

Three Objections to Constitutional Patriotism

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Love of country becomes love of leviathan or behemoth, even when, and sometimes especially when, one's country is a modern republic – that is, a constitutional democracy.

George Kateb

As is well known, constitutional patriotism designates the idea that political attachment ought to centre on the norms, the values and, more indirectly, the procedures of a liberal democratic constitution. Put differently, allegiance and attachment are not owed primarily to a national culture, as liberal nationalists have claimed, or to ‘to the worldwide community of human beings’, as for instance Martha Nussbaum’s conception of cosmopolitanism has it.²

As is somewhat less well known, the concept of constitutional patriotism has enjoyed very varying fortunes. It was born in post-war divided Germany and has often been seen as a poor substitute for a ‘proper’ national identity – a substitute that was to become redundant after the country’s unification. Yet the idea experienced a major renaissance in the 1990s when observers both inside and outside Germany began to view constitutional patriotism as a normatively attractive form of civic attachment for increasingly multicultural societies; in recent years, it has also been advanced as a way of conceptualizing ‘civic identification’ at the supranational level, with some scholars explicitly advocating a ‘European constitutional patriotism’.³ Finally, constitutional patriotism has even been proposed as a form of political belonging in deeply divided, post-war societies: for instance, the head of Bosnian Muslims has explicitly called for a pan-Bosnian constitutional patriotism.⁴

I will not address in this essay the political prospects of constitutional patriotism; and in fact I will also not address what I take to be the most common objection to the concept: that it is somehow too ‘abstract’ or, as a particularly inappropriate metaphor has it, too ‘bloodless’. Others (and I, for that matter) have elsewhere addressed this essentially moral-psychological objection to the very idea of an attachment to universalist, democratic principles.⁵ Rather, I seek to deal with three less common objections that do not in principle doubt the motivational power of patriotism, but rather converge on the claim that constitutional patriotism necessarily tends to become *illiberal*, irrespective of the universalist, democratic norms and values that are generally said to constitute its core. Put differently: constitutional patriotism might not be able to avoid the normative and practical pitfalls that tend to be associated with nationalism and that in fact animate the criticisms of nationalism advanced by advocates of constitutional patriotism themselves.

The three objections to constitutional patriotism I have in mind can be formulated as follows: first, there is the claim that constitutional patriotism is in fact a form of ‘statist nationalism’ which ultimately tends to replicate the problems commonly associated with nationalism. Second, that while constitutional patriotism is not necessarily a variety of nationalism, it is – and this might be normatively and practically even worse – a form of ‘civil religion’. Third, there is the objection that constitutional patriotism is somehow ‘modernist’ in the kind of moral psychology which it requires of citizens, and that such a ‘modernist’ moral psychology is sociologically *and* normatively inappropriate for a postmodern age of multiple, fluid, overlapping, ever evolving identities.

Clearly, these objections operate on quite different philosophical-normative and empirical levels. However, they are all animated by a certain distrust of what one

might call, for shorthand, an ‘identitarian logic’. What I mean is this: constitutional patriotism is conceived as a form of ‘political identity’ by critics espousing the three objections mentioned above; and while not all the subsequent steps of reasoning are necessarily explicated, it supposedly follows that ‘identities’ always exclude, and that they necessarily require an ‘Other’, if not an outright enemy. It is argued that ‘political values can be as effective markers of group identity and as exclusionary as ethnic allegiances’, and that, furthermore, constitutional patriotism remains within the ‘national-statist tradition of citizenship’.⁶ Finally, collective identities, at least on some occasions, supposedly have to take precedence over -- in fact might even violate -- individual identities.⁷ Here a deep distrust of ‘collective identities’ as such links up with a general scepticism about patriotism, and both appear animated by an alternative – though rarely explicit – vision centred on notions such as ‘openness’ and ‘flexibility’.⁸

Perhaps some of these concerns have to do with the fact that the country which for many years appeared as the implicit model of constitutional patriotism at least in the eyes of European critical theorists – the United States – is now seen in a rather different light.⁹ The contrast between a non-ethnic, open and liberal universalist America on the one hand, and a nationalist, even ethnic Europe on the other, has been replaced by an opposition of a post-national, postmodern, even post-heroic Europe on the one hand, and a US that appears to act in all the normatively doubtful ways that used to be identified with nationalism. Suddenly it is discovered that the American civic ‘Creed’ might have been associated all along with what Louis Hartz called ‘compulsive nationalism’.¹⁰

Critique or Collective Identity?

