

Diversity and Unity: The Problem with ‘Constitutional Patriotism’

Andrea Baumeister
University of Stirling, UK

Abstract

Although Habermas’ sophisticated conception of constitutional patriotism successfully avoids the charge of trying to ground patriotism in a set of principles that is too thin and abstract to sustain a real sense of solidarity and belonging, his optimism regarding the prospect in modern pluralist societies of building a genuinely shared political culture is misplaced. The march of modernisation as rationalisation is neither as relentless nor as inevitable as Habermas assumes. Hence the rational consensus on liberal constitutional principles that is to provide the basis for a shared political culture remains elusive. However, while Habermas’ solution to the ‘solidarity gap’ that confronts many contemporary liberal democracies remains problematic, he is right to point to the importance of a shared identity that is strong enough to turn strangers into fellow citizens. The challenges that cultural diversity and value pluralism pose for contemporary states cannot be resolved via a procedural approach that focuses solely on political legitimacy. Yet the difficulties that surround Habermas’ conception of ‘constitutional patriotism’ suggest modern states will struggle to build a collective political identity that can generate a genuine sense of solidarity. If this is so, modern pluralist states face a more profound challenge than writers such as Habermas assume.

Keyword: Habermas, constitutional patriotism, cultural diversity, citizenship

Habermas claims that his version of discourse ethics can be reconciled with the struggle for recognition on the part of many groups traditionally marginalized in liberal democracies and that, properly understood, a liberal theory of rights is not blind to cultural difference. One of the key concepts that informs Habermas' response to questions of cultural diversity is his notion of 'constitutional patriotism' (*Verfassungspatriotismus*). While Habermas acknowledges that all constitutional states are ethically patterned, he stresses the importance of decoupling the majority culture from the wider political culture. Thus Habermas distinguishes between the civic sense of a nation based upon the common civic identity of a group of citizens and the particular ethical discourses of specific sub-cultures. On Habermas' account, democratic citizenship does not require that citizens share the same language or the same ethical and cultural origins. On the contrary, citizens need only be socialised into a common political culture based upon standard liberal constitutional principles. According to Habermas, this common political culture provides the basis for a constitutional patriotism that leads to an increased awareness of both the diversity and the integrity of the different ways of life that coexist in a multicultural society and allows citizens to debate the same legal principles from different ethical perspectives.

This paper argues that, although Habermas' sophisticated conception of constitutional patriotism successfully avoids the charge of trying to ground patriotism in principles that are too thin and abstract to sustain a real sense of solidarity and belonging, his optimism

regarding the prospect of building in modern pluralist societies a genuinely shared political culture rests on two distinctive, yet controversial, features of his wider philosophical framework: (a) his theory of modernisation as the rationalisation of lifeworlds and (b) his continued commitment to rational consensus as a regulative ideal. It is these aspects of his wider philosophical framework that lead Habermas to underestimate the difficulties inherent in any attempt to build an ‘overlapping consensus’ on the liberal values that inform constitutional patriotism. While Habermas paints an optimistic picture of the potential for cultural accommodation, even on his own account it is difficult to see how the sharp distinction between political and cultural integration, inherent in the idea of decoupling the majority culture from the wider political culture, can be maintained. These worries are reinforced by the tensions inherent in the very idea of constitutional patriotism. If constitutional patriotism is to generate the sense of loyalty and commitment to the state that is widely recognised as an important hallmark of political stability, it must be underpinned by a genuine commitment to the liberal political culture that informs it. It is therefore not surprising that for Habermas a commitment to individual autonomy provides the rational for and sets the limits to cultural recognition. Yet, the emphasis on the critical rationality associated with a commitment to individual autonomy sets real limits to the degree of diversity that Habermas’ model can accommodate. The paper concludes that while Habermas is right to point to the importance of a shared political culture that is strong enough to turn strangers into fellow citizens, the difficulties that surround his conception of ‘constitutional patriotism’ suggest that such a collective identity may remain elusive.

