

On Constitutional Patriotism and Its Critics

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Abstract

The world today is ruptured by regressing notions of collective identity, seemingly abandoning the hard-fought progress made during the last seven decades. This development hinges on people's current inclination to relapse into pre-political identities of culture and nation. However, constitutional patriotism suggests that societies are capable of creating identificatory ties between their members without regard to culture, but through common allegiance to shared norms. In this paper, I introduce the reader to this abstractly-sounding concept, and subsequently juxtapose it with the communitarian objection that constitutional patriotism is ipso facto unable to create the 'glue' that holds citizens together. I highlight one example of this criticism and treat it as a stand-in for the general communitarian objection. Finally, I present some arguments countering this criticism, concluding that constitutional patriotism may be the only form of patriotism inclusive enough to cater to the fundamental needs of modern societies.

Keywords

Collective Identity, Constitutional Patriotism, Communitarianism, Habermas, Immigration, Multiculturalism, Norms

Introduction

“Democracy needs some form of citizen-identity for purposes of integration. Individual citizens can be motivated to look beyond what they understand to be in their self-interest and what they understand to be in the interest of their familiars, and to do so for the good of their fellow citizens, who remain to them *strangers*, only if they feel some sense of identification with those strangers: some sense of solidarity with them, some sense of sharing with them in a collective purpose or a collective project.” (Hayward 2007: 182)

As articulated in this formulation of Hayward, one of liberal democracy's greatest tasks is to foster its citizens' goodwill towards its institutions and its internal and procedural mechanisms, which presupposes the widespread acceptance of some sort of solidarity towards co-citizens. Much has been written about how the very existence – or, in some cases, absence – of that solidarity ought to be scientifically and philosophically framed.

In political philosophy, there are, *ceteris paribus*, mainly two counterparts pertaining to this question: liberalism and communitarianism. While these are generic terms that enclose myriad different strains of thought, they can generally be contrasted with each other, since their paradigms are diametrically opposed. Authors like David Miller or Alasdair MacIntyre take the communitarian approach, as they regard common political identity in contemporary liberal democracies as the result of shared culture and common national history (Miller 1998: 47-51, MacIntyre 2003: 287-298).

Contrariwise, recent neo-kantian thinkers, first and foremost Jürgen Habermas, have developed a theory more sceptic towards communitarian emphasis on culture and tradition, the theory of *Verfassungspatriotismus* or constitutional patriotism. Built largely upon the historic background of German re-unification and the at the time almost uncontroversial notion of an ever deeper European Integration, constitutional patriotism articulates the idea that shared culture, understood in an historically ethnic sense, can be insignificant for fabricating a sense of identification with a polity. Much rather, common allegiance to shared ideals, manifested in the context of particular democratic institutions, especially the constitution, can prove to be a significantly more inclusive and potent catalyst for creating a common political identity (Habermas 1992: 1-19).

As one might expect, being a theory that negates the essential point of (post-)modern communitarian political theory, and permits, if not favours, the entangling of nation and state, constitutional patriotism has been exposed to its fair share of criticism. This criticism has been rather diverse, some even criticizing the framework of constitutional patriotism for being prone to abuse by manipulating elites (Hayward 2007: 191).

However, the main criticism is a communitarian one: namely, the accusation that constitutional patriotism fails to provide the 'glue' that binds citizens of a polity to one another. This bond can, according to theorists like Miller, only be supplied by cultural nations. As he puts it,

“Nations are the only possible form in which overall community can be realized in modern societies. Without a common national identity, there is nothing to hold citizens together.”
(Abizadeh 2002: 498)

In this paper, I want to examine the idea of constitutional patriotism in detail and then proceed to take a close look at the criticism mentioned above. In order to make this task feasible, I will at first present this line of criticism generally, and then move on to use the example of one particular paper formulating it, Cecile Laborde's “From Constitutional to Civic Patriotism”. In conclusion, I will present some arguments opposing her view and argue that this line of reasoning does not defeat the notion of constitutional patriotism. However, constitutional patriotism might still be susceptible to other conceptual objections.