For those who are not prepared to abandon the concept of constitutional patriotism altogether, it is tempting to respond to the objections outlined above by redefining constitutional patriotism as primarily a form of *critique*. It might then become a means of ‘resisting identifications’, in the words of the most sophisticated version of this position, rather than itself a form of ‘identification’; it might also meet the normative demand, articulated for instance by Dora Kostakopoulou, to ‘facilitate the inclusion of, and the venturing towards, the other’.¹¹ The ‘identitarian logic’, so to speak, is disabled, as constitutional patriotism is no longer in any direct way about conceptualizing what citizens have in common – it’s in fact rather about criticizing in the name of universalist norms and values what they have in common. As I have tried to show in a more historical study, this ambiguity between constitutional patriotism as *collective identity* and constitutional patriotism as *critique* in fact made the concept extremely attractive in the original context where it was elaborated – the milieu of the West German Left of the 1980s.¹²

Now, it is always possible to resolve the apparent ambiguity by claiming that constitutional patriotism has to serve primarily as critique, as long as constitutional patriotism as a fully normatively justified collective identity is not yet achieved. Or one might even say that such a collective identity will never be achieved, and that a perfect match between normative aspirations and an actually existing constitutional culture – constitutional patriotic ‘closure’, if you like, or perhaps the closing of what Samuel Huntington once famously called the ‘IvI’ gap (as in: ideas versus institutions) -- is both impossible and profoundly undesirable.¹³ It then appears more plausible to say that, since no actually existing constitution, or actually existing state

structures more broadly, can ever live up to expectations drawn from a pristine universalism, critique inspired by constitutional patriotism is indeed a form of *permanent* critique that will never result in anything like an unproblematic civic identification with an existing polity. Such a *lack* of closure will at the same time provide an incentive to continue struggling for an ever fuller – and yet never full -- realization of universalist ideals. It's tempting to call this the Sisyphus-conception of constitutional patriotism.

However, it seems to me that such a 'temporalization without teleology', as far as constitutional patriotism is concerned, is in fact too easy a way of meeting the objections listed at the outset. This argumentative strategy tacitly presumes that other kinds of collective identities will persist against which constitutional patriotism as critique can work; and, on the basis of what I deem a rather mechanistic model of public discourse and culture, it appears to imagine the politics of constitutional patriotism as an ongoing project of 'purging' a political culture. Put differently: there is an essentially unargued premise that social integration and political stability are already ensured in some form or another; at the same time, there is the claim that every political culture will persistently be contaminated by illegitimate forms of particularism which will then have to be cleansed away in the name of constitutional patriotism.

It's not that such implicit assumptions and images are necessarily normatively or empirically suspect; but they tend to lead to the neglect of other, in my view legitimate, purposes of constitutional patriotism which at least I consider essential to a full normative account of what constitutional patriotism is supposed to accomplish: the purpose of constitutional patriotism in providing a (necessarily bounded) people with stability over time; the purpose of defending a polity against those bent on

undermining or even abolishing its principles; and the purpose of constitutional patriotism in encouraging what one might call ‘normative transnationalism’, that is, the development of ever stronger and more complex moral and political ties across state borders -- without simply erasing the political and moral significance of those borders, in the way that some accounts of cosmopolitan ethics suggest.

It must be stressed that these larger purposes can only be justified in the context of a more comprehensive theory of justice; constitutional patriotism in itself is not a theory of justice, a theory of legitimacy, or, for that matter, a justification of a particular polity. A fully justified concept of constitutional patriotism, in other words, is normatively dependent on a larger account of universalist liberal-democratic principles.¹⁴ But this does not mean that constitutional patriotism can mean just about anything. For sure, one could construct a purely *positivist* theory of constitutional patriotism in the sense that any observable allegiance to any persistent political arrangement could be called ‘constitutional patriotism’, without any substantive normative content or, let’s say, liberal-democratic orientation whatsoever. But constitutional patriotism, as defined and proposed here, does refer to an allegiance to constitutions with liberal-democratic, universalist, or, if you like, post-conventional orientations.