From Ethnic to Civil Nationalism

For Habermas modern struggles for recognition bring into sharp focus the ambiguities and tensions inherent in the very idea of the modern liberal nation state as it has developed in Europe since the end of the 18th century. On Habermas' reading the modern nation state combines two quite disparate ideas: nationalism and republicanism. While the republican ideal of a voluntary nation of citizens provides the basis for democratic legitimacy, the idea of a pre-political national community addresses the need for social integration in the face of the ever-increasing mobility of people that accompanies urbanisation and economic modernisation. Indeed, the idea of a shared national consciousness grounded in a common ancestry, language and history fills an important 'motivational' or 'solidarity gap' as it 'unites subjects into citizens of a single political community – into members who can feel responsible *for one another*. (Habermas, 1998a:404). However, while at one level republicanism and nationalism complement one another, ultimately the particularism and ascriptive identity of ethnic nationalism remains at odds with republicanism's emphasis on universalism and egalitarianism. Thus, '[t]he nation is Janus-faced, whereas the voluntary nation of citizens is the source of democratic legitimation, the inherited or ascribed nation based on ethical membership (die geborene Nation der Volskgenossen) secures social integration' (Habermas 1998a:405/6).

While historically the modern liberal nation state has always been subject to these ambiguities, the accompanying tensions become increasingly apparent in contemporary pluralist societies. Ultimately the idea of a pre-political, homogeneous community rests upon a myth that can only be sustained through the suppression of heterogeneous

elements of the population. It is this suppression of difference and diversity that is being challenged forcefully by recent demands for recognition on the part of many traditionally marginalised groups. In the face of these challenges Habermas (1998a:407) contends that the modern state must find a new 'functional equivalent for the fusion of the nation of citizens with the ethnic nation'. For Habermas this 'functional equivalent' is to be found in the form of civic nationalism and a more abstract constitutional patriotism (Verfassungspatriotismus)¹ that 'relates not to the concrete totality of a nation, but rather to abstract procedures and principles' and identifies with 'the political order and the principles of the basic law' (Habermas 1989: 261/2 and 257). If, in the face of difference and diversity, 'citizens are to be able to identify on equal terms with their own country', the political culture must not favour or discriminate against any specific subculture (Habermas 2001b:75). Hence, while 'for historic reasons, in many countries the majority culture is fused with the general culture that claims to be recognised by *all* citizens ...', 'this fusion must be dissolved if it is to be possible for different cultural, ethnic and religious forms of life to coexist and interact on equal terms within the *same* political community' (Habermas 1998a: 408). In as far as this process of decoupling is successful, it breaks the historical link between republicanism and nationalism and shifts the solidarity of citizens onto a constitutional patriotism, which re-directs citizen's sense of loyalty and attachment away from pre-political entities such as the nation, ethnos or the family and towards the fundamental principles enshrined in the political culture and the basic law. This new resolution of the 'motivational' or 'solidarity gap' enables republicanism to 'stand on its own feet' (Habermas 1998a:408). The democratic process can now serve as the source of both legitimacy and social integration. Membership of the

nation of citizens no longer rests upon an appeal to a shared language or common ethical and cultural origins, but merely reflects a shared political culture based upon standard liberal constitutional principles. According to Habermas (1996a:500) the constitutional patriotism associated with this shared political culture will give rise to an increased awareness of and sensitivity to ‘the integrity of the different forms of life coexisting in a multicultural society’. Thus, the decoupling of the majority culture from the political culture and the subsequent shift towards a constitutional patriotism provides the basis for a differentiated citizenship sensitive to claims for recognition.

Although constitutional patriotism is grounded in a shared political culture based upon standard liberal constitutional principles, in his recent work Habermas has stressed that ‘constitutional patriotism is not exhausted by a rational agreement on a set of abstract principles’ (Habermas in Arnason 2000:4). For many of Habermas’ critics, constitutional patriotism, with its emphasis on allegiance to abstract principles and procedures, cannot offer an adequate justification for the political boundaries that define states and will ultimately be too thin and abstract to generate a genuine sense of solidarity and belonging.² Such lines of criticism, however, underestimate the subtleness and complexity of Habermas’ account. While the primary aim of the rule of law in a constitutional state is to uphold universally valid norms, such as basic human rights, for Habermas (1993:138) ‘every legal system is *also* the expression of a particular lifeform and not merely the reflection of the universal features of basic rights’. Not only does the creation of an effective system of law entail the creation of *specific* rights enacted by a particular historical legislature, law is also concerned with the cooperative pursuit of

collective goals and the safeguarding of collective goods as well as the rational choice of the best means of achieving these goals and goods. Hence, deliberations over policies and laws will address ethical-political and pragmatic questions as well as moral ones³. Consequently, every state is 'ethically patterned' and will interpret universal rights and constitutional principles in the light of its particular historical experiences. Particular forms of constitutional patriotism, therefore, grow out of and are tied to a particular set of institutions and a historical constitution.

