

Democracy's Identity Problem: Is "Constitutional Patriotism" the Answer?

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At the start of the twenty-first century, one hardly needs to be a political scientist to recognize that democratic institutions alone do not generate democracy. When political actors introduce to societies that have been governed non-democratically liberal-democratic constitutions – even when these constitutions define broad and inclusive political and civil rights, even when they establish legal frameworks for a parliamentary government and for free and fair elections – such institutional changes alone do not secure stable and legitimate practices of democratic governance. Democracy requires, in addition to democratic institutions, democratic citizens. It requires, that is to say, citizens who regard one another as political equals, who are motivated to engage one another in collective deliberation, and who are willing to accept as legitimate the laws that democratic processes yield.

"Identity" is a term often used to capture this affective component of democratic practice. Democracy needs some form of citizen-identity for purposes of integration. Individual citizens can be motivated to look beyond what they understand to be in their self-interest and what they understand to be in the interest of their familiars, and to do so for the good of their fellow citizens, who remain to them *strangers*, only if they feel some sense of identification with those strangers: some sense of solidarity with them, some sense of sharing with them in a collective purpose or a collective project. If "rule by the people" is to mean more than simply rule by the majority in the interests of the majority – if democratic government requires that the interests of each, or the good of each, or the will of each, count in processes of collective decision-making – then every democratic polity needs some civic bond, some cohesive force that can prompt its citizens to act politically in ways that take into account the claims and the perspectives of others.

Democracy needs identity, then. But at the same time, identity is a problem for democracy. If one thing is clear from the history of the last century, it is that practices of citizen-identification are often accompanied by practices of other-ing, and in particular by the repression – often the violent repression – of those defined as "aliens" at home, and by aggressiveness – often violent aggressiveness – toward those defined as the foreign other. There is no necessary reason why this must be so. There is no necessary reason why identification with some civic "we" must be accompanied by intolerance, let alone by violence directed at those defined as outside this "we." Still, the civic identitarian component to democracy, because it *can* fuel punishing attitudes and actions directed at its others, is always potentially an object of manipulation by political elites and by would-be elites, who can – and who do –

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Thus, identity is a problem for democracy in the sense that democracy cannot work without it, and yet cannot unequivocally embrace it. If the democrat's fantasy is Rousseau's band of happy peasants regulating the affairs of state under an oak tree, her nightmare is the American Japanese internment camp. In recent years, a number of political theorists have attempted to find a safe place for identity in democracy: a place between the fantasy and the nightmare. Not only Jürgen Habermas, whose work is the focus of this essay, but also civic nationalists, republican patriots, and others have attempted to resolve democracy's identity problem by searching for forms of civic identification that meet the democratic polity's need for allegiance and for solidarity, while at the same time fostering tolerance toward those defined as outside the civic “we.”¹

In what follows, I want to make the case that this strategy, although intuitively appealing, is misguided. I will advance this claim by exploring what seems to me to be the most promising of the ongoing efforts to solve democracy's identity problem: recent work by Habermas (and others) on a form of civic identification that he calls “constitutional patriotism.” The essay proceeds in three parts. First, I explore, briefly, Habermas's principal claims about constitutional patriotism: his arguments about the content or the substance of that identity, as well as about the political work it might perform. Habermas's most basic claim is that the identity democracy needs can be constructed based on constitutional principles themselves. A civic identity rooted in liberal and democratic constitutional principles, he suggests, can perform the integrative function that democracy needs without becoming vulnerable to strategic exploitation. In the second part, I consider objections that have been raised by two sets of critics: those who claim constitutional patriotism is too thin – i.e., that it cannot perform the integrative work democracy demands from civic identity – and those who claim it is too thick – i.e., that even principled forms of civic identity always implicitly rely upon ethno-culturally particularistic solidarities and allegiances. The principal Habermasian response to both lines of critique is that they confuse what *has been* (historical fact) with what *must be* (psychological necessity): they assume that, because modern democracies have relied upon nationalist forms of identification, civic identity cannot be decoupled from nationality. Taking this Habermasian response to heart, in the third section I present what is not an empirical so much as an analytic critique. If and to the extent that constitutional patriotism can bind democratic citizens together, I argue, if and to the extent that it can create a civic identity based on liberal and democratic principles, then it will define “others” of that identity (the illiberal, the anti-democratic), creating both a potential for aggressiveness toward those others and a strategic incentive for elites to exploit that potential. Democracy's identity problem, I underscore, is a chronic problem. It therefore demands an appropriate treatment: not a cure, in the form of a democratically legitimate civic identity, so much as a management plan, which includes disturbing any settled sense of having achieved a democratically legitimate identity.

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1. What is Constitutional Patriotism?