However, assuming such a definition and also assuming that a broader normative framework can be provided for constitutional patriotism, one might say that the concept’s purposes directly reinforce the anxieties about an ‘identitarian logic’ that I set out above – making it all the more urgent to counter them effectively. But before doing so, I should say a word about, if you like, method: what is to count as a successful objection, what as one that fails? Very often discussions of liberal nationalism, constitutional patriotism and similar concepts appear to come down to

decisions along the lines of ‘Well, I take a little more emotion’, while someone else might say: ‘Well, I’ll get by -- just by reason’. Put less frivolously, it might appear that these debates are ultimately in-decidable, unless we actually had very complex *empirical* studies that would somehow yield the right moral-psychological ‘mixture’ of reason and emotion in, for instance, motivating solidarity, or making citizens want to defend their liberal-democratic institutions. While political and legal theorists are sometimes too quick to discard empirical approaches -- to put it mildly -- it is in this case not unduly pessimistic to think that no such clear-cut results are likely to emerge anytime soon.

Therefore, I shall try to defend constitutional patriotism, or at least try to delimit it from phenomena such as statist nationalism and civil religion, on either purely conceptual grounds, or, where empirical evidence enters the picture, I shall try to show that these do not simply come down to in fact contestable psychological claims, or infinitely debatable historical analogies.

Is Constitutional Patriotism a Form of Statist Nationalism?

The idea that constitutional patriotism is in fact a form of statist nationalism is a powerful and original one. It relies on a distinction between cultural and political nationalism which Chaim Gans has proposed as being central to a ‘normative typology’ of ‘nationalist ideologies’.¹⁵ Cultural nationalism, the argument goes, assumes that those who share a ‘common history and societal culture have a fundamental, morally significant interest in adhering to their culture and in sustaining it across generations’.¹⁶ Political nationalism, on the other hand, refers to the idea

that, for states to realize political values such as justice, welfare and perhaps even liberty, citizens of states ought to share a homogeneous national culture. As Gans has argued, statist nationalism designates ‘the position ... according to which a common national culture is a condition or means for the realization of political values which neither derive from national cultures nor are intended for their protection...’¹⁷ Put simply, cultural nationalism takes culture as an end, whereas political nationalism takes culture as a means. According to this analysis – and at first sight not unreasonably -- constitutional patriotism could be placed with statist nationalism.

It is important to recognize the force of the objection that can be derived from this distinction (I am not claiming that Gans himself derives an actual normative objection of the kind that I elaborate here): first, constitutional patriotism, to the extent that it is actually a form of attachment or political loyalty -- and not a free-floating set of universalist beliefs -- necessarily needs to be focused on a *state*. Second, to the extent that constitutional patriotism is focused on a particular polity and aims at the formation of a homogeneous political culture characterized by a common set of beliefs concerning norms and values, it is necessarily a form of nationalism.

Of course, the objection fails, if, more or less by fiat, nationalism is defined as a purely cultural phenomenon. But, again, this would make things too easy. What the objection brings out is that, unless constitutional patriotism is understood purely as critique – in the sense explained above – it is necessarily statist and particular, in a way that might make it structurally no different from nationalism. As Judith Shklar once put it: ‘loyalty is either spontaneous or it is thought control, and it is very bad news’. One might say then: civic nationalism -- under which constitutional patriotism is now subsumed -- is still nationalism, and not automatically less fraught with danger

in contrast with cultural nationalism. In particular, it still aims at homogeneity among citizens in a way that would have been recognizable to an antiliberal like Carl Schmitt as allegedly indispensable for democracy, and that more or less directly imperils values such as inclusiveness, individuality and diversity. It is precisely for this reason that a defender of democratic individualism such as George Kateb is wary of *any* patriotism, even if defined as liberal or republican.¹⁸

In my view, a defence of constitutional patriotism that effectively counters its equation with statist nationalism ought to look something like the following: first, it has to be underlined again that constitutional patriotism is in itself not a justification for a particular polity, let alone a panacea for ensuring political stability; the reason is simply that a normatively substantial concept of constitutional patriotism relies on the normative idea of *sharing political space on fair terms*.¹⁹ Constitutional patriotism cannot create the motivation to subscribe to such an idea -- but it can usefully make sense of a continuous commitment to it. In other words, constitutional patriotism is best understood as a set of normative beliefs and commitments, and their attendant psychological dispositions, such as a readiness to defend what Rawls calls 'constitutional essentials', or a willingness to render interpretations of such essentials ever more inclusive.

