

Research Note: Is Europe Converging on Constitutional Patriotism?

(And If So: Is It Justified?)

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Constitutional patriotism, as is fairly well known, emerged from debates about national identity in a divided country facing an extremely difficult past: post-war West Germany. It had initially been advanced in the late 1970s and early 1980s by the political theorist Dolf Sternberger, who had been heavily influenced by Hannah Arendt and who conceived constitutional patriotism as a republican, specifically non-national and non-ethnic form of civic attachment; subsequently it was taken up by Jürgen Habermas, who integrated the concept into his larger social theory, making it an instance of a ‘post-conventional’ form of identity (Müller 2006). After the end of the German division, however, many predicted the imminent demise of constitutional

patriotism: now that a ‘normal nation-state’ and a ‘proper national identity’ had been regained (and with the past receding ever further), the artificial, or, as a particularly inappropriate metaphor went, the ‘bloodless’ concept of constitutional patriotism was simply no longer needed.

Yet two developments led to a surprising renaissance of the idea after the mid-1990s, first in Germany itself, then, increasingly, in debates elsewhere in Europe and in North America: on the one hand, the perception that West European states had become irreversibly ‘multicultural’ – with ‘multiculturalism’ here denoting the fact of cultural diversity, not a norm; and, on the other, the even more incontestable fact that the process of European integration had markedly sped up (and deepened) after the Maastricht Treaty. The former development made political theorists search for a putatively ‘non-national’ form of civic attachment; the latter had philosophers and intellectuals calling for an ‘identification mechanism for the civic body’ of the European Union as a whole, namely a ‘European constitutional patriotism’ (Lacroix 2002).

I shall not engage here with the question whether a ‘supranational constitutional patriotism’ is normatively desirable and practically feasible; I want to limit the discussion to ‘domestic constitutional patriotism’. Specifically, what I should like to put forward in this research note is the contention that – in public justifications, but even more so in state practice -- countries in Western Europe are now converging on a notion of membership and political attachment that is best theorized in terms of the category of constitutional patriotism. In other words, what once appeared as a highly idiosyncratic construct for the very specific situation of post-war West Germany is now becoming an accepted norm and practice across at least Western Europe.

Of course, not everyone uses the very words ‘constitutional patriotism’, and one still finds the habitual and predictable dismissals in, say, the French, British or Spanish press of this concept as ‘too abstract’. However, *de facto* European governments – including main-stream right-wing and Christian Democratic parties – are distancing themselves from traditional ethnic definitions of citizenship and ethnic-priority immigration. At the same time, parties across the political spectrum have become sceptical of any approaches to ‘integration’ and immigration that suggest indifference or laissez-faire; hence the rejection of, for instance, a civic registration approach, in contrast to more stringent demands codified in citizenship tests, or a stronger emphasis on civic symbolism, as in rites of passage to membership.

Yet, this is not a simple return to traditional ideals of assimilationism often associated with civic nationalism (which, as has often been pointed out, is not in any way a clear indicator of cultural openness): ‘Integration’ is not simply code for absorption which in turn might be code for assimilation which in turn might be code for ‘acculturation’ (see also Mouritsen, 2006). Rather, as Rogers Brubaker has stressed, we are witnessing a shift from ‘transitive’ to ‘intransitive’ understandings of assimilation: integration is not something done to ‘them’, but something accomplished in common through mutual deliberative engagement, usually under state auspices. Civic integration is thus not normatively opposed to the value of difference, but practically meant to prevent marginalization and ‘ghettoization’, and therefore contrasts, above all, with ‘benign neglect’ (Brubaker 2004).