Habermas's work on constitutional patriotism grew out of his efforts to grapple with two of the most pressing problems identity poses for democracy in contemporary politics. The first might be thought of as the German problem: How should liberal democrats who identify as citizens of a particular political community relate to those elements of that community's past that are, from a liberal and a democratic perspective, repugnant? One starting-point for the notion of constitutional patriotism, then, was Habermas's effort to think about German political identity after the Holocaust.²

A second was his effort to think about the ongoing processes of European economic and political integration: processes that bring into relief the problems globalizing pressures pose for identity in democracy. If dense networks of power relations transcend the boundaries of national political communities, if they define economic problems, environmental problems, and other collective problems that cross nation-state boundaries, then how can people construct, not only political institutions, but also political *identities* that enable them to address such problems democratically? If citizenship has an important affective dimension, in other words, if it involves on some level identifying with those strangers whom one regards as one's fellow citizens, then what could it mean to be a citizen of Europe?³

In coming to terms with the first problem – the problem of the liberal democratic political community's relationship to its illiberal and anti-democratic past – Habermas argues forcefully against an understanding of political identity as fixed or static: an attachment which citizens passively inherit. Identity is not, he suggests, so firmly rooted in tradition as to be unresponsive to reinterpretation. It is not an unbroken chain linking past to present to future. Instead, political identity – the sense of solidarity people feel with those strangers whom they regard as their fellow citizens – is an artifact of political practice. Citizen identity is, more specifically, an artifact of public deliberation, which, by Habermas's view, is always in process in a democratic society.⁴ Citizen identity is an affiliation that people continuously create and re-create through a series of ongoing public conversations. As participants in such conversations, citizens cannot invent political identities from whole cloth. Dense webs of human relationships tie political societies to the past, including to those elements of the past that are, from a liberal and democratic perspective, "disastrous."⁵ Still, Habermas underscores, there is much room for collective agency as citizens debate with one another and as they decide together *how to relate to* their past. Members of a liberal democratic political society can take a critical stance toward their past. They can examine it through the lens of constitutional liberal and democratic principles, which they reflexively endorse. They can deliberate with one another about which elements of the past to appropriate, given their endorsement of those principles. They can deliberate, as well, about how the elements of their past that they disavow should inform their understandings of their political identity.⁶ So, to cite an example that preoccupies Habermas, the history of Nazism in Germany, when German citizens reflect upon it and deliberate about it from the point of view of the liberal and democratic principles institutionalized in the

postwar constitution, can motivate them to construct a German political identity that is explicitly anti-racist and opposed to human suffering.

Habermas takes a similar tack in addressing the second problem: the problem identity poses for democracy in the face of globalizing pressures. Just as citizens can take a critical attitude toward the past as they deliberate about the content of their political identity, he suggests, so they can take a critical attitude toward the boundaries that, at present, delimit their political community. If power relations create a need for a more expansive political identity – for an identity which can motivate public-regarding political action across extant nation-state boundaries – then, by deliberating together, people consciously can construct new, transnational identities. Thus in Europe, notwithstanding national differences in history, in language, in customs, Habermas suggests, people can decide, collectively and deliberatively, to construct a new identity built from their (selectively appropriated) European experiences and European traditions.⁷ Together with Derrida, Habermas has suggested several candidates: several traditions that might be appropriated and that might inform a new transnational European identity. These include a tradition of keeping religion separate from the public sphere, a tradition of relying upon the state to correct market failures, and a tradition of engaging in collective action with a view to promoting social justice.⁸ As in the German national case, Habermas envisions this new European political identity, as, in part, the product of critical engagement with what is illiberal and what is anti-democratic in Europe's past. For instance, he suggests that by reflecting critically on the experience of empire, and by deliberating together about this deplorable aspect of their shared past, Europeans might construct a political identity that includes an explicit repudiation of Eurocentrism.⁹

Thus constitutional patriotism, as Habermas conceives it, differs substantially from more conventional understandings of patriotic attachment. It is a form of identity citizens create and re-create by participating in collective deliberation about how to interpret and institutionalize principles of constitutional democracy: democratic principles of free, equal, and inclusive collective self-determination and liberal principles that support human rights. "In complex societies," he writes, "it is the deliberative opinion- and will-formation of citizens, grounded in the principles of popular sovereignty, that forms the ultimate medium for a form of abstract, legally constructed solidarity that reproduces itself through political participation."¹⁰ If members of a particular political society take pride in some aspects of their shared history, this view suggests, if they identify with some of their political community's institutions and some of its practices, if they experience themselves as fellow citizens united by collective memories and collective achievements, they might do so, not only and not principally because they understand these experiences and accomplishments to be *theirs*, but also, and importantly, because they understand them to be the product of democratic deliberative processes, consonant with universalistic constitutional principles.

