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Dimensions of a European Constitutional Patriotism

Mattias Iser



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Mattias Iser is Permanent Research Fellow at the Centre for Advanced Studies 'Justitia Amplificata: Rethinking Justice - Applied and Global' at Johann Wolfgang Goethe University, Frankfurt am Main. E-mail: iser@rz.uni-frankfurt.de.

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Centre for European Studies

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P.O.Box 1143 Blindern | 0318 Oslo | Norway

Tel: +47 22 85 87 00 | Fax +47 22 85 87 10

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Abstract

In this paper I deny the claim that the European Union is not and cannot be a political community based on a strong sense of solidarity between its members. The influential position that I critically discuss states that such solidarity would have to rely on sovereign law enforcement based on shared characteristics (such as a common culture or language) – all of which is and should (from a normative point of view) remain missing in Europe. In defending the possibility of a European constitutional patriotism I explore its different dimensions, namely a *procedural* and a *substantial* one. In the procedural dimension we confront the question which institutions and what kind of experiences (e.g., commonly confronted challenges) could heighten the awareness of citizens to be engaged in a common political project. In a substantial dimension we have to ask what kind of European policies could (and should) generate pride in its citizenry. With regard to this substantial dimension I draw a further line between an *internal* and a *transcending* perspective. An ‘internal’ perspective highlights the additional value of a politically strong Europe for *its own* citizens. A ‘transcending’ perspective emphasizes the role of the EU in creating a new world order and thus focuses – quite ambitiously – on the benefits a strong Europe might bestow on humanity as such. However, as attractive as the transcending perspective might sound for all those who are moved by an urgent sense of cosmopolitan justice, it also entails a danger. Such a perspective may try to idealize the reality of European power politics in order to create a shared identity. Yet, constitutional patriotism denotes a critical attitude: We should only feel pride in a political order that deserves it.

Keywords

Constitutional Patriotism – European Union – European Integration – New World Order – Political Community

Introduction

The prospects of a politically unified Europe seem to be more removed than ever, with fierce struggles over the best way to deal with (or minimize) national deficits and anxieties about a new German hegemony holding sway. Discussions about whether Greece should leave the Euro-zone seem to render all talk of a shared European identity futile. The same is true of the even more lofty prospect of a European constitutional patriotism. For some the latter might even be an utterly pointless idea, as there is no European constitution. When the French and Dutch citizens voted 'no' to the Treaty Establishing a Constitution for Europe in May and June 2005, this project witnessed its most dramatic blow. Certainly, the Lisbon Treaty entails most of the substantial improvements the constitution had envisaged and, after having been signed on 13 December 2007, it entered into force on 1 December 2009. But the Lisbon Treaty lacks the additional legitimacy that a constitution – ratified by referendums in all member states – would have had in the eyes of many.

The decisions in France and the Netherlands were – not so surprisingly – determined first and foremost by the perception of domestic problems and not so much by genuinely European ones. Does that show that Europeans just lack a shared identity that could motivate them to take Europe and its problems seriously? This diagnosis paints too dark a picture: At least part of the French and Dutch voters did, after all, not abandon the Treaty because they considered a strengthening of the European Union (EU) irrelevant or would have liked to give up this political project altogether. To the contrary, in the view of at least some politically active citizens the proposed constitution was characterized by serious flaws as for them it was still too market-oriented, too undemocratic and too immune to revisions. It might have been imprudent to vote against the constitutional treaty on these grounds. Nevertheless, could this not have been – as paradoxical as it might sound – a first sign of an emerging, albeit critical constitutional patriotism on the European level?