I am not the first to notice this empirical trend towards convergence – a trend that is often veiled by the persistent political rhetoric (and reifying scholarly analysis) of radically divergent ‘national models’ (Joppke 2004). What I am suggesting is, first, that the result is best described as a form of constitutional patriotism, rather than liberal

nationalism or pragmatic multiculturalism, as, for instance, Christian Joppke has done; and, second, that such constitutional patriotism is *normatively* justified, when compared to competing theories of civic attachment, such as liberal nationalism, French republicanism, or a more libertarian civic registration approach (I shall neglect contrasts with approaches that only contain marginal normative differences – such as the difference between constitutional and civic patriotism; on the latter see Laborde 2002b).

What I am not claiming – and not in a position to claim – is that this approach is successful empirically in terms of more or less contentious indicators about integration, social cohesion, non-discrimination, and so on. What I hope this research note might provide, however, is a framework and a language to conceptualize the question: to what extent is Western Europe in fact converging on constitutional patriotism? To that effect, I'll sketch a number of empirical research questions. Following on from these, it should also become possible to investigate in a more coherent fashion whether constitutional patriotism is working in practice or not.

I shall proceed in three steps: first, I briefly want to distinguish between constitutional patriotism as a *positivist* notion, constitutional patriotism as a *substantive normative* theory, and, finally, constitutional patriotism as an *analytical* category to capture a specific approach to questions of social cohesion, political membership and civic dispositions. Secondly, I want to advance the hypothesis that what we see unfolding both at the level of public justification (by politicians, civil servants and, to some degree, intellectuals) and at the level of state practice might best be captured by the *analytical* category of constitutional patriotism. Despite the persistence of a (reifying) rhetoric of very distinct 'national models', there has in fact been both a retreat from certain types of multiculturalism (in public justification as well as state practice), and a weakening of distinctly republican approaches (French Republicanism in particular). At

the end of this section, I then offer a number of empirical research questions that could help to test these claims. In the final section I shift to more normative ground and ask whether the constitutional patriotism that has been identified in the second section could be normatively justified. I leave the analytical-empirical perspective behind and, as a further suggestion for future research, offer some normative reasons why the kind of constitutional patriotism that is developing in Western Europe might be justifiable.

Clearly, this agenda is a tall order, but given the political urgency of the matter, and the very real gap between so much political rhetoric and social realities in Europe today, it seems especially important that positive and normative perspectives become more meaningfully related – without being conflated, to be sure. Within the framework suggested here, a number of (more or less troubling) findings would be possible: for instance, *prima facie* it would be a perfectly plausible result of further research that Europe is indeed converging on constitutional patriotism as defined in the next, analytical-empirical section, but that nonetheless, such a common approach cannot be normatively justified, all things considered. Or it could be that a constitutional patriotism that falls short of any normatively substantive theory of justice is nevertheless justified – but that in fact European approaches are not converging, but rather diverging, and that there is much less mutual learning that one might suppose. Hopefully, the framework proposed in this note will clarify such questions and possible findings.

Defining, detecting...

In this section I'd like first to draw distinctions between three ways of understanding constitutional patriotism. Constitutional patriotism, by itself, is not a theory of justice, or

a justification for any particular kind of polity. Instead, constitutional patriotism is what Rainer Forst has usefully called a ‘normatively dependent concept’ (Forst 2003). It depends on a larger normative theory to gain normative traction – the words themselves could suggest just a purely positivist notion according to which constitutional patriotism exists wherever members of a polity show themselves to be attached to persistent (but not even necessarily constitutionally codified) political arrangements.

Now what is generally suggested by a *normatively substantive* – as opposed to positivist -- notion of constitutional patriotism is a form of attachment to norms, values, and procedures that are contained (or at least suggested) in a liberal democratic constitution, and, in my view, the larger constitutional culture surrounding it (Cronin 2003; Häberle 1982). Such a larger culture does not necessarily suggest a strict homogeneity of beliefs or political dispositions. It can also be characterized by persistent and characteristic forms of public disagreement.