Moreover, constitutional patriotism never refers simply to a written constitution in its entirety, or to actually existing administrative state structures, as some crude positivist criticisms of the concept imply; rather, while it ultimately always links back to a constitution as the focal point of political debate, constitutional patriotism takes as its object what one might call a 'constitutional culture' that surrounds every constitution, and includes not merely agreed-upon 'constitutional essentials', but also persistent patterns of debate and disagreement about the most

faithful interpretation and actual implementation of such essentials. Constitutional culture is not as expansive a term as 'political culture'; at the same time it might turn out to be more, not less particular, than 'political culture', even if the constitution itself, in line with Habermas's initial conception of constitutional patriotism, is seen as characterized, above all, by universal norms. After all – to say what for sociologists in particular will appear as the obvious – constitutions do not interpret or apply themselves; they are read and reread in light of particular historical experiences, new information, mutual learning across borders and boundaries, etc.

The main point is this: constitutional patriotism does not designate the homogeneity of individual beliefs, or of ascriptive or voluntary identities, which then simply serve the implementation of other political or social values. Constitutional patriotism – in the substantial normative version defended here -- is valuable in itself and, rather than simply facilitating justice or other values, it actually conceptualizes the beliefs and dispositions of a citizenry committed to justice or other values (for instance in the form of the idea of sharing common political space under fair terms of cooperation). Nationalism – and, more precisely, 'trust' on account of national sameness – is the means in ideologies that we might indeed call statist nationalism; it is not a good in itself (as opposed to the cultural nationalism that designates a cultural nation as a value in itself). Constitutional patriotism, as defined here, on the other hand, cannot be separated from justice, or solidarity, and seen simply as a 'means'.

Constitutional patriotism is therefore fundamentally different from the logic that underlies liberal nationalism to the extent that a liberal nationalism which uses a common culture as a means to social solidarity is in fact, according to Gans's typology, a form of statist nationalism. Constitutional patriotism, by contrast, is not primarily tied to a state, but to political principles, and has normative value in itself –

even if it is not, as argued above, a full-fledged normative theory or justification. Put differently – and this might sound paradoxical at first sight: constitutional patriotism is intrinsically good, and yet, as a concept, normatively dependent.

Is Constitutional Patriotism a Civil Religion?

It might be helpful broadly to distinguish three ways of thinking about ‘civil religion’.²⁰ First, there is what one might call a strong religious version in which religion profoundly structures political life. The paradigmatic case of such a religious ‘structuration’ of society has been elaborated by Marcel Gauchet in his seminal *Disenchantment of the World*.²¹ Any serious consideration of the question of ‘civil religion’ should at the outset consider Gauchet’s claim that such a total religious structuration of society is simply not available under modern condition, after what Gauchet famously called the ‘exit from religion’. If such a structuration – or re-structuration -- is attempted under modern conditions, it will result in a form of totalitarianism.²²

Second, there is the classic Rousseauian version that treats broadly defined religious beliefs, or ‘natural religion’, or a *religion du citoyen*, as a means to render a certain kind of republican politics possible. It’s the sentiment summed up by a twentieth-century Rousseauian who claimed: ‘Our government makes no sense unless it is founded on a deeply felt religious faith – and I don’t care what it is’. Put differently, this is an essentially *functionalist* view of religion.²³

Thirdly, there is the weaker, quasi-sociological claim in which civil religion denotes a more or less metaphorical invocation of concepts, dispositions and

behaviours associated commonly with religion; and, in particular, a view of such concepts, dispositions and behaviours as having been transferred from religious to political objects. Veneration of symbols such as flags, national anthems, pledges of allegiance, ceremonies at statesmen's tombs, 'Constitution Days', even battleships named after the constitution – this is the stuff of civil religion, in which 'religion' is ultimately but a metaphor for the process of creating and reinforcing the 'symbolic power' of constitutions.²⁴

The division outlined here is obviously both crude and rigid, and much more could be said about the subtle back-and-forth crossings between different categories which students of political theology in particular have identified. But for my purposes here, it might be enough to say that it's clearly the third kind of civil religion that critics of constitutional patriotism are concerned with; and we have to ask what precisely the normative concerns are here.