Such an overly optimistic perspective frequently encounters a fundamental skepticism about whether the concept of constitutional patriotism can be applied to Europe at all. In the following I will not only defend this idea but also explore the different dimensions of a potential European constitutional patriotism. Such patriotism is – or so I will argue – not categorically distinct from national constitutional patriotism. This is precisely the problem of contemporary discourses on Europe where the difference between national and European identity is often depicted too dichotomously. Thus, the EU is considered to be incapable of fulfilling important tasks already on the *conceptual* level. This regards, for instance, rather demanding policies of redistribution. I want to illustrate this problematic move – which is often encountered in the literature – by an intriguing text of Ulrich K. Preuß (2005), in which he denies that the EU possesses the qualities necessary for a genuine political community. Preuß refers to the lack of sovereign law enforcement which he attributes to the lack of shared characteristics (such as a common culture or language). Only such shared characteristics could account for a strong solidarity between European citizens. Thus, he claims, the EU can by its very nature not fulfill certain political tasks. This claim will be discussed in section one of this article.

However, some of his earlier writings already point to an alternative conception, namely that of a constitutional patriotism which locates the difference between national identities and a European identity on a continuum. In this latter case, the

decisive variable is taken to be the extent to which citizens share a common political practice. From this perspective, the degree of political involvement is not given *a priori*, but rather depends on political structures we are able to put into practice – if not now, then at least in the future. This argument emphasizes the *procedural* dimension of constitutional patriotism and thus political participation. Here, the concept of constitutional patriotism (at least conceptually) allows for a convergence between both kinds of identities, i.e., national and European. This possibility will be investigated in the second section.

Such an account, however, raises the question why citizens should identify with Europe at all if they can already be patriotic towards their respective nation states. What is to be gained by the European project? With these considerations I touch on the *substantial* aspects of a possible European constitutional patriotism: What kind of European policies could (and should) generate pride in its citizenry? Here it is important to bear two issues in mind: First, the exact content of constitutional patriotism can be interpreted very differently, e.g., as pride in a minimal state (respecting negative rights) or in a more demanding welfare state (securing social rights). Thus, one has to specify the background theory of justice that underlies one's own attempt at specifying the rather formal notion of constitutional patriotism (see also Müller, 2009: 47). Second, despite this fact one can quite generally distinguish two different perspectives regarding the tasks of the EU. On the one hand, one can assume an 'internal' perspective, which highlights the additional value of a politically strong Europe for *its own* citizens. On the other hand, one can take a 'transcending' perspective, which emphasizes the role of the EU in (shaping or even morally furthering) world politics, hereby focusing on the benefits a strong Europe might have for humanity as a whole. I deal with these two perspectives in the third section.

As attractive as the transcending perspective might sound for all those who are moved by an urgent sense of cosmopolitan justice, it also entails a danger. Such a perspective may try to idealize the reality of European power politics in order to create a successful identity politics. However, that would run against the very core of constitutional patriotism which seeks to maintain a critical attitude. The fourth and last section confronts this issue by explicating the normative idea that we should only feel pride in a political order that deserves such pride – and always work towards improving the justice of its institutions.

Is Europe a political community?

The decisions of EU-institutions increasingly determine the life of European citizens. They are directly binding for the member states and trump national law.¹ Does that already constitute the European Union as a political community? In an intriguing article, Ulrich K. Preuß reaches a negative conclusion when faced with what he calls the 'most mysterious' of all the characterizations of the EU (Preuß, 2005: 489)². However, in a first approximation Preuß regards the EU as a political community because it is a *polity*, pursues clearly discernible *policies* and finally – on the level of

¹ This view of the European Court of Justice, which also found its way into the draft for the Treaty Establishing a Constitution for Europe (Art. I-6), has, however, again and again be challenged by national supreme courts.

² All translations from German publications by the author.

politics – acknowledges the EU-citizens as actors (ibid.: 497f.). Nonetheless, Preuß soon describes the EU merely as ‘something like a political community’ (ibid.: 527). Finally, he denies that the EU can be assigned the character of a political community because it does not possess the sovereign means of law enforcement. Only coercion could guarantee the citizens’ ‘social discipline’ (ibid.). Enforceable law is the ‘medium of collective political identity’ and the expression of the ‘collective beliefs of a community about how it wants to live’ (ibid.: 528). Without such a monopoly of coercion (and violence), Preuß suggests, the close ties of mutual responsibility between citizens are missing, and with it the basis for reciprocal obligations of solidarity or ‘associative’ obligations (in the same vein Nagel, 2005: 128ff., 143ff.).