Constitutional patriotism resembles more traditional understandings of civic identification, however, in that Habermas envisions it, not merely as a rational endorsement of universal principles, but also as an affective attachment to the particular interpretations of universal principles that emerge from collective deliberation. Thus he argues:

Each national culture develops a distinctive interpretation of those constitutional principles that are equally embodied in other republican constitutions – such as popular sovereignty and human rights – in light of its own national history. A “constitutional patriotism” based on these interpretations can take the place originally occupied by nationalism.¹¹

Constitutional patriotism, then, is “loyalty to a particular constitutional tradition.”¹² A constitutional patriotic version of German civic identity, for instance, might be based in a felt attachment to the particular interpretation of human rights and democratic principles articulated in the German Basic Law. Habermas’s claim is *not* that constitutional principles alone can produce a cohesive civic identity. Instead he stresses that, in order to experience themselves as co-members of a particular political community, people need some politically particular interpretation of such principles.¹³ Yet these interpretations, he underscores, can and should remain neutral vis-à-vis the ethno-cultural norms and values that define “sub-political” identity-communities in every pluralistic political society.¹⁴ He thus envisions both a universalistic and a politically particularistic dimension to constitutional patriotism. The latter (the polity’s politically particular interpretation of constitutional principles, conditioned by deliberative democratic processes) he hopes will enable civic solidarity and motivate public-regarding political action, while the former (the universal principles themselves) provide a built-in defense against the strategic manipulation of identity for anti-liberal and anti-democratic ends.

2. Thick and Thin: Critics of Constitutional Patriotism

Critics of Habermas’s work on constitutional patriotism have articulated two principal sets of challenges to this position. Some argue that constitutional patriotism is too thin. If a definition of the civic “we” is to engender politically efficacious forms of identification, their claim is, it must be moored in deeply constitutive attachments and solidarities. By this view, a constitutional patriotic identity forged in democratic deliberation simply cannot inspire civic solidarity and trust. It therefore cannot motivate public-regarding political action. What is worse, if liberal democrats focus exclusively on building such thin civic identities, some suggest, they may inadvertently create what William Connolly characterizes as an identitarian “black hole.”¹⁵ They might cede the political field, that is to say, to those who would promote politically efficacious but highly illiberal and anti-democratic ethnic, racialized, and gendered identities.

Critics suggest constitutional patriotism is too thin in at least three analytically distinct senses. First, some argue it is insufficiently particularist. If I understand myself to be a participant in a collective political project that yields interpretation(s) of universal principles, the claim is, such a self-understanding is not enough to cause me to feel a strong sense of allegiance to the particular strangers who are my fellow-citizens, and not to other strangers who are not my fellow-citizens, but who develop equally reasonable interpretations of universal principles. Such a self-understanding is not enough to

engender in me a sense of loyalty to my particular political society, but not to other, equally legitimate liberal democratic polities. For identity to perform the integrative function that democracy requires, the claim is, citizens need some compelling sense of why it is that they form a political "people" with some particular strangers and not with others.¹⁶ They need some compelling sense of why it is that some particular political institutions and practices are the institutions and the practices that deserve their loyalty.¹⁷

Second, some critics suggest that constitutional patriotism is too thin in the sense that it is insufficiently constitutive. For an identity to motivate citizens to feel a sense of solidarity with one another, the claim is, for an identity to sustain loyalty to a polity and to its institutions, it must appear to those who bear it as if it literally makes them who they are. People can experience a national identity in such a manner. An important part of who I am, I can believe, is the fact of my German-ness or the fact of my French-ness or my English-ness. Who I am is, in part, my heritage. It is, in part, my membership in this ethically particularistic community. Constitutional patriotic identity, by contrast, because it is arrived at procedurally, through public deliberation, cannot be understood to reflect an enduring truth about who I am and about my place in the world.¹⁸

A third and related concern is that constitutional patriotism is too thin because it is insufficiently naturalized. Even if identity is *in fact* a construct, some critics argue, if it is to perform the binding work that democracies require, it must appear to those who bear it to be natural. Civic identity must feel like kinship, even though it is created rather than inherited. Civic identity must feel like destiny, even though it is the product of contingent human action. It is possible to reflect upon our civic identities, these critics acknowledge. It is possible to evaluate them and to think creatively about how to build institutional arrangements that will help revise them or consolidate them. Yet if identity is to bind citizens together, this reflective stance must not be one that is typically or even regularly adopted by citizens. Democratic citizens must experience identity, more often than not, pre-reflexively: not as something they consciously create, but as something that "just is."¹⁹

A second set of challenges to constitutional patriotism centers on the claim that it is not thin enough. Civic identities and affiliations are never purely political, some critics suggest. In practice, it is always through the lens of particularistic identities (which people experience as constitutive and as natural) that citizens interpret liberal and democratic constitutional principles and develop affective attachments to a political culture.²⁰ This line of critique complements, rather than controverts, the first. If the first worry is that, were a pure constitutional patriotism to exist, it would not work, the second concern is that, in fact, there is no such beast. In every political community, the claim is – even in allegedly "civic" nations like France, even in immigrant societies like the United States – there is some historic majority. There is a dominant language that citizens use when they deliberate. There are dominant ethical beliefs and cultural values, which shape the terms of deliberation. Hence the narratives that inform the thin political culture are necessarily influenced by a thick majority culture. The heroes, the holidays, the monuments the political society depends upon as mechanisms to

foster civic identification are culturally particularistic, and inevitably so. Constitutional patriotism needs these mechanisms, the claim is. It leans on them to foster identification. Therefore, constitutional patriotism cannot escape the identity problem that plagues more conventional brands of patriotism. It always relies upon, it always tacitly assumes, "thick" particularistic identities.

