



CONSTITUTIONAL PATRIOTISM BETWEEN FACTS AND NORMS

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Abstract

History of thought has offered many rigorous ways of thinking about the world. Many great idea(s) have benefited from surrounding disciplines. The call for changing the world rather than interpreting it has been made by Marx long ago. This appeal for change through thought, one might think, has arrived at a standstill with the political impasses our world is witnessing today. Habermas' magnum opus 'Between Facts and Norms' offers a track between the world as it is and the world as it should be. The legal reading, he provides offers a functioning solution bridging the gap between the social and the philosophical. The missing link in this work, I argue, is the notion of a developed understanding of constitutional patriotism. Introduced by Habermas and later developed to a larger extent by Muller, constitutional patriotism is a form of political attachment seeking to transform conventional national(istic) ties. Interdisciplinary by nature, constitutional patriotism sits into the framework of 'Between Facts and Norms', between Is and Ought and between theory and practice perfectly. Communication as the glue of a broader theory is harmonised into the theory of CP through Kohlberg's idea of development. While I develop the notion under Philosophy as the main discipline, CP in practice addresses conflict resolution stream of international relations too. International human rights law and the principle of democracy are the theoretical components of constitutional patriotism. In practice, these theoretical normative pillars transform in light of the political problem at hand. In this paper, I would like to present constitutional patriotism as a concept which is philosophically defensible and workable in practice.

Keywords: Habermas, Identity, International Human Rights Law, Democracy.

1. Theory and Praxis for Habermas

The social world of today is marked by a schism between the empiricism offered by social sciences and the perfection offered by an orthodox philosophy. Sociologists have recently focused more on empirical research providing factual data about the world we inhabit. Crises of the real world about migration, and violations of human rights have made it obligatory to keep a watchful eye on the social. Philosophers, on the other hand, arrived at a standstill about bringing the normative ought down into the social. History has brought the East and the West into this crossroads together. It is the job of social thought to bridge this gap by bringing seemingly different spheres together. For Habermas, the place critical theory which stands today is very different from what its founding fathers had imagined. Law steps in to synthesise the real and the ideal. Pathologies of the real world is a good point to start about the factual existence of the social world.

Nationalism is an ideology which fuels the emotions of people forming attachments in the social domain. It helps people to form a We-ness and feel more secure within an imaginary domain the strength of which is confirmed by a shared language, first, and then a shared culture. The identity it forms connects people living different lives under possibly completely different circumstances. Benedict Anderson's introduction of the notion of identity being imaginary refers to the sentiment of relying on another person doing and feeling the same as

you do within the bounds of the same geographic area. This sense of belonging is largely created and perpetuated by the media. While a newspaper was the only medium Anderson used at this younger stage of building a sociological literature on national identity, now more developed means of information technologies and the internet offer different mediums of communication. The ideas shared and mobilised are no longer limited to another person reading the same newspaper as you in Southern France, therefore constituting a French national identity, as Anderson exemplified in 1983. Today, the international community is able to learn and react to a large variety of ideas from around the globe. Social media has changed the direction of communication in a way which allows personalisation of the news one gets on an everyday basis. In social media, a participant in discourse can choose which information sources one can bring herself closer to. This way, opinion and will formation which is an integral part of democratic regimes witnessed a momentum never witnessed before: one image of a drowned infant migrant can find itself in the personalised newspaper of anyone through the social media.

Time has shaped the notion of idealism, as well as it reshaped communication: Nationalism today is different from nationalism at its time of emergence. While at its emergence through the French Revolution it provided a form of emancipation from the rule of the monarch the superiority of whom was attributed to divine law, nationalism offered an egalitarian form of identification between people of different economic classes. Source of legitimation could no longer be the divine privileging the Church and the monarch who, according to the prevalent belief of the time, received her power to reign from God. Therefore, around the time of 1789, the need of the social progress pointed out toward a different direction rendering nationalism, in some sense, useful and progressive. This positive use of nationalism, I argue, has arrived at an impasse in view of the global politics of 21st century. Under circumstances which the originating power of emancipation from the supreme power of the God or the monarch has already been lost, nationalism started producing a pathology in its unreflective form. Allow me develop this notion.