I should like to distinguish two normative perils: on the one hand, attitudes of veneration – of the constitution, of historical events, of historical figures, or of *lieux de mémoire* to do with the constitution – encourages what one might call uncritical citizenship. It might well be true that 'constitutions do not live by texts alone' and that 'constitutional communities' always constitute 'communities of memory and experience', as Hans Vorländer has pointed out.²⁵ But different 'communities' allow for very different levels of contestation and critique, and what for instance Jean-Marc Ferry has called 'consensus through confrontation' is very different from consensus through cultic practices, or what Louis Hartz called a 'conformitarian ethos'.

Patterns of constitutional veneration might encourage the strategic manipulation of such constitutional symbols by political elites, or a competition for 'capturing' and 'decontesting' the meaning of such symbols so as to discourage or, in

the extreme, entirely disable political dissent. Short of such illiberal scenarios, it might generally be the case that ‘flurries of reverential activity’, as occurred for instance in the United States the 1920s, might be reliable indicators of deeper-seated, structural ‘problems of democracy’ trying to work themselves out.²⁶ Put differently, there might be a genuine trade-off between democratic contestation and constitutional veneration, and it’s at least imaginable that constitutional patriotism perniciously reinforces the latter, rather than enabling the former.

On the other hand, there are the perils of ‘civil millennialism’ and of what one might call ‘chosen-people’-syndrome – which, as John Pocock has shown, have so frequently been associated with republican politics.²⁷ Social-psychologically, one might say, it’s simply very hard to avoid the shift from a sacralisation of one’s own to a belief in the superiority of one’s own – even if such a shift is in no way *conceptually* necessary. This missionary impulse, or, if you like, compulsive connecting to the religious imagination, then also comes to resemble many accounts of nationalism much more than the defensive or protective posture which, historically, has been associated with patriotic virtue.

In general, one is left with the impression that the abstract principles of liberal-republican patriotism always seem in need of supplements of concreteness, or, if one prefers, concrete oppositions which yield the moral motivation to adhere to and fight for such principles. Here we really do come close to the notion of patriotism as a kind of illiberal and anti-individualist ‘group-based meaningfulness’ which Kateb has criticized, as well as the ‘connection between patriotism and militarized death’ which Kateb has also highlighted.

Again, there is an easy way out, that is, a way of countering this suspicion about constitutional patriotism by definitional fiat; but then, fortunately, there’s also a

somewhat more complex rejoinder. The easy way out is in fact a return to the original Habermasian conception of constitutional patriotism: Habermas, it will be recalled, while locating his conception of constitutional patriotism in a broad republican tradition, did not think that an unproblematic return to a pre-national (and premodern) patriotism centred on civic friendship was possible.²⁸ Put simply, the disenchantment of the modern world and its complex division into different value spheres block such a return to an Aristotelian polity. Individual and collective identities are no longer formed by internalizing religious or, for that matter, nationalist imperatives. In other words, an unproblematic reference to quasi-sacred objects – including the *patria* – is no longer available. Instead, in a disenchanted world, individuals develop what Habermas, following Kohlberg, has called ‘post-conventional identities’. They learn to adopt as impartial a point of view as possible and to step back from their own desires and from the conventional social expectations with which society and its institutions confront them. Identity becomes ‘de-centred’, as individuals relativize what they want and what others expect from them in the light of moral concerns.

Moreover, the exercise of coercion over citizens can no longer be justified with reference to sacred or quasi-sacred sources. Unmediated religious legitimacy tends to be abandoned alongside traditionalism and other transcendent sources of authority. In the end, there emerges what Habermas has termed ‘post-traditional society’. This concept does of course not imply that religion, tradition and other forms of conventional morality simply vanish or are superseded. Rather, they are at least partially re-interpreted in the light of the universalist claims that have been realized as basic rights and constitutional norms more generally. Citizens are asked critically to reflect upon particular traditions and ‘group identities’ in the name of shared universal principles. This also means that they have reflectively to endorse or reject the national traditions with which they find

themselves confronted, and which might at least partially constitute them in the first place.

In short, unconditional or even unreflective identification becomes replaced by dynamic and complex processes of identity formation – or, put differently, by open-ended political and legal learning processes. There simply is no unchanging object of identification – whether the nation or, for that matter, a historical constitution, as in the purely positivist account rejected above. In fact, one might even say that the precise object is less important than the appropriately ‘post-conventional’ stance that subjects attachments and loyalties to critical reflection and, if necessary, revision.