Habermas's (and Habermasians') principal response to both sets of critics has been to draw attention to their (often implicit) assumptions about the immutability of what may be contingent features of political life. Habermas notes, for instance, that in Europe there have been multiple paths to nation-statehood: from nation to nation-state, to be sure, but also from state to nation-state, where in the latter instance national consciousness follows and grows out of the political empowerment and mobilization of the citizenry. That a collective political identity can develop prior to a cohesive national identity, he suggests, is evidence against the claim that it necessarily depends on one: "[P]recisely the artificial conditions in which national consciousness arose argue against the defeatist assumption that a form of civic solidarity among strangers can only be generated within the confines of the nation."²¹ If national identities have developed, at least in some instances, through a collective "learning process" through which people transcend their more local and ethno-culturally particularistic identities, Habermas asks rhetorically, then "why shouldn't this learning process be able to continue?"²²

Similarly, although he acknowledges that, beginning with the revolutions of the late eighteenth century, nationality has played a crucial role in forging and maintaining the cohesiveness that democracy requires, Habermas argues that the link between nationality and republican citizenship is contingent, rather than necessary. There is no reason to assume, the claim is, that civic identity cannot be de-coupled from nationality:

the modern understanding of . . . republican freedom can . . . cut its umbilical links to the womb of national consciousness of freedom that originally gave it birth. The nation-state sustained a close connection between "demos" and "ethos" only briefly Citizenship was never conceptually tied to national identity.²³

Thus, even if, in the words of Attracta Ingram, it is "emphatically true that populations in the grip of a national idea are unwilling to form a state with people who do not share their national culture . . . that does not tell us that liberal unity is always and everywhere impossible, or that it is never right, in principle, to try to educate people to abandon nationalism."²⁴ The position, in short, is that, although it may be difficult to cultivate "postnational" forms of political identification – civic identities that are rooted in principles, rather than in a perceived ethnic or cultural sameness – those who are committed to the universalistic principles of collective self-determination and human freedom and equality should not dismiss the possibility out of hand. Instead, we should explore it, experimenting with institutional efforts to foster constitutional patriotism.

This response is reasonable, as far as it goes. Indeed, if the (relatively short) history of the nation-state seems to support critics' claims that constitutional patriotism is too thin to work, as well as their complimentary claims that every politically efficacious

identity leans on ethically thick identifications, experimental evidence seems to suggest the contrary. Research that spans more than three decades on what social psychologists call the "minimal group paradigm" shows that *exceedingly* thin identities – identities that are artificially constructed in a laboratory setting – can produce beliefs, attitudes, and behaviors of the sort that concern students of political identity.²⁵ Subjects who are assigned to groups based on aesthetic preferences, for example, even subjects who are assigned to groups randomly and who know that their categorization is random, engage in the types of behaviors that worry democratic theorists (such as negative stereotyping of what social psychologists call the "out-group"), as well as in behaviors which most view as necessary for stability in democratic societies (such as altruistic behaviors toward fellow "in-group" members when distributing rewards). Of course, such experiments do not test the feasibility of a specifically constitutional patriotic identity, and so their results cannot provide direct support for Habermas's positive claims. They do, however, lend support to his critical claim that civic nationalists and others who are skeptical about constitutional patriotism likely underestimate the malleability of identification. If even trivial categorizations, even group identities that are constructed in a laboratory and hence have no history whatsoever, can influence how people regard and treat one another and how they distribute rewards and sanctions, then it seems wrongheaded to jump to pessimistic conclusions about the inordinate thinness, or the inevitable thickness, of constitutional patriotism. Exactly how difficult it would be to promote constitutional patriotic identifications – and whether or not it would be impossible to do so – are empirical questions, which remain unanswered. Assertions and counter-assertions by political philosophers do nothing to advance our understanding of whether, and if so under what conditions, constitutionally-based civic identifications are viable.

3. Constitutional Patriotism and Its Others

Hence I propose to leave these empirical questions to the side and to assume, if only for the sake of argument, that Habermas is correct: that principles can do the integrative work of a citizenship performed as postnational. Even if so, I want to suggest, we will not have escaped democracy's identity problem. The reason is straightforward: to the extent that liberal and democratic principles effectively can bind together members of a political society, and even if they can do so in ways that remain fully neutral vis-à-vis ethno-culturally particularistic identities, they define "others" of constitutional patriotism. They define illiberal and anti-democratic others, along with others who are insufficiently acculturated to the beliefs, norms, and values that constitute the polity's politically particular civic bond. Political elites, who are constrained by democratic institutions to compete for power, will have an incentive to exploit even constitutional patriotic identities in ways that can demonize and that can encourage aggressiveness toward these others. To the extent that principles effectively motivate people to recognize some set of strangers as co-citizens, they can promote intolerance of, even violence directed at those they define as outside the civic "we."

Habermas, to be sure, is not unaware that constitutional patriotism defines others. To the contrary, he explicitly addresses constitutional patriotism's exclusions, for instance in his writings on the moral facets of immigration policy.²⁶ Here he advances the claim that, although it is illegitimate for a liberal democratic political society to limit immigration according to ethnic, linguistic, and other culturally particularistic identity-markers, because stable liberal democracy requires commitment to liberal and democratic principles, as well as a non-neutral "horizon of interpretation" within which to deliberate about how best to interpret constitutional principles, it is legitimate for such a polity to exclude would-be immigrants who are illiberal or anti-democratic and/or who are not assimilated to the polity's politically particular interpretation of liberal and democratic principles.