Pathology, in the positive scientific sense, is the malfunctioning of a particular physiological part of the body. This results in pain and the failure to use that part of the body effectively. Health, in positive sciences, is lack of pathology. Alternatively, it is having a pathological symptom that is manageable for he or she that perceives that pain. An improved well-being may entail having a particular illness still present in the body, but also an attitude on behalf of the patient toward that particular illness for it being tolerated. Nature has levels and a different language of its own. Science offers a means to read that language and even to master it. The body-politic, that is the form of governance of a given society, functions in a slightly different way from a human body when it comes to the problems it encounters. The body-politic has a social, as well as a political dimension. The former relates to matters within its borders whereas the latter is an in between level between the outside and the inside. Pathological formations in one part can affect the other very easily due to the democratic structure of most western governments.

Nationalism in our day started to form a filter which has a dual function: one of identifying people with one another which facilitates local governance, and the second a negative function rendering international communication much more difficult for the identification attained at the national level hindering a post-national one. The function nationalism used to meet in an emancipatory process has for long facilitated the dissemination of ideas within a linguistic domain facilitating communication. The invention of the press which diminished the role of the clergy being the only people capable of reading the Bible is now replaced by the dissolution of information within as well as among nations. In our age, neither is there a single book which holds the truth, nor is there a particular community with privileged access to the language and the contents of this book. Historical openings rendered the Enlightenment ideals spread over larger groups of people which interact with one another as well as with the individuals constituting these communication groups. For the theory of CP, the primary group of communication within which an identity formation can be detected in an anthropological

sense rendering the study of this group easier is the nation-state. The nation-state, as the foremost actor in international relations, is also the common denominator for increased communication. National language or the majoritarian language goes hand in hand with this intense process of communication. Communication within the human brain is carried out through neurotransmitters doing a back and forth for the thoughts to be turned into linguistic utterances. When a human being desires, at a conscious level, to express a thought or feeling, an impressive process of communication takes place within the brain. This includes electricity, synapses and different neurological organs such as the corpus collosum. This state of perfection for the utterance of a sound and a meaningful set of sounds (that are words) cannot be found in human society as it does in a healthy human body.

For the body politic, there aren't any flawless set of institutions functioning in a similar pattern to the that of the body. Democracy as an ideal renders the will of the majority superior to that of the minority. Therefore, when a nation state as an agent in international relations seeks to express itself, it is unmistakably through the will of the governing party or parties. And when we expand the circle of communication towards a cosmopolitan one, it is even more difficult to find a pattern of expression and understanding resembling the healthy human brain. Nation-states hold onto their core essence to the extent which makes it difficult to internalise the incoming message from another nation-state.

In a cosmopolitan perspective, one can observe that the members of different nation-states are now exposed to the same news shared through the new information technologies. 'Rights violations in one part of the world are felt everywhere', to quote Kant. This international exposure and an unseen obligation arising in the field give rise to responses which are affirmative of international communication as well as to responses which condemn the norms belonging to different societies. While the examples to the social norms less desirable vary in different national and cultural contexts, there is one division which renders sociological analysis possible in a scientific sense: conventionalism and post conventionalism are attitudes shared in different contexts. The specific social norms belonging to different levels of conventionalism scale are unique to each cultural domain. However, progressive thought is different from thought which prefers to maintain what already 'is'. Therefore, nationalism, providing a form of solidarity rendering political governance is, in this schema, a notion falling under conventionalism. Cosmopolitanism, on the other hand, offers an idea of unity among diversity. Post-nationalism and the notion of constitutional democracies advocated in *Between Facts and Norms* of Habermas is an idea I situate between the cosmopolitanism and nationalism. I am not able to focus on each of these notions in the way they deserve to be treated right now. However, I think that it is important to pay attention to the bridge between the two rather than going into either one of them more than they require.