Against this background, ‘constitutional veneration’ clearly is incompatible with what one might call an orthodox version of Habermasian constitutional patriotism. Of course, the critic might object, so much worse for the orthodox version of Habermasian constitutional patriotism. And the critic might argue further that for constitutional patriotism to become effective as a form of moral motivation, the kinds of perilous supplements of particularity mentioned above are always likely to come into play.

Let’s grant the point for the moment. Let’s say that consistent post-conventional and post-traditional sets of beliefs and patterns of behaviour simply cannot be maintained in the face of weakness of will, a craving for the supposedly concrete, an overwhelming aesthetic desire for symbolism and meaning in politics, or any other reason that critics of constitutional patriotism might think of.²⁹ The crucial point then is that constitutional patriotism – in its normatively substantive, not the purely positivist version -- carries within itself the normative resources to counter and correct the perils and problems associated with the third kind of ‘civil religion’. Clearly, such corrections in particular might take time to have an effect – in which

case it might be too late for some who have suffered from the ‘identitarian’ illiberal dangers that might be associated with constitutional patriotism. But this is still better than, let’s say, the politics of liberal nationalism which simply does not have any such in-built corrective tendencies (assuming that liberal nationalism really is nationalism, and not just national liberalism).

In other words: forms of constitutional patriotism might come to share characteristics with the third kind of civil religion identified above. But the very universalist dynamics of inclusion that is built into the concept will also make ways of contestation available in way that is not the case with liberal nationalism. This is not a moral-psychological claim about the superiority of certain patriotic dispositions, but a conceptual point that is rooted in the very idea of constitutional patriots having a constitution available as a common means of problematizing policies, or even of creating new metalegal meanings and aspirations.³⁰

Is Constitutional Patriotism ‘Modernist’?

I will deal with this last objection briefly, as it really does turn more on very debatable, but also ultimately un-decidable moral-psychological assumptions. Thomas Meyer, for instance, has claimed that constitutional patriotism designates a particularly modern identity.³¹ The primary contrast, of course, is here with prepolitical (as well as premodern) national and cultural identities; but there is the further argument that constitutional patriotism ought to be compared with ‘postmodern’ identities. The latter take particular polities as contingent starting points, and they rely on ‘basic rights’ and ‘constellations of responsibility’

[*Verantwortungszusammenhänge*]; unlike nationalism and constitutional patriotism, they are also said to reach down and up to regional and global ‘communities of responsibility’.³² Such postmodern identities are, finally, presented as ‘early stages’ of genuine cosmopolitan citizenship.³³

It seems to me that while such a tripartite division (and teleology from pre- to post-) is useful for heuristic purposes, the strict division between modern and postmodern functions only on account of a subtle or in fact not so subtle mischaracterization of constitutional patriotism. Meyer contends that constitutional patriots primarily endorse ‘really existing’ institutions, rather than universalist principles as such -- although he does concede that constitutional patriotism is ‘conditional’ (upon a liberal-democratic constitution). However, in this case, the importance of critique in conceptions of constitutional patriotism really comes into play right away – in other words, constitutional patriotism cannot simply be reduced to an ‘identification with institutions’ (especially if we include in our definition of institutions an element of coercion). Constitutional patriotism precisely allows for a distancing from actually existing institutions, for contesting and criticizing them in the name of principles which they might only partially embody.

Furthermore, constitutional patriotism does not *prima facie* exclude the regional and global commitments to which Meyer alludes – in fact, it is more likely to encourage them. Constitutional patriotism does not *guarantee* the development of what I’ve elsewhere called ‘normative transnationalism’, but, at least in the abstract, it is more conducive to it than any contending conception of collective identity. If the aim is ‘opening towards others’, as some recent revisions of Habermas’s original version of constitutional patriotism have argued, only a very narrow, institution-fixated notion of constitutional patriotism would in principle prevent such a vision.³⁴

This is not to deny, however, that such institution-fixated accounts exist – and that they do indeed marshal positivist (and even originalist) versions of constitutional patriotism against normative transnationalism, and international law in particular. But not only do they rely on an implausibly narrow account of constitutional patriotism – they also very often hide other, deeper normative commitments inside their notion of constitutional patriotism. For Jeremy Rabkin, for instance, it is in the end less the constitution, than a narrow version of a specific subset of ‘American values’ (namely an unstable mixture of conservatism and libertarianism) that animate his opposition to the apparent spectres of international law and ‘global governance’.³⁵ One might debate these value choices against traditions of constitutional democracy in the US (though this is the place here) – but the main point is that such an example says nothing about constitutional patriotism as such having to be statist or, indeed, modernist.