However, it remains utterly unclear why it should be political coercion that gives rise to demanding duties of solidarity in the sense of redistribution. An alternative argument, that Preuß does not consider, is that in order for coercive laws to be legitimate in the first place, the addressees have to be able to understand themselves as their authors (Habermas, 1996: 120ff.). Thus, the material preconditions have to be provided for all citizens so that they can in fact play an active part in the determination of the common laws (and, additionally, enjoy the fair value of the resultant rights). Yet, that is not the argumentative route Preuß takes. Rather, he connects the idea of sovereign coercion with that of cultural homogeneity. Thus, referring to Karl Wolfgang Deutsch, Preuß distinguishes between two conceptions of a ‘we-identity’:

a ‘we’ of several individuals based on similarity, homogeneity and identity and a ‘we’ which is created between individuals by mutual interactions and communications. The former ‘we’ I label ‘solidarity-we’, the latter ‘transactions-we’. The former presupposes social proximity – and usually cultural proximity as well. It refers to the thickness of the social cohesion within a community. The latter can also emerge between strangers.

(Preuß, 2005: 530f.)

Thus, Preuß uses this categorical distinction in order to illuminate the difference between thick national identities on the one hand and a rather thin European identity on the other. The latter is, when confronted with unbridgeable difference, able to come to a ‘gentle balancing between conflicting interests’ (ibid.: 529). Preuß’s innovative characterization of the contemporary EU as a ‘covenant’ (*Bund*), which is more than a confederation (*Staatenbund*) but less than a federal state (*Bundesstaat*), understands the EU as a *political* entity, which is based on fair compromises between nations, but not as a political *community* which is grounded on consent.

It is probably uncontroversial to observe that Europe, for the time being, does not have a collective identity which would qualify it as a political community in the strong sense which we are familiar with from the context of nation states. It is controversial, however, whether this must *remain* the case: After all, even the citizens of today’s nation states are strangers to each other (see also Preuß, 1998: 402).

And yet, Preuß seems to argue against aligning the distinguished we-identities mainly for a normative reason: He follows the influential criticism mounted by Joseph H. Weiler (1998) against the very idea of a European federal state. Weiler argues that such a polity would necessarily run into the danger that a people would have to subordinate itself to the majority opinion of ‘foreign’ peoples. The categorical

difference to majority decisions *within* nation states is allegedly established by claiming that only within a single people we could presuppose the homogeneity and mutual trust necessary for accepting majority decisions that do not match one's own convictions (Preuß, 2005: 518, 522). A similar reliance on democratic majority decisions within the EU would only be possible under the (rather unlikely) condition that the European *demoi* would merge into one people, into a 'transnational community of solidarity between individuals of quite distinct origins, cultural backgrounds, languages and world views' (ibid.: 527). Nonetheless, according to Preuß, such a fusion would destroy the valuable pluralism of the European peoples which has to be protected (ibid.: 529). Thus, the goal of a European federal state is neither 'desirable nor realistic' (ibid.: 524). By equating the European federal state with a homogenous nation, however, Preuß also equates the political *demos* with a culturally defined *nation* – a move which is, as I will now argue, far from necessary.

European constitutional patriotism?

In an earlier article Preuß had already argued that the EU is a 'community of states, at most of peoples, but not of citizens' (Preuß, 1998: 405.). However, in this earlier piece he considered it to be at least possible to arrive at a stronger form of political community by 'gradually expanding the civil rights and by permanently enhancing the institutions by which the individuals would be represented as citizens of the Union' (ibid.: 406). In fact, back then Preuß rather emphatically wrote that it should be the destiny of the EU to create a European citizenry (ibid.).