Habermas borrows Kohlberg's terminology. In 'Communication and Evolution of Society' and in 'Moral Consciousness and Communicative Action', he uses slightly different schemas while he seeks to find the right reading of Kohlberg's moral development. The first thing to mention about Kohlberg's work is that his choice of word of 'morality' is not an idea which belongs to the realm of moral philosophy in a strictly philosophical discipline. For Kohlberg, morality is closely linked with the right behaviour for which he makes use of psychology more so than a religious or philosophical understanding of morality (I maintain this link between religion and morality as the compounding of the two without an analytically clear implementation of secularism can easily yield to chaos, mostly in non-European contexts). Habermas and Kohlberg did not infuse secularism into their schema of moral development; however, for researchers following them, it is useful to add this social political ideal into the framework of Habermasian moral development.

In *Moral Development*, Kohlberg utilises early infant development to reconstruct the social evolution of a society. In doing so, he seeks to come up with a theory with which the society (as a phenomenon belonging anywhere) is capable of transforming for the good. The 'moral' is the good behaviour. Habermas describes the three level schema with another narrower six stage schema within it as a framework for reading human social behaviour. These are pre-

conventional, conventional and post-conventional levels. An infant who is at the pre-conventional level lacks the skills of perceiving the same physical setting from another person's point of view. This notion of perspective has paved the way for physiologists following Piaget to call this skill of perspective development 'empathy'. Piaget, and Kohlberg and Habermas, who all borrow from one another, work around this notion of empathy as a cognitive development of the child. When we try to project this schema into the society, perspective taking turns into a process of communication. It is through participating in rational discourse with all those concerned that an agent in international relations (which is a nation-state mostly) can develop its own perspective. This call for increased communication, in one of Habermas's Kohlbergian schemas, places "universal ethics of speech" as the philosophical denominator of the highest level of moral development. It is only at this last level that an ideal legal framework functions for citizens who think reflexively.

In a different article, Habermas's remarks on empiricism indicate towards a speech-act theory with implications on conflict resolution: the type of conflict and the mode of communication demonstrate a correlation, he claims (Habermas, 2005). He adds that the process of communication flows between two different tracks constituting the governmental structure: the first one formal and the second one informal. The formal one is the constitutional structure of the state including legislations and courts and administration; while the second channel which is informal constitutes of the citizens. He keeps identity out of this schema. It is in the second channel which identity formations can be found at the Kohlberg's conventional level, I argue. What already is, and the way the citizens already define themselves, sit into the conventional level of identity formations.

Habermas's discussion of Kohlberg offers a reconstruction of individual moral development. His focus on Kohlberg predates his work on constitutional democracy. However, in *Between Facts and Norms* he does not successfully place the moral development nor does he hint toward the direction of constitutionalism in his discussion of Kohlberg. These different spheres of Habermas's work require the rapprochement of one another. Furthermore, in his analyses of Kohlberg, Habermas does not use the notion of a constitution, but that of human rights and democracy.

To conclude, Habermasian idea of moral development offers an empirical tool for analysing and reshaping the philosophical ideals which, up until recently, remained under the monopoly of the normative 'Ought'. Psychology saves morality from a belief-like attitude towards political and social existence, while interdisciplinarity facilitates reaching utopian ideals in academic fields. Habermas's remarks on empiricism point toward an ideal.

Constitutional Patriotism puts into question the pathological aspects of national identity formations for increased communication among nations. It is this process of communication which can ease aggravated forms of conflict through a process of back and forth and sharing of views. In CP, any form of communication is helpful for the resolution of a conflict. The more the contact, the more likely that different interlocutors would find themselves within a space which they share a similar perspective. Kohlberg's and Piaget's experiments with early child development exemplify this development of perspective-taking. This is what empiricism means in a new political-legal theory of identity.

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