Such requirements for admission to the civic "we," the claim is, differ qualitatively from requirements for ethno-cultural assimilation, in at least three nontrivial ways. First, because liberal and democratic constitutional principles are principles that any human being can endorse, unlike ascriptive identities (such as ethnic identities purportedly defined by shared origin and ancestry), constitutional patriotic identities are, in principle, open to all. Second, because the political cultures within which citizens interpret and apply constitutional principles are themselves responsive to practices of collective autonomy, the "horizon of interpretation" within which citizens deliberate about how to institutionalize constitutional principles itself can be critically evaluated, and can be changed through deliberative processes. Third, and perhaps most significantly, constitutional patriotic identities include built-in resources for resisting any urge to the violent oppression of, or to violent aggressiveness toward, those they define as "other." Constitutional principles are universal in their reach. They claim to apply to all human beings. Hence they not only set the terms within which citizens deliberate with one another, but further counsel against intolerance and violence in all its forms, including intolerance and violence directed at those who do not endorse constitutional principles.

For these reasons, constitutional patriotic identification might appear to be a force for political integration uniquely equipped to solve democracy's identity problem. If what binds "us" together are principles which themselves direct us to respect all human beings, then our political identity might seem immune to the forms of strategic manipulation that so often produce violence and aggressiveness against others.

Due to the incentive that democratic politics define for elites to manipulate and exploit *any* strong, affectively-based civic identification, however, the avowed legitimacy of the boundaries to constitutional patriotic identities is a double-edged sword. Constitutional patriotism not only excludes the illiberal and the anti-democratic from particular political communities. It further claims to exclude them on normatively unobjectionable grounds. Constitutional patriotism thereby renders itself highly susceptible to a certain brand of politically efficacious, although illiberal and anti-democratic, rhetorical misuse.

In recent years, such strategic exploitation of constitutional patriotic identification has been most evident not in European politics (where most Habermasians' attention has been focused) so much as in the United States, and in particular among the

neo-conservatives who have aligned themselves with the current Bush administration. To cite just one example, William Kristol and Robert Kagan have repeatedly attempted to make the case that, because the principles institutionalized in the American Constitution and in the Declaration of Independence are, in their words, "not merely the choices of a particular culture but are universal, enduring, 'self-evident' truths," the use of force against actors who threaten these principles is morally unobjectionable.²⁷ The aggressive promotion of liberal and democratic constitutional principles abroad, they claim, is similarly morally justified by the universalism of constitutional liberal and democratic principles. The goal of "regime change," like the larger goal of securing a "benevolent global hegemony," is *not* simply a matter of promoting American interests through foreign policy (the claim is), but also, and more importantly, a matter of promoting principles and values that serve the interests of all human beings.²⁸

To be sure, a deep illogic plagues this neo-conservative invocation of liberal and democratic norms and values. A belief in collective autonomy and in human rights does not legitimize aggressive attacks against people who do not endorse those principles. To the contrary, a commitment to human rights and to democracy promotes toleration, political equality, and inclusiveness, as well as respect for all human beings. In this respect, the strategic exploitation of constitutional patriotic identities is not unlike the strategic exploitation of ethno-culturally particularistic identities.²⁹ Still, as our recent history reminds us, it would be a mistake to allow the illogic of such rhetoric to divert attention from the genuine political threat it can pose, especially when elites are able to convince citizens that the other is a menace to the object of their patriotic attachment. What is more, constitutional patriotism's claim to exclude only those who are – according to universalistic norms and values – *deserving* of exclusion, exacerbates this threat.

Consider, as a case in point, two highly publicized documents released by the Bush administration in the aftermath of the September 11 attacks: the *National Strategy for Homeland Security (NSHS)* and the *National Security Strategy of the United States of America (NSSUSA)*.³⁰ In both documents "the American people" and its specifically American "way of life" are defined in terms of, not ethnic or national sameness, but shared liberal and democratic principles.³¹ Thus *NSHS* defines the American people with reference to "America's commitment to freedom, liberty, and our way of life," where the latter it characterizes in terms of a "democratic political system . . . anchored by the Constitution," "[f]reedom of expression, freedom of religion, freedom of movement, property rights, [and] freedom from unlawful discrimination."³² Both *NSHS* and *NSSUSA* interpret liberal and democratic constitutional principles through the lens of US founding documents and historical experiences. The *NSHS* cites the Constitution and the Bill of Rights, for example, and stresses the importance of building upon the American tradition of federalism.³³ The *NSSUSA* emphasizes that "even in our worst moments, the principles enshrined in the Declaration of Independence were there to guide us. As a result, America is not just a stronger, but is a freer and more just society."³⁴

Yet both documents employ these liberal and democratic constitutional principles to distinguish an American "we" – lovers of liberty – from an illiberal and anti-democratic