These passages follow a theoretical tradition which does not accept the idea that German citizens 'belong to each other in some way', whereas they 'only' have the feature of being 'members of the shared European project endowed with equal rights' in common with other Europeans (Preuß, 2005: 534.). Rather, accounts of constitutional patriotism disconnect the notion of political community as much as possible from national belonging in the cultural or even ethnic sense (see also Lacroix, 2002: 946, 954f.; Cronin, 2003: 14f., Fossum, 2008: 139f.). Participation in a shared political project is regarded as being sufficient. Constitutional patriotism denotes a positive identification with one's own political community, i.e. patriotism, *because* it has institutionalized the universal principles of human rights and democracy in a specific way, i.e. through a specific constitution. However, it is a critical attitude³: One is supposed to feel patriotism only towards a political entity which deserves one's identification – despite all the deficits (e.g., of ongoing inequalities and discrimination) that it might still have to overcome (see in more detail Iser, 2003: 102f.).

That said, is it still possible to apply this concept to Europe in face of the failed compromise of a constitutional contract, which shipwrecked on the 'no' of the French and the Dutch? Certainly, the lack of a constitution that has been explicitly authorized by the European citizens does not fully realize the republican idea of self-legislation. Yet, in a restricted sense I would maintain that one can nevertheless apply the concept of constitutional patriotism to Europe. Constitutional patriotism is not only (and not even mainly) characterized by the identification with specific articles of a constitution.

³ On the varying emotions that may be involved, see Müller (2009: 62).

Rather, it depicts the emotional and cognitive affirmation of the institutional character of the political community in question as well as pride for the historical process which has led to this result.⁴ The European Union already has such an implicit 'constitution', since it is grounded on an encompassing agreement between democratic and constitutional democracies which have surrendered sovereignty rights to supranational institutions. However, there is still the question of whether this European institutional structure provides its citizens with sufficient reasons for such patriotism. The age-old discussion about Europe's future, its *finalité*, does not only concern the question of whether we need a European constitutional patriotism at all (which may be denied by some tough eurosceptics), but also *what kind* of constitutional patriotism is needed.

Here it is important to note that the particular conception of constitutional patriotism one entertains depends on the underlying theory of justice embraced. The more abstract concept of constitutional patriotism, in contrast, denotes an attitude that can be affirmed by defenders of the status quo as much as by convinced eurofederalists. This should not come as a surprise. Obviously, if one disagrees about the legitimate shape of a political constitution one will also disagree about which substantial form constitutional patriotism should take. Thus, the main elements of the concept of constitutional patriotism are purely formal: Identification should proceed exclusively on political grounds – and not on cultural, ethnic or religious ones.

Two dimensions that should be distinguished, however, show that the idea of a European constitutional patriotism points in the direction of a stronger eurofederal position, or at least so I want to argue. These two dimensions I label 'procedural' and 'substantial'. These two dimensions can roughly be assigned to the three classic categories of rights famously distinguished by Thomas H. Marshall (1950). Political rights correspond with the procedural dimension of constitutional patriotism (democracy). Civil as well as social rights that result from the democratic process (and enable them at the same time) may be thought to correspond to its substantial dimension (human rights). I will first deal with the procedural dimension.

With regard to the procedural dimension, the republican origins of constitutional patriotism imply that an emotional as well as cognitive identification with one's own community can only properly emerge when the citizens are able to understand themselves as participants within a common political practice. From this perspective, the current state of European political life does not seem to be an especially suitable object of identification. Certainly, one can affirm the constitutional toleration between separate peoples that has already been achieved. But with such characterizations one, again, emphasizes the differences, not the commonality. Thus, the often bemoaned democratic deficit also creates a deficit of constitutional patriotic identity. This can only be remedied if Europeans jointly confront political challenges that are indeed experienced as shared and can only be solved together. That way, a common space of political experiences could emerge – and create a vital sense of being a member of Europe as a political community.

⁴ In emphasizing the role of a community's political history and its political institutions I argue against Josef Isensee's dictum that constitutional patriotism would be a deeply 'Lutheran solution: to get by without tradition, the German Basic Law' (Isensee, 1986: 14).

These considerations highlight the importance of institutional structures. As long as arguments are only exchanged within national public spheres, problems cannot be perceived as ones that apply to Europe in its entirety, let alone Europe's possible contribution to the promotion of a new world order (see next section below). Even an increased media coverage of European events by the national press, although an important first step, would not suffice because the emergence of a European identity does not only depend on the *mutual* perception of what is going on in the other national public spheres, but also on an active exchange between them that can actually influence the outcomes (cf. Strecker, 2003: 104f.). Such a goal could only be fully achieved by establishing *one* comprehensive public sphere with European-wide media, effective associations within civil society and European parties that offer programmatic alternatives.