The way I propose to use ‘constitutional patriotism’ here is neither as a purely positivist description of a given political culture, nor as a fully developed normatively substantive theory, nor as *merely* what one might call an aspirational self-description of a given society (in the manner the term was often used in 1980s West Germany). Rather, I want to employ constitutional patriotism as a larger analytical category, or ideal type, to capture approaches and social strategies to civic integration and immigration that are oriented towards liberal-democratic norms and values, and their active affirmation by citizens and aspiring citizens.² This approach does not treat constitutional patriotism as identical with – or even similar to – any existing full normatively substantial theory. In other words: I am not claiming that all Western European governments have suddenly turned into faithful Habermasians...

What needs to be investigated here is, on the one hand, aspirational self-descriptions of given societies that are being advanced by politicians, bureaucrats and intellectuals, broadly speaking, on the one hand; and, on the other, the actual policy proposals and emerging state practices dealing with admission and integration. On this account constitutional patriotism serves as both ‘identity’ and ‘citizenship’ (including the question of preconditions for, and access to, citizenship, civic rights and duties, and, the specific virtues and dispositions associated with citizenship and, in one way or another, fostered and encouraged by states).

This brings me to the main research question: what precisely does it mean then to say that West European countries are converging on constitutional patriotism? Above all, it means a public distancing from ethnic public self-definitions, ethnic definitions of citizenship and ethnic-priority immigration in particular (see also Joppke 2005). The most notable example here is Germany, long notorious for its denial that Germany was a ‘country of immigration’, and no less notorious for its ethnic definition of citizenship. Not only have the relevant laws been changed; the public rhetoric of leading Christian Democrat politicians no longer contains the call to return to a purely descent-based form of citizenship. In fact, no party represented in the Bundestag subscribes to such a call anymore.

It is of course impossible to tell how much of this change is based on a genuine transformation in political convictions, and whether some of it might not be confined to certain publics – but it would be hard to deny that the era of confident public denial (‘We are not a country of immigration’) is over. True, leading Christian Democratic politicians keep insisting that what is often referred to as a ‘pure constitutional patriotism’ is not enough; and that immigrants ought instead to subscribe to a ‘leading culture’, or *Leitkultur* (Tibi 2001). But when pressed on the point, the culture in

Leitkultur is not anything that can meaningfully be described as *German* culture. In fact, there has been a conscious distancing even from the expression ‘German *Leitkultur*’. Instead, there is a retreat to a combination of the demand to endorse liberal-democratic values and the demand to acquire the German language (and sometimes to the notion of a ‘European *Leitkultur*’, which, of course, can easily be read as having the exclusion of Turkey from the EU as its real purpose). These linguistic capacities and civic convictions in turn are supposed to be proven in citizenship tests (which, as of now, individual *Länder* are free to work out for themselves).

Again, it’s tempting to argue that *Leitkultur* is merely *code* for ethnicity, since it can be injected with highly selective elements of a supposed ‘national culture’, or that an explicit reference to ethnicity has been abandoned, because other markers of otherness are available and can be deployed instead of a culturalizing rhetoric. However, this shift in public justification is in itself not without normative importance. First, it indirectly vindicates the point made by critics of liberal nationalism that liberal nationalists have tacitly relied on an ethnic core for their definition of liberal national culture – when pressed, they seem unable or unwilling to define such a ‘national core’, and the larger claim about a liberal national culture collapses with it (Abizadeh 2004). Second, even the proponents of the unspecified – and apparently un-specifiable -- *Leitkultur* want to acknowledge a notion of citizenship that is in principle accessible on a voluntary basis for those who have been within the state’s borders for specified periods of time, and that is centred on explicit normative liberal-democratic commitments.