Although Habermas' recognition of the historical and cultural particularity of concrete expressions of constitutional patriotism goes a long way to allay the worries of many critics, it raises a new set of concerns. Just as the classical nation state is characterised by the tension between republican universalism and ethno-national particularism, the attachment to universal principles that constitutional patriotism is meant to foster is both dependent upon and threatened by the particularity and historical continuity that is essential if citizens are to be able to passionately identify with the state (Markell 2000). If every legal system is inevitably historically grounded and ethically patterned, modern pluralist societies will only be able to develop a genuinely shared political culture, if the constitutional traditions that characterise a particular state can be re-interpreted in ways that reflect the ethical concerns of the diverse ethnic, cultural and religious groups that live within this state. While Habermas acknowledges that the political culture that informs constitutional patriotism is not value neutral and entails the rejection of worldviews and ways of life such as religious fundamentalism, racism, sexual chauvinism, radical nationalism and xenophobic ethnocentrism, which are incompatible

with the principle of equal treatment, he maintains that constitutional patriotism can provide the basis for an ‘overlapping consensus’ which can encompass the overwhelming majority of citizens. Habermas’ optimism about the prospect of achieving such an ‘overlapping consensus’ ultimately rests upon two distinctive features of his wider philosophical framework, which are frequently overlooked in debates surrounding constitutional patriotism. These are (a) his theory of modernisation as the rationalisation of lifeworlds⁴ and (b) his continued commitment to rational consensus as a regulative ideal.

According to Habermas (1986/1987) modernity not only gives rise to the purposive rationality associated with the rationalisation of action systems such as the economy and the state that Weber identified, but also entails the development of a communicative rationality inherent in the rationalisation of the lifeworld.⁵ For Habermas (1986) the transition to modernity is accompanied by the institutionalisation of differentiated knowledge systems, giving rise to the establishment of a scientific enterprise, the institutionalisation of an artistic enterprise and the professionalisation of ethics, political theory and jurisprudence. In as far as these new knowledge systems replace the action-guiding function of traditional knowledge, ritual practices, religious symbolism and ‘the power of the sacred’ in everyday communication, ‘there is a rationalisation of everyday practice’ (Habermas 1986:340). In such a rationalised lifeworld the latitude for interpretation and the need for reasoned justification increasingly open up the authority of tradition to criticism, giving rise to a growing differentiation of individual identities and an increased sphere of personal autonomy. Given such a decentered understanding of the

world, 'the need for consensus must be met more and more frequently by risky, because rationally motivated, agreement' (Habermas 1986:341). It is this communicative rationality that characterises the rationalisation of the lifeworld, a process which, according to Habermas, in the final analysis, no culture can resist. As they modernise, all lifeworlds 'progressively lose their capacity to provide prediscursive explanations and situation definitions', giving rise to a de-centred reflective attitude to beliefs and practices, which entails, among other things, the ability to recognise that established beliefs and practices constitute only one of a variety of 'possible interpretations of the world that can and do compete with others' (Pensky 2000:71). This process of rationalisation makes 'reasonable political understanding possible, even among strangers' (Habermas 2001b:74).⁶ Hence democratic procedures no longer need to rely upon a prior background consensus based on a homogeneous culture to secure legitimacy.

While the process of modernisation makes political understanding among strangers possible, it does not guarantee that such an agreement will be reached. Indeed, while Habermas encourages citizens to push 'beyond contested interests and values' and to seek to establish 'deeper consonances [Übereinstimmungen] in a common form of life', he recognises that in complex and culturally diverse societies it may not be possible to identify a generalisable interest or to obtain agreement on the priority of a particular value (Habermas 1996a:165). In these cases he appeals to two means of normatively neutralising differences: (1) the guarantee of an equal right to coexistence and (2) legitimisation through procedures (Habermas 1996b). For him, ethically controversial