Whoever paints such an optimistic picture of a European future, however, is confronted with the question of whether constitutional patriotism can emerge in such a prospective, future-oriented way – without a remembered history of challenges that have been mastered together, i.e., by drawing on shared institutions which stood the test. This might very well be a real *circulus vitiosus*: If a shared political identity presupposes a collective political practice, but the practice can only gain strength if it is able to rely on an already shared identity – then how is this vicious circle to be broken?

One might conclude from all this that every majority decision within Europe at the moment is doomed to lead to illegitimate results as there is no European identity it could rely on so far. Is it not very likely that some people will one-sidedly determine the fate of others? And should one not therefore discard all hopes for such an identity and settle for compromises between sovereign nation states? Such an interpretation of the situation is misguided. There are certainly nationally diverging political cultures. They shape public debates in the *style* of argument as well as in the way they prestructure the political *contents* that can be effectively put forward (Bellamy and Castiglione, 2004: 190). Yet, this should not mislead us into falsely conceptualizing national debates as expressions of homogenous ideas of what the single nation state wants as a whole. Processes of collective self-understanding cannot be modeled along the lines of a single individual searching for an authentic self-interpretation. Modern pluralism does not only cover questions of the good life but also the question of which conception of justice should be embraced (see also Rawls, 1993). Thus, dissent and conflict are indelible features of all politics. Those who lose out in majority decisions must – already in the context of nation states – accept these results, although this might sometimes prove to be quite painful. Citizens do not simply reconcile themselves with such outcomes because they consider themselves to be part of a strong 'solidarity-we' akin to that of a family. Rather, such political defeat is only acceptable if the decisions: (1) do not violate individual rights (which may include cultural rights), and; (2) the minority can entertain justified hopes that its arguments will – in due course – be able to challenge and even transform the opinion of the majority. Thus, with regard to the question of European identity we should embrace what John P. McCormick quite generally reminds us of when it comes to a political theory of the EU: 'The EU should not be held to normative standards that nation states themselves did not meet' (McCormick, 2006: 131). Empirically, it might very well be the case that within the EU we face unbridgeable disagreements *more often* than within the context of an already established national political culture. However,

it is by no means conceptually necessary that such unbridgeable differences will arise – as some seem quite eager to suggest.

The initial goal should be one of facing collective political challenges on the one hand and an identity that is able to generate feelings of solidarity on the other. Thus, issues should be discussed Europe-wide which are not prone to lead to a nationalization of discourse hereby fueling the impression of heteronomous decision-making (lately, fiscal matters concerning the stability of the Euro rather seem to have that impact, I fear). Issues in which opinions *within* all (or at least most) of the nation states diverge could figure as suitable ‘initial challenges’. For example, if one thinks that it is one or even the primary goal of the EU to politically intervene in the common market by regulating it and by addressing the distributive injustices that result from it, i.e., to complement ‘negative’ by ‘positive’ integration (Offe, 1998: 110), it is certainly not helpful to characterize European pluralism solely with reference to European peoples: Winners and losers of negative integration can be found throughout all member states. With regard to such issues, questions of economic and social *structures* become relevant but are increasingly neglected when the discussion focuses on the fact that Germans would have to ‘pay’ for the Greek. Whether ‘the’ Greeks then feel overruled by ‘the’ Germans (or the other way round) and therefore dominated depends largely on the kind of arguments which are brought forward by the majority: Are they characterized by a specifically national imprint? Michael Zürn has proposed that European referendums should initially refrain from referring to distributive policies because they would be too contested and one should rather focus on questions of a common foreign and security policy (Zürn, 1998: 355). Whatever issues one might favor, such proposals should be discussed in light of the aforementioned considerations.