I’ll return to the question how liberal or illiberal the demand for such explicit political commitments is in the last section of this note. In the remainder of the present section, I want briefly to say something about another major contender for a public philosophy of civic attachment, namely French Republicanism, which might in certain

ways support and in certain other ways disprove my thesis about convergence. On the one hand, French Republicanism seems like an even more demanding version of constitutional patriotism, one that in the name of universalism entirely purges cultural (and ethnic) particularity from the public realm. In that sense, a strengthening of Republicanism would appear like a reinforcement of constitutional patriotism more broadly. On the other hand, though, one could be forgiven for thinking that the law banning the veil has further reinforced *l'exception française*, that there is in fact now a stronger consensus in France on a particular interpretation of *laïcité* than at any point in the past, and that therefore any notion of European convergence is empirically highly questionable indeed (Roy 2005: 43).

Two responses can be made to these observations: one more philosophical, the other empirical. First, it is not entirely plausible to call Republicanism a version of constitutional patriotism, given that Republicans have increasingly insisted on a highly specific and 'thick' public culture, that serves the realization of substantial political principles. In other words, unlike constitutional patriotism, it is in fact a version of what Chaim Gans has classified as 'statist nationalism' (Gans 2003). The Republic – as the great counter-Catholic, but equally sacralised, form of universalism – traditionally (and structurally) resembles nationalism much more than the most normatively substantive version of constitutional patriotism (Bouretz 2000, Müller 2007).

Second, and more importantly, on an empirical level: Republican rhetoric continues – sometimes very aggressively in its invocation of the spectre of *communautarisation* -- to occupy much of the space for public debate; but at least some of the major policy initiatives that are under way and likely to be implemented in the foreseeable future sit uneasily with classic Republican principles; examples include such initiatives as the state's creation of the *Conseil Français du Culte Musulman*, essentially

to have an interlocutor for itself that is seen as in some sense representative of the 'Muslim community' and therefore legitimate; the proposals for *discrimination positive* (to avoid the taboo of 'affirmative action'); and the proposed state subsidies for Muslim schools, as well as the state-supervised training and language instruction for imams.

All these instances point to a *de facto* more pragmatic version of Republicanism (one that dares not speak its name), and that also puts an actual commitment to liberal-democratic values, as opposed to Republicanism as a national way of life, at the centre. In other words, Republicanism might well be on the way to being 'liberalized'; its 'thick' republican culture might be thinned out in favour of 'testing for values' and language, rather than expecting a wholehearted embrace of a republican conception of the good (Laborde 2002a, Laborde 2005, de Gaulebert 2005). For now, the most striking thing about it is the considerable and apparently widening gap between public justification and state practice.

So Republicanism is moving closer to what Joppke has called 'applied multiculturalism' (Joppke 2004); though it is important to stress that such applied multiculturalism does not entail multiculturalism as any kind of *ideal*. Indeed, contrary to much rhetoric by leading politicians in Europe today, even in Britain and the Netherlands multiculturalism was never wholeheartedly embraced as a vision for society as a whole; what happened, especially in the Netherlands, was a pragmatic, but ill-conceived multiculturalism as pre-emptive pacification of parts of the population (Scheffer 2000). 'Pillarization' – the famous division of society according to *zuilen* -- had precisely *not* been the kind of vision which, for example, Bikuh Parekh outlined in saying: "we" cannot incorporate "them" so long as "we" remain "we"; "we" must be loosened up to create a new common space in which "they" can be accommodated and become part of a new reconstituted "we" (Parekh 2000: 204). Segmentation was the

opposite of such a ‘new common space’: it was an ‘us and them’ that never gave way to a newly constituted ‘we’.

Pre-emptive pacification or even indifference has now been replaced by an intense anxiety about the emergence of ‘parallel societies’ where ordinary laws do not apply by default and neglect, rather than by multicultural design. Consequently, one now finds a not always very coherent mixture of an overall ‘imperative for inclusiveness’, ‘applied multiculturalism’ and the demand for an affirmation of liberal-democratic constitutional principles (as well as the imperative to acquire the official national language) (Joppke 2004). Practically, this search for a common affirmation – and potentially a newly constituted ‘we’ – is taking the form of high-level dialogue and consultations between the state and minority representatives; witness, for instance, Germany’s string of *Islamkonferenzen*, from which a kind of ‘social contract’ between the state and the Muslim community is supposed to emerge after a number of years (Schäuble 2006). One could simply dismiss such an approach as a revamped corporatism, and complain that states are assuming the task of ‘consolidating’ the notoriously fragmented ‘Muslim community’ to fit pre-existing patterns of state-church relations (Warner and Wenner 2006). But this is to overlook the efforts at genuine *mutual deliberative engagement* that outside observers and Muslim representatives themselves have lauded time and again.