Constitutional Patriotism

The concept of constitutional patriotism has emerged mainly as Jürgen Habermas' response to the problem of how people in ever more multicultural and diverse societies aspire to live together, and which political framework exists for all of them to embrace and adhere to. Juxtaposed against German reunification, it is reasonably clear that constitutional patriotism stems from Habermas' contextualized experiences as a citizen in his particular polity, the Federal Republic of Germany (Habermas 1992: 1f.). However, it is intended as a theory that may apply to various polities, even to all liberal democracies. The basic idea is the belief that constitutions of liberal democracies which embody universal norms such as justice, freedom and the recognition of the legitimacy of human rights are substantive in assuring support from citizens for the polity they are part of, and can function for these citizens as a means to generate a common political identity (Ingram 1996: 2). However, theorists proposing the idea of constitutional patriotism do recognize the need for particular (as in particular for a certain polity) institutions to reflect in political praxis the norms introduced in the constitution in order to make them palpable for citizens; thus, constitutional patriotism does not reject all notions of particularism (Müller 2007: 65f.). What is more, constitutional patriotism should not be understood as a static model of allegiance to a constitution, but much rather as a mindset encouraging an ever-ongoing process of deliberation about the specific norms and practices adhered to and practised in a certain society, held together by, as Jan-Werner Mueller puts it, the shared

“[...] idea of citizens conceiving each other as free and equal [which enables them to, note] find fair terms of political cooperation that they can justify to each other.” (Ibid: 55)

This necessity of ongoing discourse constitutes what Mueller calls “a constitutional culture” (Ibid: 56). Thus, that leads us to spot the element of process as the essential subtle drive of the idea of constitutional patriotism. Its postulated ability to gain more and more momentum through the process of deliberation and the praxis of discourse in society is not only what brings the abstract expression of a constitutional culture to life, but also suggests, for constitutional patriots, a decisive merit of their theory: the ability to cross state-boundaries and generate, to quote Mueller again, “normative spillover” and “transnational norm-building” (Ibid: 49). As Habermas, his colleagues and academic followers are known for their consideration of the continuing integration of the European Union, the idea of the momentum of constitutional patriotism should be considered with the background knowledge that its agents most likely constructed this argument with the idea of a European Union with less (even no) boundaries in the back of their heads (Habermas 1992: 10ff.). Nevertheless, it is definitely possible to apply this idea to any polity that is a liberal democracy.

Now, the defining factor and, if actually coherent and applicable, greatest virtue of constitutional patriotism has so far only been implied. It consists in the possibility of creating a post-national identity. To quote Attracta Ingram (1996: 2),

“Citizens are thought of as bound to each other by subscription to these shared values *rather than by the more traditional pre-political ties that nation-states have drawn on as sources of unity.*” (stress added)

Thus, while theorists in favour of constitutional patriotism acknowledge that modern states have largely been founded and developed as nation-states, they also conclude that the modern state *can* be conceived, i.e. is viable, without one particular nation as its foothold (Ibid: 11). This, again, means, that the functioning of a liberal democracy is explicitly not dependent on certain pre-political conditions, such as the existence of a relative homogeneous cultural nation that is shared by the overwhelming majority of citizens, who are tied together by matters of kinship, shared religion or some sense of common cultural history. However, that is not to deny that such cultural nations exist in liberal democracies and can, in fact, spark a sense of common identity among their constituents, but much rather to propose a way of generating common identity that works just as well and, most importantly, represents an ethically justifiable alternative to do so in times of a multiculturalism that demands inclusive efforts of political integration (Müller 2007 87ff., Canovan 2000: 416, 418). Thus, what holds citizens together is no longer necessarily a matter of given pre-political facts unable to be influenced by the individual, but rather the result of a man-made process of deliberation open to all citizens, unaffected by their particular cultural belonging.

Thereby, a modern society uninhibited by pre-political divisions becomes not only conceivable, but, rather, emerges as the most workable option of community-building. As Gregory Hoskins (2012: 65) quite accurately observes,

“Jürgen Habermas' account of 'civic identity' is grounded in the claim that 'consent' constitutes a political people [...].”

As merely implied at the beginning of this section, the great worth of constitutional patriotism as a contribution to the discourse of particularism versus universalism lies in its implication that those notions are not actually as mutually excluding as it may seem, but are in fact reconcilable, or, at least, in some form able to co-exist. It is universal in the aspect that it alludes to norms whose intrinsic worth is the same anywhere on this planet, and particular in insisting that those norms have to be reflected by a particular institutional and deliberative culture engendered over time in some sort of polity (Müller 2007: 59ff.).