Referendums are, however, only one institutional possibility to ‘europeanize national horizons of perception, trust and solidarity’ (Offe, 1998: 115). Additionally, all institutions (especially the European Parliament but also the European Court of Justice) are characterized by a symbolic dimension (cf. Göhler, 1997). If the principles of a fair and solidary cooperation would be publicly represented by European institutions in a way that is apparent to all citizens, they could very well contribute to the formation of a shared identity. That is because these principles ground the attitude of constitutional patriotism. In times of personalized politics this is especially valid for the behavior of those persons representing European politics – particularly if there was ever a democratically legitimized European president and foreign minister, for example. Symbolically, the ratification of a European constitution (or at least a constitutional contract) by the European citizenry would certainly have made a difference. Thus far – and there seems no end to this – the central role of the national governments rather enhances the tendency to view problems in the light of the respective ‘national interest’.

If one embraces this procedural understanding of a political identity as a result of a shared practice, which establishes a ‘community of problem solving’ (Schmalz-Bruns, 1999: 188) it does not seem to be the best conceptual strategy to complement national identities with a categorically different constitutional patriotism on the European level, as proposed by Jan-Werner Müller (2004: 183f.). He thereby fails to appreciate the general attempt of constitutional patriotism: The goal is to strip political integration from its prepolitical (esp. national) basis as much as possible *on all levels*. National and European constitutional patriotism should only be distinguished from

each other by the (still) differing degrees in which citizens struggle with (and against) each other for shared *political* solutions. Preuß's thesis that the 'solidarity-we' is grounded in 'social proximity' (2005: 531) can be understood exactly in this sense. For structural reasons – e.g., the pluralism of European languages or the unsettled finality of Europe – the extent to which citizens are jointly confronting political challenges might diverge for quite a long time, perhaps even forever. However, the theoretical framework proposed here does at least not prejudge the future prospects of the EU. From this perspective it does not seem to be impossible that European citizens would at some point in the future be able to synthesize both their constitutional patriotisms. If in the end we would face *one* constitutional order in which – according to the principle of subsidiarity – only those tasks would be assigned to the European level which could compensate the loss of sovereignty for the nation states by a gain of problem-solving capacities (Kumm, 2005: 31ff.; critical Bowman, 2006), the citizens might be able to perceive this entire order as *their* constitution – a constitution of which they feel proud. That said, even here they might identify with their nation state in view of specific accomplished tasks whereas they would laud the EU for enabling them to solve other political challenges.

The question whether one takes the transformation into a federal European 'state' to be necessary, thus, depends on why one thinks that democratic decisions should be met not only on the national, but on the European level. What is the 'additional value' of the EU – symbolically as well as materially? After all, neither nation states nor continental regimes like the EU are ends in themselves. They should be evaluated according to whether they allow their citizens to coordinate their common life by means of law and political programs. Thus, it is the substantial dimension of constitutional patriotism we now have to turn to.

Why Europe?

Nearly every democratic nation state can delineate its own identity against a dark history of oppression, foreign rule or moral failure, but what is the specific achievement of the EU? The question is pertinent, as only democracies with sufficient rights and minority protections qualify for membership within the EU.⁵ I already mentioned that constitutional patriotism entails a strong backward-looking dimension. The citizens must be able to refer to challenges that have been overcome collectively. For the defender of the European status quo the achievements of a lasting peace and a tolerant handling of differences within the EU and/or the successful creation of a single European market already suffices for a European constitutional patriotism.

From the vantage point of a stronger republican perspective, however, one has to hope for a much thicker constitutional patriotism. And this hope would have to rely on the analysis that threats to the substantial liberty rights and social rights can only – or at least much more effectively – be averted by a politically united Europe capable of acting in a much more constructive manner than so far. From such a perspective

⁵ Thus, it is often – polemically – claimed that the EU itself would, due to its democratic deficit, not qualify for membership. For some, this fact alone seems to disavow a European constitutional patriotism (Offe, 1998: 122).

the emerging European *polity* has to be regarded as a necessary complement of the national *polities* (see also Kumm, 2005: 48).