"they" – "rogue states," "evil . . . enemies," "terrorists and tyrants."³⁵ Both documents exploit this distinction to advance arguments for the exclusion and policing of these others and for acts of violence aimed at them: for the shoring up of American borders, for instance, the heightened surveillance of foreigners, both at home and abroad; and, in the international realm, unilateral preemptive aggression in response to American elites' perceptions of threat.³⁶

In citing these examples, of course I do not mean to imply that Habermas or other advocates of constitutional patriotism would endorse the recent rhetoric of the Bush administration. To the contrary, I am certain they would not.³⁷ Still, the larger point remains. If, indeed, constitutional patriotism is capable of binding together a civic "we," then (not unlike other forms of patriotism), it is troubled by democracy's identity problem. Even divorced from communitarian readings that link it with particularistic forms of social identification, citizenship is, unavoidably, a category that delimits an included and an excluded set. If understandings of "who we are" that are rooted in universal constitutional principles indeed can motivate citizens to look beyond their private concerns and their particularistic identities, and to take into account the perspectives of those they regard as their interlocutors in processes of democratic deliberation, such identities are susceptible to strategic exploitation by elites who urge the exclusion and policing of, even violent aggressiveness directed at, those they claim threaten constitutional principles. As Habermasians emphasize, the principles that define constitutional patriotic identities can serve as powerful resources for those who would resist their strategic exploitation. At the same time, however, constitutional patriotism's claims to universality can serve as powerful resources for those who would exploit them.

Conclusion

In this essay, my principal claim has been that constitutional patriotism, especially as that notion is developed and defended in the recent work of Jürgen Habermas, fails to resolve what I have called democracy's identity problem. Democracy needs civic identity, I have argued, in order to promote public-regarding forms of political engagement across lines of difference that are based on interest or on particularistic solidarities. Yet the very identities on which democracy depends are inherently susceptible to manipulation by political elites, whom democracy constrains to compete to get and to keep power. Even civic identities that are rooted in liberal and democratic constitutional principles, I have underscored – and in one important sense, *especially* such identities – are vulnerable to strategic exploitation by elites who make the case that the foreign and/or the internal "others" of constitutional principles legitimately can – and *should* – be repressed.

That said, liberal democrats would be ill-advised to throw out the baby of attachment to constitutional principles with the bath water of their susceptibility to misuse.³⁸ A more reasonable response is to turn to alternative, more contestatory readings of constitutional patriotism, according to which it is less a form of civic identity that solves democracy's identity problem, than a practice of always *resisting identification*. Patchen Markell,

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for instance, although he argues that much of Habermas's work manifests what he calls a "strategy of redirection" that aims "to render affect safe for liberal democracies" by directing it away from the particularistic, and toward the universalistic, makes the case that, at least at some points in his work, Habermas departs from this strategy.³⁹ At some points, that is to say, Habermas appears to regard constitutional patriotism, less as a solution to democracy's identity problem, than as "a practice of refusing or resisting particular identifications . . . for the sake of the ongoing, always incomplete, and often unpredictable project of universalization."⁴⁰ By this view, the aim of constitutional patriotism is not to develop an understanding of "who we are" and "who we want to be" that resists strategic exploitation. Instead, it is to cultivate the struggle itself to define and to redefine "who we are" and "who we want to be."⁴¹

Appealing as this line of response may be (and I find myself largely sympathetic to it), it is important for those who adopt it to avoid erring on the other side of democracy's identity problem. What might be thought of as *deconstructive* forms of contestation – efforts to disturb any settled sense of having achieved, once and for all, a shared political identity – although a necessary part of every viable response to democracy's identity problem, are, in themselves, insufficient. Democracy requires, as well, what might be called *reconstructive* contestation: efforts to articulate definitions of "who we are" and "who we want to be" that depart from dominant definitions, efforts to advance and to defend competing accounts of how a particular polity might create a cohesive identity.

Thus, even on a contestatory reading, constitutional patriotism should not be regarded as resolving the dilemma of needing to guard against the threat civic identity poses, while at the same time relying on the cohesion civic identity provides. Because criticism alone – the refusal of identity – cannot perform the integrative work on which democracy leans, even contestatory democracy needs identity. Hence the importance of always approaching our reconstructive, identity-making tasks with caution: aware that, when successful, they inevitably generate (new) identity problems.

NOTES

This paper was presented at the Thursday seminar at the Institute for Advanced Study, School of Social Science, and at the Princeton University Program in Law and Public Affairs (PEPA) Workshop on Constitutional Patriotism, both in April, 2006. Thanks to all participants in both discussions for their thoughts and reactions. Thanks are due, as well, to the anonymous reviewers for this journal for their helpful comments and suggestions.