A number of research questions would allow the testing of the claim that Europe is moving towards a constitutional patriotism as defined here.

First: Is the immigration regime one that can be classified broadly as a ‘universal source’ regime? Or are there ethnic preferences that structure immigration policies? Note that immigration does not have to be particularly liberal (in the sense of generosity of openness) – but clear ethnic preferences would generally point towards liberal

nationalism, where certain ethnic groups are seen as more easily compatible with something seen (or, rather, reified) as ‘the national culture’.

Second, are citizenship tests and rituals of membership focused on political values, or are they for the most part – whether explicitly or implicitly – about a ‘way of life’, a national culture or a ‘thick’ *Sittlichkeit*? Obviously, it’s hard to draw hard and fast distinctions here. Nevertheless, a preponderance of questions and symbols focused on high culture, or specific confrontations with highly specific segments of a way of life (as in Dutch immigration and integration minister Rita Verdonk’s proposal to confront would-be immigrants to the Netherlands with images of gay couples and bare-breasted women on Dutch beaches) might point to liberal nationalism, rather than constitutional patriotism (and, as with Verdonk, poor political judgment).

Third, are the tests and rituals of membership applied to all applicants? Inconsistencies here would again indicate liberal nationalism, or a form of republicanism that remains more or less secretly imbued with a particular national culture. Take as an example the initial attempt by some German *Länder* to apply certain kinds of tests only to applicants for citizenship from so-called ‘Muslim countries’.

Fourth, is the public justification of immigration regimes and citizenship oriented towards political values, and what could be described, following Rawls, as ‘constitutional essentials’ (Rawls 1993)? Again, it will be difficult to draw hard and fast distinctions here – but there clearly is a difference between regimes that justify immigration through kinship, those that stress economic benefits, and those that emphasize historical bonds and legacies.

Fifth, what is the legal approach to the *de facto* multiculturalism of a given country, and, in particular, is it consistent across ethnic, religious and cultural communities? For instance, is there a libertarian free speech regime, or one that could be

called ‘dignitarian’, because, as in German and other types of continental European law, the dignity of collectives and their capacity to be insulted is explicitly recognized (Whitman 2004)? If so, is what appears as the majority culture subject to particular protection (in the way that, for instance, the Turkish Penal Code makes ‘insults to Turkishness’ punishable?) The point is not that one is necessarily a pointer towards constitutional patriotism, and the other away from it; rather, the question is about consistency. Inconsistencies here would point towards liberal (or even illiberal) nationalism, rather than constitutional patriotism.

Sixth, in what way are immigrants and applicants for citizenship in particular expected to relate to ‘difficult national pasts’? As is well known, the last two decades have seen the rise of a ‘politics of regret’, where heroic, even triumphalist narratives of national pasts have been at least complemented by the recognition of histories of atrocity and moral failure (Olick and Coughlin, 2003). Are immigrants asked to share such critical attitudes with regard to the majority’s national past? Or are they to make the ‘politics of regret’ meaningful for the histories and national narratives of their (or their parents’, say) countries of origin? It would be wrong to think that a critical engagement with the host country’s difficult past would necessarily indicate liberal nationalism, as in: everyone now revises and furthers the same national identity or project (see also Booth 2006). Nor is it realistic to think that all difficult pasts can easily yield ‘universal lessons’, so that national specificity is somehow avoided altogether. My sense is that a stress on ‘universal lessons’, where plausible, would point towards constitutional patriotism, as would a more inclusive approach that focuses on ‘entangled histories’ or *histoires croisées* (see also Barou 1993). The latter would be a particularly strong sign that political cultures have become porous, mutually open and ‘decentred’, in the way

that proponents of a normatively substantial theory of constitutional patriotism such as Jean-Marc Ferry have long advocated (Ferry 2005).