issues can be resolved at a more abstract level by an appeal to an equal right to coexistence. This requires a shift in perspective on the part of participants in discourse away from the ethical question of ‘what is good for us’ to the moral point of view of what is ‘equally good for all’. However, although an appeal to an equal right to coexistence holds out the possibility of rational agreement, Habermas is keenly aware that in practice even at such an abstract level consensus is rarely reached. Consequently, Habermas invokes a second avenue for the resolution of differences: legitimation through procedures. Here the parties must engage in a process of bargaining that seeks to establish a negotiated agreement (Vereinbarung) based upon a compromise that balances conflicting interests. While a ‘rationally motivated consensus (Einverständniss) rests on reasons that convince all the parties *in the same way*’ (Habermas, 1996a:166), in a bargaining process each party may accept a negotiated agreement (Vereinbarung) for its own reasons. Nevertheless he stresses that even in negotiated agreements the search for a rational consensus remains relevant, although it only plays an indirect role in terms of the procedures that govern the bargaining process. Thus he closes the gap between formal, procedural legitimacy and substantive, rational acceptability by insisting that ‘legitimate procedures *themselves* depend on rational discourse and reasoned agreement’ (McCarthy, 1996:1086). For a compromise to be fair all relevant interests must be given equal consideration and all parties must have an equal chance to influence the outcome.

Given that for practical reasons decisions must be made despite ongoing dissensus, Habermas recognises that one of the most important decision procedures is majority rule. However, for him even majority rule ‘retains an internal relation to the search for truth’

(Habermas cited in McCarthy, 1996:1103). Since the procedures that guide deliberation themselves are shaped by rational discourse and reasoned agreement, majority decisions are merely interim results in a process of discursive opinion formation (Habermas 1996b).⁷ If the outvoted minority is to accept majority decisions as legitimate, it must recognise them as the product of a process - albeit a fallible one - which aims to arrive at the one correct solution to controversial legal and political problems.⁸ The participants in these negotiations must continue to assume that consensus is in principle possible, since in the absence of such an assumption 'political disputes would forfeit their deliberative character and degenerate into purely strategic struggles for power' (Habermas 1996b:1493).⁹ Thus, despite his recognition of the 'facts of pluralism' and the 'ethical pattering of states', Habermas retains an emphasis on rational consensus as a regulative ideal, which guides deliberation and legitimates the outcome of democratic procedures. While the process of modernisation makes political understanding among strangers possible, the search for rational consensus facilitates the development of a common political culture and secures the legitimacy of democratic processes.

Constitutional Patriotism and the Problem of Cultural Diversity

Habermas' sophisticated conception of constitutional patriotism sets out to strike a careful balance between a commitment to universal principles and the recognition of particularity. Although constitutional patriotism seeks to foster an attachment to universal principles, Habermas recognises that if citizens are to passionately identify with the state, constitutional patriotism will have to be 'nourished' by cultural traditions that support it. Thus every concrete expression of constitutional patriotism reflects the culture and

history of a particular political community. While the historical and cultural ties of concrete expressions of constitutional patriotism potentially threaten the search for common ground, Habermas maintains that the shift towards a de-centred, reflective attitude associated with modernisation and the search for rational consensus that informs democratic procedures will enable modern pluralist societies to build a genuinely shared political culture that allows 'different cultural, ethnic and religious forms of life to coexist and interact on equal terms' (Habermas 1998a:408). Thus, although all concrete expressions of constitutional patriotism are 'ethically patterned', Habermas believes that the constitutional traditions that characterise modern states can be reinterpreted in ways that reflect the ethical concerns of the diverse ethnic, cultural and religious groups that live within the state. If successful, this potentially offers a very attractive resolution of the integration problem facing many modern pluralist states.

However, while Habermas' nuanced account successfully avoids many of the worries frequently expressed by critics of constitutional patriotism, his optimism regarding the prospect in modern pluralist societies of building a genuinely shared political culture remains problematic on at least two counts: (a) not only does Habermas underestimate the difficulties inherent in any attempt to decouple the majority culture from the wider political culture, (b) his notion of constitutional patriotism entails a more substantive commitment to liberal values than he acknowledges. These worries highlight difficulties inherent in Habermas' underlying assumptions regarding modernisation and the potential for rational consensus.

Habermas' conception of constitutional patriotism relies upon a sharp distinction between political and cultural integration. While all citizens must be socialised into the shared political culture, citizens should not be expected to integrate into a privileged cultural form of life. The state must be sensitive to the needs of cultural, linguistic and national minorities and should ensure that members of such minorities have meaningful cultural choices and can participate in their cultural practices.¹⁰ Similarly, immigrants should not necessarily be expected to give up the way of life typical of their country of origin.¹¹ On Habermas' account (1992:17)

‘the political acculturation demanded of them does not include the entirety of their socialization. With immigration, new forms of life are imported which expand and multiply the perspective of all, and on the basis of which the common political constitution is always interpreted’.