This Habermasian proposition of a notion of patriotism built upon universal values may resonate perfectly well with an observer fairly alien to the discourse in contemporary political theory. However, constitutional patriotism has been exposed to plenty of criticisms, the most fundamental and well-argued of which is proposed by communitarians, agents of a line of thought revitalized as a response to the individualistic political philosophy that is John Rawls' magnum opus, *A Theory of Justice* (1971) (Primoratz 2015). Scholars and theorists in favour of communitarian political philosophy disagree with the central argument developed by constitutional patriots: the claim that allegiance to abstract notions of fairness and freedom can be enough to unite citizens in a common political identity. For communitarians, this argument ignores basic conditions of human life. In the second part of this paper I will illustrate their line of reasoning and judge its validity.

Is Constitutional Patriotism 'too thin'? A Common Critique

“It's fair to say that within constitutional patriotism as a form of attachment cognitive elements will predominate.” (Müller 2007: 62)

This statement by Jan-Werner Müller, a persistent advocate of constitutional patriotism, demonstrates in its vagueness the most obvious and perhaps characteristic problem this theory is confronted with. It has been pointed out by many scholars that constitutional patriotism may rely too heavily on abstract principles that lack the emotional tangibility of pre-political ties, and therefore fails to create a common identity among citizens (c.f. Miller 1988). It is an argument most frequently proposed by communitarians and liberal nationalists, as its fundamental objection to constitutional patriotism draws on notions of political societies as decidedly particular communities relying on a largely homogeneous understanding of culture (Ibid: 651, 654f.). In proposing in their

political theories that universalists falsely ignore the respectively particular circumstances one's self-understanding, moral beliefs, and partial affiliations are necessarily embedded in, those theorists emphasize the seemingly forgotten quality of cultural heritage. Furthermore, it is often argued that this cultural heritage is necessarily contextualized in the existence of a nation, which in turn is constituting for its political framework, the state (c.f. MacIntyre 2003: 290f.). Subsequently, the argument goes, a community-building sense of common identity cannot be thought feasible without recognizing those prerequisites of cultural belonging. Therefore, the cultural nation becomes a necessary condition for the existence of a polity built upon liberal and democratic constitutions, as these presuppose contractual willingness to some sort of solidarity. As Margaret Canovan (2000: 423), in her critique of constitutional patriotism, puts it quite metaphorically:

“The claim that an impartial state can form a benign umbrella soaring above rival national or ethnic identities and attracting patriotic loyalty ignores the most crucial political question. Where is the state to draw its power from? What holds up the umbrella?”

This means, of course, that, contradictory to Attracta Ingram's conclusion, the nation-state cannot be disentangled (Ingram 1996: 3, 14f.). It is suggested that no abstract principle, however honorary, can replace the pre-political ties kinship and trans-generational cultural heritage fabricate, and that constitutional patriotism even unknowingly presupposes these ties as given (Canovan 200: 426f.). This criticism does not merely question some aspects of constitutional patriotism's feasibility, but negates its very basic notions of how a modern political society functions. The question remains, however, if one of those two lines of thought is superior to the other, and can therefore claim victory in this clash of societal paradigms, or if the division between these sorts of universalism and particularism can be overcome in some sort of compromise. In the next section, I will show one particular scholar's expression of the criticism explained above and then present arguments constitutional patriots might propose as an answer.

The Common Critique as employed by Laborde and some Replies

“[...] is a commitment to liberal procedures and principles sufficient to actualize the sense of trust and solidarity essential to maintain the thick web of mutual obligations upon which the liberal-democratic state rests?” (Laborde 2002: 593)

Cécile Laborde goes on to argue that it is not, and proposes her own theory that is similar to constitutional patriotism, but includes major concessions to the value of particular cultural heritage (Ibid: 597-601, 607-611). As defending constitutional patriotism against every author and his or her particular argument would go far beyond the scope of this paper, I will in the following section treat those parts of Laborde's argument that employ this particular criticism (she uses different reasoning as well, but examining that is a different task for a different paper) as a *pars pro toto* for

the common critique described above, since I believe her paper embodies its objections and their flaws adequately well.

As she builds her case for “Civic Patriotism”, Laborde criticizes that constitutional values are currently in no polity the original entity of allegiance. Building a post-national identity would, if at all, most likely be attempted within the context of a supra-national polity, and would come at the cost of polarizing universalist institutions at the polity-level with quasi-autonomous communitarian cultures at the nation-level (Ibid: 599f.). What is more, she fears that supranational institutions of the constitutional patriot's vision would be devoid of support among many citizens and therefore illegitimate and useless. This happens as citizens are not inclined to see these institutions as belonging to them, since they would not pose a legitimate object of identification, for, it is implied, there is nothing meaningful enough about a shared loyalty to certain norms (Ibid: 601f.). She concludes this argument by emphasizing that universalist principles are only possibly effective if their message can “resonate with the political self-understanding of the society in question” (Ibid: 602).