Conclusion

I have argued that three somewhat more unusual objections to constitutional patriotism – which all point to the perils of an alleged ‘identitarian logic’ at the heart of constitutional patriotism – are certainly not without merit. Yet all can be effectively countered by drawing on the normative resources which a normatively rich conception of constitutional patriotism ought to contain. Such resources, I hasten to add, cannot *guarantee* that constitutional patriotism in practice will not turn illiberal and exclusionary. In the same vein, it cannot guarantee what, short of all-out illiberalism, has been painted as the spectres of ‘*hoheitliches*

Integrationsmanagement [officially managing integration from above] through constitutional courts, or constitutional patriotism *par le haut* where political elites decree constitutional values, as arguably happened with the ‘European Constitution’.³⁶ But I am not sure what political and legal theorists who want guarantees really expect; nor am I sure what those are after who, from the beginning, would want to rule out any ‘identity talk’ for fear of ‘othering’, or who drop a Schmittian ‘h-word’ (in this case: homogeneity), as soon as there is any talk of allegiances, or even just political coalition-formation. Democratic politics *is* risky, and without guarantees, especially within a shared space of free and equal citizens who don’t want their politics entirely guaranteed – or even ordered -- by a state or who indeed want to resist any management of group loyalties from above. Constitutional patriotism is a bet on the right civic attitudes within that shared space; it’s not an insurance policy.

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¹ I wish to thank Justine Lacroix for very helpful comments on this essay.

² Martha Nussbaum *et al.*, *For Love of Country: Debating the Limits of Patriotism*, ed. Joshua Cohen (Boston: Beacon Press, 1996).

³ Justine Lacroix, 'For a European Constitutional Patriotism', in: *Political Studies*, Vol. 50 (2002), 944-58.

⁴ 'Reis ul-ulema Mustafa Ceric, Oberhaupt der bosnischen Muslime, über den Islam, Europa und Bosnien-Herzegowina', in: *Frankfurter Allgemeine Zeitung*, 4th January 2006.

⁵ See for instance Ciaran Cronin, 'Democracy and Collective Identity: In Defence of Constitutional Patriotism', in: *European Journal of Philosophy*, Vol. 11 (2003), 1-28; Arash Abizadeh, 'Liberal nationalist versus postnational social integration: on the nation's ethno-cultural particularity and "concreteness"', in: *Nations and Nationalism*, Vol. 10 (2004), 231-50; Jan-Werner Müller, 'On the Origins of Constitutional Patriotism', in: *Contemporary Political Theory* (forthcoming) and Jan-Werner Müller, 'A "Thick" Constitutional Patriotism for Europe? On Morality, Memory and Militancy', in: Erik O. Eriksen, Christian Joerges and Florian Rödl (eds.), *Law, Democracy, and Solidarity in Europe's Post-National Constellation* (London: Routledge, forthcoming).

⁶ Dora Kostakopoulou, 'Thick, Thin and Thinner Patriotisms: Is This All There Is?', in: *Oxford Journal of Legal Studies*, Vol. 26, No. 1 (2006), 73-106; here 79 and 83

⁷ These issues can – and ought to be -- disentangled: the suspicions about collective identity always requiring an 'other' is not confined to discussions of constitutional patriotism, but they shall not be dealt with in this article. For an important contribution to this debate, see Arash Abizadeh, 'Does Collective Identity Presuppose an Other? On the Alleged Incoherence of Global Solidarity', in: *APSR* Vol. 99, No. 1 (2005), 45-60.

⁸ See for instance Kostakopoulou, 'Thick, Thin and Thinner Patriotisms', 83.

⁹ For the sake of clarifying the conceptual history of constitutional patriotism: The word *Verfassungspatriotismus* was first used by Dolf Sternberger in 1970; constitutional patriotism was first elaborated as a theory in 1979, again by Sternberger, and only adopted by Habermas in the mid-1980s, in the context of the German historians' debate. Sternberger time and again pointed to the US and Switzerland as 'real world' examples of *Verfassungspatriotismus*. See also Claudia Kinkela, *Die Rehabilitierung des Bürgerlichen im Werk Dolf Sternbergers* (Würzburg: Königshausen & Neumann, 2001), 285-96.