These dangers can be perceived from two different perspectives; from an internal and a transcending perspective. From an *internal* perspective the advantage of a unified Europe concerns primarily (or even solely) the European citizenry. From a *transcending* (or even cosmopolitan) perspective the main question is whether the European Union might be able to promote the solution of global problems in the interest of humanity as such. Thus, Ulrich Beck and Edgar Grande pose 'the European question quite immodestly: In which world do we want to live and what can Europe contribute to this goal?' (Beck and Grande, 2004: 336).

The recent literature discusses two material threats faced by nation states on their own: First, the prevention of future wars; second, the preservation of political steering capacity in light of globalized capitalism. Whereas war can be seen as the ultimate threat to all rights (a), globalization primarily undermines established social rights, but also already achieved standards of environmental protection – and therefore the basic rights of future generations (b).

(a) Historically, the fatal experience of World War II provided the central motive for establishing the EU as a zone of peace. However, this goal has already been achieved. Thus, the question is why we should transform the EU into a 'republic' in a more emphatic sense if this task of securing peace can also be achieved by the 'good old' mode of intergovernmental cooperation? From an internal perspective we might just point to the necessity of a common foreign and security policy in order to prevent or counteract military or terrorist threats from *outside*. Assignments of the military beyond Europe would, from this perspective, have to be justified in the light of European security interests. However, apart from clear cases of self-defense, military interventions can rarely be justified with reference to purely self-centered interests. Therefore, the transcending perspective is nearly always invoked. In this vein, Europe was – most strongly during the US-administration of George W. Bush – supposed to act as a 'civil power' (*Zivilmacht*) which could create a counterbalance towards the unilateral undermining of international law by the sole remaining superpower. Only in the service of peace (e.g., to avoid genocide) and with a mandate by the UN was Europe supposed to intervene militarily beyond its borders.

(b) Additionally, it has become a commonplace that the process of globalization threatens the role of democratic politics. Whereas politics is usually supposed to domesticate the anarchic powers of the market, it is less and less able to do so effectively. Because all countries have to compete for industrial location, they tend to lower the tax rates to create incentives. However, by doing so they engage in a fatal race to the bottom which decreases the overall amount of taxes they are able to collect. This in turn reduces their capacity to redistribute wealth in a just way, to provide its citizens with a work-independent basic income or to induce companies to behave in more environment-friendly ways (Zürn, 1999: 252, Habermas, 2001: 69).

Because the EU can be regarded as an important actor in the process of a neoliberal globalization, the political strengthening of the EU in order to protect (or even improve) the current level of social rights, would be – at least in part – an answer to a problem that was created by the EU itself, namely the global weakening of social

rights. Thus, Europe has to become a political order in which social rights play a much more important role than they have so far.

In order to commit Europe to this (rather more social democratic) conception of a just polity, it seems indeed that we have to rely on a notion of a 'we' that is thicker than a mere 'transaction-we': It is especially the poorer member states who hope to profit from reducing their labor costs and taxes, hereby compensating their disadvantages in infrastructure. Thus, it is highly unlikely that harmonized margins of business taxes and a unified commercial law could be achieved within Europe without a massive redistribution of wealth between the states. If, however, poorer states have to be compensated for European policy decisions, and this is to be regarded as legitimate by all Europeans, this presupposes that, 'for example, Swedes and Portuguese will be ready to vouch for one another' (Habermas, 2006a: 87).

Against this (admittedly politically tendentious) way of interpreting the political task of 'Europe' one can certainly argue that it is to be regarded as just a 'proposal for how to interpret the political meaning of European integration', and by no means 'a description of an already consolidated view (*Meinungsbild*)' (Offe, 1998: 125; similar Habermas, 2004: 46, 73ff.). I have already pointed to the indeterminacy of the notion of constitutional patriotism. Neoliberals can be constitutional patriots as well as social democrats. The former would feel pride in a minimal state, the latter in a welfare state. However, this is the same as on the national level. Within nation states we witness heated debates about the future of social security as well. These discussions are not only fueled by pragmatic arguments, but also by reasons grounded in differing theories of justice. Nevertheless, *if* one wants to protect the social rights, for which political movements have fought in the last centuries, then enabling Europe as a political actor seems to be a necessary means to this end.