There are a number of answers and counter-arguments to this line of reasoning. To begin with, her indication that polities of the constitutional patriot's conception are likely to only (if at all) emerge as a supranational framework ignores the most obvious counterexample: The United States of America. Later on, we will see that it has elsewhere been argued that even the US is not a polity solely gaining its support through common allegiance to constitutional principles, but that is not to deny that it is a multicultural society founded and largely developed on common values that at least resemble the constitutional patriot's normative vision for the headstone of a commonwealth (Canovan 2000: 424f.). Furthermore, the US has in its history arguably applied a rather liberal approach to immigration, and to a certain extent still does so, thereby adhering to what is proposed by Habermas and Jan-Werner Mueller as perhaps the most revealing feature of a constitutional patriotic polity (Habermas 1992: 10-19, Müller 2007: 85-92). To continue, her fear of a polity whose institutions enjoy no civic support because citizens show no interest in them and would rather live among themselves in secluded cultural national communities presupposes, of course, that common values simply cannot forge a band between citizens powerful enough to constitute a political community if they do not reflect cultural traditions and idiosyncrasies. But it seems that this is a mere claim, which is nowhere in communitarian argument profoundly illuminated or explained; a mere social intuition, if you will. For if theorists advocating this communitarian claim are confronted with conflicting examples, like Canada or Switzerland, they substitute in their argument *shared nationality* for *shared affective identity*, which cannot be argued to inevitably stem from shared cultural habitus (Abizadeh 2002: 498f.).

In fact, uniting the empirical reality of some states with its basic societal axioms may be *the* challenge this line of communitarian thought seems to be unable to overcome. Multicultural countries like the USA or Canada simply do not rely on cultural-national particularities to justify the political legitimacy of their governmental structures. In fact, their political systems are deliberately designed to maximize inclusion of every particular community of interest, especially regarding minorities (Kymlicka 1995: 132-138). Of course, even these seemingly legitimate examples are liable to objection and have been criticised. Canovan (whose reasoning comes from a completely different perspective than Laborde's), for example, ascribes the American common political identity not to a mere shared allegiance to institutionalized universal values, but rather to the important band the common inheritance of these values forges (Canovan 2000: 425f.). But that is not an argument that legitimately attacks the validity of the notion of constitutional patriotism in any way, for inheritance is merely a feature of human life in general. Most notions and ideas are naturally inherited, but this doesn't mean they are immune to abandonment. It is precisely because of the inherent worth of the principles and ideas embodied in the American constitution that they have been able to survive and are still an object of allegiance to this day; if the ideas embodied in the American institutional context were not valuable enough to provoke allegiance on their own, they would by now have been abandoned in favour of some other source of common identity.

All of this is decidedly not to say that constitutional patriotism is immune to criticism. There are a number of criticisms, in Canovan's paper alone, that seem on first look legitimate and should be subject of close evaluation. Especially the question of how membership in a state or a supranational polity should be prescribed to citizens, if national inheritance is to be disregarded, represents an important objection and has yet to be answered accordingly (Ibid: 426f.). Fortunately, this is a task for a different paper.

Conclusion

As I have illustrated, constitutional patriotism is more than mere allegiance to constitutional principles. In emphasizing its procedural character and the importance of the element of deliberation, I hope to have adequately explained its mechanisms and underlying principles. What is more, constitutional patriotism succeeds in unifying universalism and particularism. In stressing the need for particular institutions to reflect the universal ideas of human rights and democratic principles, it recognizes the merits of embedding those ideas in the particular historic project taken on by respective polities. However, this particular historic project need not be cultural or ethnic in nature. This is why the communitarian objection against constitutional patriotism fails: it goes one step too far in promoting particular cultural nations. Always relying on some sort of cultural unity

for the establishment of a common political identity, it embodies notions that not only seem normatively objectionable, but also do not accurately adhere to the empirical reality of some of the most significant liberal democracies in the world. Furthermore, as the evidence for Mary Kaldor's claim that the political conflicts of the 21st century are fought along the identity politics cleavage of cosmopolitanism versus particularism seems to ever grow, constitutional patriotism might increasingly appear as the only justifiable form of patriotism left; a formulation of identity politics that stresses the need for multicultural comprehension but does not forget the institutional framework within which a post-national society must take place (Kaldor 1999: 7).

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