
- Hillgruber, A. (1986), *Zweierlei Untergang: Die Zerschlagung des Deutschen Reiches und das Ende des Europäischen Judentums*. Berlin: Seidler.
- Hobsbawm, E. J. (1990), *Nations and Nationalism since 1780*. Cambridge: Cambridge University Press.

- Holub, R. C. (1991), *Jürgen Habermas: Critic in the Public Sphere*. London and New York: Routledge.
- Ingram, A. (1996), 'Constitutional Patriotism', in *Philosophy and Social Criticism*, 22/6, pp. 1–18.
- Kymlicka, W. (1995), *Multicultural Citizenship*. Oxford: Oxford University Press.
- Maier, C. S. (1988), *The Unmasterable Past: History, Holocaust, and German National Identity*. Cambridge, Mass.: Harvard University Press.
- Markell, P. (2001), 'Making Affect Safe for Democracy: On "Constitutional Patriotism"', in *Political Theory*, 28/1, pp. 38–63.
- Mason, A. (1999), 'Political Community, Liberal-Nationalism, and the Ethics of Assimilation', in *Ethics* 109, pp. 261–86.
- McCarthy, T. (1996), 'Legitimacy and Diversity: Dialectical Reflections on Analytical Distinctions', in *Cardozo Law Review* 17/4-5, pp. 1083–1125.
- (2002), 'On Reconciling Cosmopolitan Unity and National Diversity', in P. De Greiff and C. Cronin (eds.), *Global Justice and Transnational Politics*, pp. 235–74. Cambridge, Mass.: MIT Press.
- Miller, D. (1995), *On Nationalism*. Oxford: Oxford University Press.
- Rawls, J. (1999), 'The Idea of Public Reason Revisited', in *The Law of Peoples*, pp. 129–80. Cambridge, Mass.: Harvard University Press.
- Schulze, H. (1996), *States, Nations and Nationalism* (trans. W. E. Yuill). Oxford: Blackwell.
- Smith, A. D. (1999), 'Social and Religious Origins of Nations', in D. M. Clark and C. Jones (eds.), *The Rights of Nations: Nations and Nationalism in a Changing World*, pp. 26–44. Cork: Cork University Press.
- Torpey, J. (1988), 'Introduction: Habermas and the Historians', in *New German Critique*, 44, pp. 5–24.
- Viroli, M. (1995), *For Love of Country. An Essay on Patriotism and Nationalism*. Oxford: Clarendon Press, 1995.
- Wehler, H.-U. (1988), *Entsorgung der deutschen Vergangenheit? Ein polemischer Essay zum 'Historikerstreit'*. Munich: Verlag C. H. Beck.
- Yack, B. (1999), 'The Myth of the Civic Nation', in R. Beiner (ed.), *Theorizing Nationalism*, pp. 103–18. Albany, NY: SUNY Press.
- (2001), 'Popular Sovereignty and Nationalism', in *Political Theory*, 29/4, pp. 517–36.