1. Among the works that adopt this approach are Margaret Canovan, *Nationhood and Political Theory* (Cheltenham: Edward Elgar, 1996); Canovan, "Patriotism is Not Enough," *British Journal of Political Science* 30, no. 3 (July 2000): 413–32; David Miller, *On Nationality* (Oxford: Oxford University Press, 1995); Miller, *Citizenship and National Identity* (Cambridge: Polity, 2000); Charles Taylor, "Democratic Exclusion (and its Remedies?)," in *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives*, eds. Alan Cairnes, John Courtney, Peter MacKinnon, Hans Michelmann, and David Smith (Montreal: McGill-Queen's University Press, 1999), 265–87; Taylor, "A Tension in Modern Democracy," in *Democracy and Vision: Sheldon Wolin and the Vicissitudes of the Political*, ed. Aryeh Botwinick and William Connolly (Princeton: Princeton University Press,

2001), 79–95; and Michael Walzer, "Notes on the New Tribalism," in *Political Restructuring in Europe: Ethical Perspectives*, ed. Chris Brown (London: Routledge, 1994), 187–200.

2. This effort began with Habermas's interventions in the late 1980s into the so-called "historians' debate." In a series of articles first published for a popular audience, Habermas challenged the work of conservative revisionist historians, whom he understood as attempting to relativize the Nazi past with a view to promoting a coherent and continuous narrative of German national identity. These essays have been collected and translated in Jürgen Habermas, *The New Conservatism: Cultural Criticism and the Historians' Debate*, ed. and tr. Shierry Weber Nicholson (Cambridge, MA: MIT Press, 1989). See esp. "Apologetic Tendencies," 212–28; "On the Public Use of History," 229–40; "Closing Remarks," 241–8; and "Historical Consciousness and Post-Traditional Identity: The Federal Republic's Orientation to the West," 249–67.

3. On this question, see esp. Habermas, "The Postnational Constellation and the Future of Democracy," in Habermas, *The Postnational Constellation: Political Essays*, tr. and ed. Max Pensky (Cambridge, MA: MIT Press, 2001), 58–112.

4. Thus, he argues that collective autonomy in practices of identity formation can be realized through "a publicly conducted debate," citing the example of the German debate over "how we want to understand ourselves as citizens of the Federal Republic." "Historical Consciousness and Post-Traditional Identity," 262.

5. "On the Public Use of History," 233; "Historical Consciousness and Post-Traditional Identity," 251.

6. "Apologetic Tendencies," 226–7; "On the Public Use of History," 236; "Historical Consciousness and Post-Traditional Identity," 251.

7. Habermas, "The Postnational Constellation and the Future of Democracy." See also Justine Lacroix, "For a European Constitutional Patriotism," *Political Studies* 50 (2002): 944–58.

8. Habermas and Jacques Derrida, "February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe," *Constellations* 10, no. 3 (September 2003): 291–7.

9. *Ibid.*

10. Habermas, "The Postnational Constellation and the Future of Democracy," 76.

11. Habermas, "The European Nation-State: On the Past and Future of Sovereignty and Citizenship," in *Inclusion of the Other*, eds. Cronin and De Greiff, 118.

12. Attracta Ingram, "Constitutional Patriotism," *Philosophy and Social Criticism* 22, no. 6 (1996): 1–18.

13. Recently, however, Habermas has underscored that such affective attachment need not depend upon *consensus* about how to interpret constitutional principles. The citizens of a political society might never agree about how best to interpret constitutional principles, he grants, but they may nonetheless share the sense that they could, in principle, arrive at such a consensus, along with an understanding of themselves as participants in free, equal, and inclusive deliberative processes aimed at doing so: a collective self-understanding which itself might be sufficiently strong to serve as the basis of a cohesive civic identity. See Habermas, "Law and Disagreement: Some Comments on 'Interpretive Pluralism,'" *Ratio Juris* 16, no. 2 (June 2003): 197–94.

14. See Habermas, "Struggles for Recognition in the Democratic Constitutional State," in *Inclusion of the Other*, eds. Cronin and De Greiff, 203–36.

15. William Connolly, "The Liberal Image of the Nation," in *Political Theory and the Rights of Indigenous Peoples*, eds. Duncan Ivison, Paul Patton, and Will Sanders (Cambridge: Cambridge University Press, 2000), 192.

16. See, e.g., Rogers Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge: Cambridge University Press, 2003).

17. Civic nationalists who advance this critique make the case that the broadest and the most inclusive identity that can perform the integrative work democracy needs is a national identity. Nationalism need not be ethnic at base, they emphasize. It need not be culturally particularistic. But it must be particularistic in some substantial sense. Citizens must believe, for instance, that they share deep historic roots, or perhaps that they share a set of values and beliefs about the good life that differ from

the values and beliefs of one another, and not simply that themselves: "Patriotism is Not F

18. Smith, *St*

19. Canovan,

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21. Haberma

22. *Ibid.*

23. Haberma

24. Ingram, "

25. See Mar

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33. See, e.g.,

34. *NSSUSA*,

35. *Ibid.*, 13;

36. See, resp.

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the values and beliefs of other nations. They must experience themselves as sharing something with one another, and not with others; something more consequential than just an interpretation of principles that themselves are universal. See, e.g., Canovan, *Nationhood and Political Theory*; Canovan, "Patriotism is Not Enough"; Miller, *On Nationality*; and Miller, *Citizenship and National Identity*.