...and defending Constitutional Patriotism

As was said at the outset, I will not here venture any hypotheses as to whether constitutional patriotism, as a mixture of an insistence on liberal-democratic values and more particular demands for language acquisition and other civic capacities, is now working particularly well anywhere in Western Europe, or whether there might even be an ideal mixture. However, I do want to suggest that from a normative perspective, such a mixture is not automatically illegitimate. It's true that, partly because of taking the 'imperative to inclusiveness' more seriously inside individual states, Europe's borders as a whole have probably become less porous (although one should not jump to the conclusion that there's necessarily a trade-off here). West European states continue to comply with international legal obligations – Michael Howard's 2005 suggestion to stop doing so by withdrawing from the 1951 Geneva convention on the status of refugees was not an obvious vote-winner – but they want to do no more; those countries that used to have, for instance, more generous asylum policies, have noticeably tightened them (Robertson 2005; Weil 2005). But unless a fundamental normative doubt about the rights of those who are already members to define and limit membership could be vindicated, it is hard to see what is so obviously wrong with an approach that does not violate stringent international standards.

Equally, it is in my view misconceived to see constitutional patriotism (as described here) and its expression in more concrete policies as inevitably contaminated

by culture and ethnicity, and therefore as exclusionary, in the way that, for instance, Dora Kostakopoulou has suggested (Kostakopoulou 2006). It is perfectly true that citizenship tests by themselves will not ensure integration; an environment where the contributions of immigrants and their descendants are properly recognized might indeed be far more important than a one-off testing of political knowledge, which, in any case, might say little about the actual civic attitudes of an applicant for citizenship. But it does not follow that all requirements or expectations beyond a simple procedure of civic registration send a signal of hostility, or that anything that affirms 'identity' is primarily designed to reinforce exclusion. Of course, one might say that, by definition, 'identity' excludes; but, again, it does not follow that, as a postmodern cliché has it, all 'identity-building' has to start with the search for an 'Other' (see also Abizadeh 2005). The question is what kind of identity, and what possibilities for contesting identity are available at the same time; simply asserting that everything is contaminated by ethnicity short-circuits such a real, in principle open-ended process of a society coming to a collective self-understanding.

Not all political or even historical knowledge that might be seen as important for citizenship is automatically exclusionary on an ethnic basis: events, historical figures, and broader principles might well become part of a larger narrative of inclusion: it all depends *how* it is done, and such policies cannot simply be discredited with the argument that 'all identities exclude'. There is much to be said for the view that 'membership...is meaningful only when accompanied by rituals of entry, access, belonging, and privilege' (Benhabib 2004). No doubt such civic meaning-making can look silly or excessively 'modernist' in the eyes of some, but it is not an obviously illegitimate demand.

Conclusion

I have argued that it can at least be tentatively suggested that the major Western European countries are converging on a set of political ideals, civic expectations and policy tools that can usefully be described as a form of constitutional patriotism. An idea that once appeared as either hopelessly abstract and universalistic or highly particular, on account of seeming only relevant in a divided country, is fast becoming a pan-European norm.

Whether such a shift actually will translate into successful integration arguably depends on what eventually happens within societies: public discourses and law can only ever reach so far, and cannot by themselves guarantee hospitable civic dispositions, fully eradicate discrimination in the private sector, and generally strengthen the image of porous societies with fair opportunities. In that sense, it would not be unjustified to end on a note of caution and stress that constitutional patriotism might indeed not enough.

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² I am indebted to Paul Starr for the notion of a social (or even sociological) strategy.

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