¹⁰ See for instance Anatol Lieven, *America Right or Wrong: An Anatomy of American Nationalism* (London: HarperCollins, 2004), especially 48-87.

¹¹ See Patchen Markell, 'Making Affect Safe for Democracy? On "Constitutional Patriotism"', in: *Political Theory*, Vol. 28, No. 1 (2000), 38-53; Kostakopoulou, 'Thick, Thin and Thinner Patriotisms', 74.

¹² Jan-Werner Müller, *Another Country: German Intellectuals, Unification and National Identity* (New Haven: Yale UP, 2000).

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- ¹³ See also Rogers M. Smith, 'The "American Creed" and Constitutional Theory', in: *Harvard Law Review*, Vol. 95, No. 7 (1982), 1691-1702.
- ¹⁴ For the idea of normative dependence, see Rainer Forst, *Toleranz im Kontext: Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs* (Frankfurt/Main: Suhrkamp, 2003), 48-52. I am much indebted to discussions with Rainer Forst on this point.
- ¹⁵ Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge UP, 2003).
- ¹⁶ *Ibid.*, 7.
- ¹⁷ *Ibid.*, 15.
- ¹⁸ George Kateb, 'Is Patriotism a Mistake?', in: *Social Research*, Vol. 67, No. 4 (Winter 2000), 901-24.
- ¹⁹ See also Frank Michelman, 'Morality, Identity and "Constitutional Patriotism"', in: *Ratio Juris*, Vol. 14 (2001), 253-71.
- ²⁰ For a fourth, in many ways much more comprehensive, one, see Niklas Luhmann, 'Grundwerte als Zivilreligion', in: Heinz Klegler and Alois Müller (eds.), *Religion des Bürgers: Zivilreligion in Amerika und Europa* (Munich: Kaiser, 1986), 175-94.
- ²¹ Marcel Gauchet, *The Disenchantment of the World: A Political History of Religion*, trans. Oscar Burge (Princeton: Princeton UP, 1997).
- ²² Marcel Gauchet, *La condition historique: Entretien avec François Azouvi et Sylvain Piron* (Paris : Gallimard, 2005), 373.
- ²³ For a useful overview, see Heinz Klegler and Alois Müller, 'Bürgerreligion und politische Verpflichtung', in: *Archiv für Begriffsgeschichte*, Vol. 29 (1985), 47-98.
- ²⁴ See also Dieter Grimm, 'Integration by constitution', in: *I-CON*, Vol. 3, No. 2/3 (2005), 193-208.
- ²⁵ Hans Vorländer, 'Integration durch Verfassung? Die symbolische Bedeutung der Verfassung im politischen Integrationsprozess', in: Hans Vorländer (ed.), *Integration durch Verfassung* (Wiesbaden: Westdeutscher Verlag, 2002), 9-40; here 21.
- ²⁶ Michael Schudson, *The Good Citizen: A History of American Civic Life* (Cambridge, Mass.: Harvard UP, 1998), 203.
- ²⁷ J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, with a new afterword (Princeton: Princeton UP, 2003).
- ²⁸ The following draws heavily on Müller, 'On the Origins of Constitutional Patriotism', in: *Contemporary Political Theory* (forthcoming).
- ²⁹ George Kateb, 'Aestheticism and Morality: Their Cooperation and Hostility', in: *Political Theory*, Vol. 28, No. 1 (2000), 5-37.
- ³⁰ Grimm, 'Integration by constitution', 204.
- ³¹ Thomas Meyer, *Die Identität Europas: Der EU eine Seele?* (Frankfurt/Main: Suhrkamp, 2004), 64-67.
- ³² *Ibid.*, 65.
- ³³ *Ibid.*
- ³⁴ See for instance Jean-Marc Ferry, *Europe, la voie kantienne: Essai sur l'identité postnationale* (Paris: Cerf, 2005).

³⁵ Jeremy A. Rabkin, *Law without Nations? Why Constitutional Government Requires Sovereign States* (Princeton: Princeton UP, 2005).

³⁶ Vorländer, 'Integration durch Verfassung?', 29.