In contrast to this internal perspective which focuses on how best to protect one's own welfare system(s), the transcending perspective demands of Europe to shoulder even more tasks. Thus, Europe, as the first continental political regime, is supposed to serve as a role-model for all other regions. Together with the other influential global players Europe is, 'within the framework of permanent conferences and negotiating forums' (Habermas, 2006b: 136), called upon to engage in the positive task of protecting and furthering the achievements of welfare state policies and a more ecologically friendly economy. Again, within the debates about Europe's future role, the delineation against the United States and its alleged tendencies towards more neoliberal and unilateral policies have played a major role in trying to create a common sense of 'Europeanness' (see also Heins, 2005).

Constitutional patriotism as critique

Such a transcending perspective is certainly most welcome from a cosmopolitan perspective. However, it comes with two dangers: First, it is often accompanied by a demarcation from the U.S as an 'other' (a) and secondly it may lead to an uncritical idealization of Europe and its policies (b).

(a) Confronted with the administration of George W. Bush it might have been politically expedient to demarcate Europe's identity *from* that of the United States in order to induce Europeans to a public discussion about the future role of Europe. Yet

this should not be taken to indicate that such delineation is necessary in order to ascertain one's own identity (see as well Habermas, 2006b: 50). Generally, it is a mistake to think that one could generate an identity only in contrast to the diverging values of other identities.

As I have indicated above, the specifics of a collective identity can already emerge from actors being faced with very specific challenges. It is not important that collective A develops a radically different self-understanding than collective B. Both can interpret themselves as welfare-state democracies with a strong affirmation of international law. It is sufficient that they came to this self-understanding on different historical paths (see section on European Constitutional Patriotism above and Iser, 2003: 97ff.). It is also not important for a European identity that it realizes the universal principles of human rights and democracy better than other continental political regimes (which may be established in the future). Rather, it would be most welcome from a cosmopolitan perspective if all these regimes would work fruitfully together to jointly solve the problems at hand. Why should not Europeans be proud of their political order if the Americans are proud of theirs? Europeans could also take pride in the attempt to establish a more just economic world order. However, these cursory remarks already suggest that the transcending perspective would not only have to hope for a European constitutional patriotism, but in the end for a global one as well. To summarize: A European identity must not (although it may) diverge from that of the United States in important respects.

(b) The emphatic talk of a 'mission of Europe' is also dangerous in that this might easily turn into mere ideology: If one is interested in a European constitutional patriotism it might seem expedient to simply claim that there already is a cosmopolitan Europe that deserves the pride of its citizens in order to create the solidarity so desperately needed. However, such a Europe has to be established by political efforts – it cannot simply be proclaimed. Therefore, an attitude of constitutional patriotism that would take seriously the political goal of a European 'mission in world politics' (Meyer, 2004: 142) would necessitate a *further* expansion of our solidarity – towards the global realm.

What is already true for the EU holds true for the world economy as well. Normatively, the goal cannot be to protect the living standard of the Western hemisphere by avoiding that companies start factories in underdeveloped countries or to uphold the fatal subventions of European agriculture. Global capitalism can only be domesticated in a fair way by means of an active global solidarity. The goal must be a more just distribution of the global wealth. These rather sketchy suggestions indicate how painful such policies could turn out to be for European citizens. In the end, European constitutional patriotism would have to lead to a global constitutional patriotism, where citizens are proud of the achievement of a more fair structure of world politics.

However, it is at least possible (perhaps even probable) that a politically unified Europe would use its bargaining power in its own interest rather than in that of humanity as such. Thus, the danger of idealizing the 'European project' before it has even started can only be averted if one always keeps a critical distance to it. One always has to watch out for possible discrepancies between its pretense and its reality. In order to do so, it is necessary to remain aware of the different dimensions of a European constitutional patriotism (procedural vs. substantial and internal vs.

transcending). Additionally, one has to keep in mind that the core of the attitude of constitutional patriotism is a critical one, namely to cultivate a patriotic sentiment only towards those political orders that really deserve such positive identification.

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