18. Smith, *Stories of Peoplehood*, ch. 3.

19. Canovan, *Nationhood and Political Theory*; Canovan, "Patriotism is Not Enough"; Miller, *On Nationality*; Miller, *Citizenship and National Identity*.

20. See, for instance, Veit Bader, "The Cultural Conditions of Transnational Citizenship: On the Interpenetration of Political and Ethnic Culture," *Political Theory* 25, no. 6 (December 1997): 771–813; Cécile Laborde, "From Constitutional to Civic Patriotism," *British Journal of Political Science* 32, no. 4 (October 2002): 591–612; Patchen Markell, "Making Affect Safe for Democracy? On 'Constitutional Patriotism,'" *Political Theory* 28, no. 1 (February 2000): 38–63; and Bernard Yack, "The Myth of the Civic Nation," in Ronald Beiner, ed., *Theorizing Nationalism* (Albany: SUNY Press, 1999), 103–18.

21. Habermas, "The Postnational Constellation and the Future of Democracy," 102.

22. *Ibid.*

23. Habermas, "Appendix II: Citizenship and National Identity," 495.

24. Ingram, "Constitutional Patriotism," 6–7.

25. See Marilyn Brewer, "In-group Bias in the Minimal Group Situation: A Cognitive-Motivational Analysis," *Psychological Bulletin* 86: 307–24; Michael Hogg and Dominic Abrams, *Social Identifications* (London: Routledge, 1988); Henri Tajfel, M.G. Billig, R.P. Bundy, and Claude Flament, "Social Categorization and Intergroup Behavior," *European Journal of Social Psychology* 1: 149–78; and Henri Tajfel and John Turner, "The Social Identity Theory of Intergroup Behavior," in Stephen Worchel and William Austin, eds., *Psychology of Intergroup Relations* (Chicago: Nelson-Hall, 1986), 7–24.

26. See Habermas, "Struggles for Recognition in the Democratic State."

27. William Kristol and Robert Kagan, "Toward a Neo-Reaganite Foreign Policy," *Foreign Affairs* 75, no. 4 (July/August, 1996): 31.

28. "Benevolent global hegemony" is Kristol and Kagan's phrase. *Ibid.*, 20.

29. If the civic "we" is defined with reference to shared ancestry or to common descent, there is no logical reason why those who are included should be hostile toward, or should act aggressively toward, people whom they perceive as standing outside their particularistic identity-group.

30. United States Office of Homeland Security, *National Strategy for Homeland Security* (Washington, DC, July 2002); United States White House, *National Security Strategy of the United States of America* (Washington, DC, September, 2002).

31. This paragraph and the one that follows draw on Clarissa Hayward, "Binding Problems, Boundary Problems: The Trouble with 'Democratic Citizenship,'" in Seyla Benhabib, Ian Shapiro, and Danilo Petranovich, eds., *Identities, Affiliations, and Allegiances* (Cambridge: Cambridge University Press, forthcoming 2007), 181–205.

32. *NSHS*, second un-numbered page in the opening address; *NSHS*, 7. The *NSHS* characterizes the American "way of life," as well, with reference to external security and domestic peace, a free market system, and cultural pluralism and openness.

33. See, e.g., the section titled "Organizing for a Secure Homeland."

34. *NSSUSA*, 3.

35. *Ibid.*, 13, *NSHS*, 1; *NSSUSA*, the first unnumbered page in the opening address.

36. See, respectively, the discussion of "smart borders" in the *NSSUSA*, 22–3; the section in the same document titled "Domestic Counterterrorism, 25–8; and, in the *NSSUSA*, section V, titled "Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends, with Weapons of Mass Destruction."

37. Habermas has been a vocal critic of American military aggression. In an interview soon after the September 11 attacks, he characterized the Bush administration as "continuing, more or less undisturbed, the self-centered course of a callous superpower," and criticized sharply what he referred to as its "barely concealed unilateralism." See "Fundamentalism and Terror: A Dialogue with

Jürgen Habermas," in *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, ed. Giovanna Borradori (Chicago and London: University of Chicago Press, 2003), 27. See also Habermas, "Interpreting the Fall of a Monument," *Constellations* 10, no. 3: 364–70.

38. I owe this formulation to an anonymous reviewer for this journal

39. Markell, "Making Affect Safe for Democracy?," 39.

40. *Ibid.*, 40.

41. Ciaran Cronin, "Democracy and Collective Identity: In Defense of Constitutional Patriotism," *European Journal of Philosophy* 11, no. 1 (2003): 1–28; Omid Shabani, "Who's Afraid of Constitutional Patriotism? The Binding Source of Citizenship in Constitutional States," *Social Theory and Practice* 28, no. 3 (July 2002): 419–43; James Tully, "The Agonic Freedom of Citizens," *Economy and Society* 28, no. 2 (May 1999): 161–82; Tully, "The Challenge of Reimagining Citizenship and Belonging in Multicultural and Multinational Societies," in *The Demands of Citizenship*, eds. C. McKinnon and I. Hampsher-Monk (London: Continuum, 2000), 212–35; and Tully, "The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy," *Modern Law Review* 65 (March 2002): 204–28.

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