Yet it is doubtful if even on Habermas' own account such a sharp distinction between political and cultural integration can be maintained. According to Habermas, in modern pluralist societies the shared political culture and institutions of the constitutional state can provide the basis for social integration because they are *political* and thus do not entail the dangers inherent in an appeal to pre-political nationhood. This, however, underestimates the degree to which even the political culture of a community is in important respects pre-political.¹² As Markell (2000:52) notes:

The symbols, songs, events, dates and people who capture our political imagination; the patterns and structures of civil societies; the vocabularies of political analysis and polemic; the “natural fantasies” that “circulate through personal/collective consciousness” – all these and more constitute a cultural inheritance that the *demos* did not choose.

Although Habermas recognises that in principle all states are ‘ethically patterned’, he maintains that multicultural societies like Switzerland and the United States show that a shared political culture can provide a common denominator even in the absence of

common linguistic, ethnic or cultural origins. This picture, however, fails to acknowledge the extent to which the political culture of even as culturally diverse a society as the United States relies upon and perpetuates a strong sense of national identity that draws upon many of the pre-political markers identified by Markell. American national identity has its 'own historical myths, its own 'dreams', its own sense of mission, its own powerful self-image' (Scruton, 1990:80). While it 'may be reasonable to contrast nations whose distinctive cultural inheritance centres on political symbols and political stories with nations whose cultural inheritance centres on language and stories about ethnic origin', this is not to suggest that such political cultures are based on rationally chosen principles (Yack 1996:197). National symbols such as the American flag are laden with pre-political meanings that are neither chosen nor readily open to rational reinterpretation. Indeed Habermas' sharp distinction between political and cultural integration obscures the extent to which the 'ethico-cultural views of the native population ... have already shaped the political realm in ways that may systematically discriminate against the new citizens and make it hard for them to obtain recognition' (Bellamy 2000: 100). This discrimination not only makes it difficult for members of linguistic, ethnic and cultural minorities to fully recognise themselves in the institutions and norms that make up the political realm, it also undermines their capacity to effectively voice their concerns.¹³ Not only does the relatively low socio-economic position of many immigrant communities make it hard for them to mobilize politically, the assumptions embedded in the political culture and the prejudices of the native population often lead to the demands of immigrant communities being dismissed or misrepresented. For example, even when the British Muslim community has formulated its demands for the regulation of free speech in terms of

liberal principles regarding defamation or the incitement to violence, there has been a tendency to dismiss these demands as rejections of liberal political culture (Bellamy 2000). While the distinction between the majority culture and the wider political culture may well be theoretically impeccable, in practice it is likely to be much more difficult to sustain than Habermas suggests. Undoubtedly a commitment to constitutional patriotism should encourage citizens to reflect upon the impact of existing norms and practices upon minorities. Indeed commentators sympathetic to Habermas' project, such as Markell (2000:40) have suggested that 'constitutional patriotism is best understood not as a safe and reliable identification with some pure set of already available universals, but as a political practice of refusing and resisting particular identifications'. On such a reading constitutional patriotism requires a continued willingness to probe the extent to which existing political institutions and practices may fail to truly secure the equal standing of all citizens. Such processes will clearly be aided by Habermas' emphasis on the need for a differentiated citizenship that ensures effective political participation for traditionally marginalised and socially disadvantaged groups and secures group specific cultural and social rights for minority groups. However, ultimately a clear distinction between the majority culture and the political culture may only be practically feasible if the constitutional principles that inform the political culture can be reinterpreted in ways that generate an overlapping consensus that allows citizens with highly diverse conceptions of the good to subscribe to the same legal principles from their different ethical perspectives. Yet, the tensions inherent in the very idea of constitutional patriotism suggest that this assumption is problematic.

If constitutional patriotism is to generate the sense of loyalty and commitment to the state that is widely recognised as an important hallmark of political stability, it must be underpinned by a genuine commitment to the liberal political culture that informs it. It is therefore not surprising that for Habermas a commitment to individual autonomy provides the rationale for and sets the limits to cultures' equal right to coexistence. For Habermas, cultures and traditions only deserve protection in as far as they promote the well-being and freedom of individuals. Thus, the equal right to co-existence of diverse worldviews and ways of life not only implies that citizens must be able to practice their own culture and traditions, but also entails that individual group members must be free to question existing practices, traditions and identities and to break free from them should they choose to do so. Indeed, for Habermas the critical rationality associated with a commitment to individual autonomy constitutes a vital pre-requisite for full and equal participation in practical discourse in a constitutional state. On this account all worldviews which 'lack an awareness of the fallibility of their validity claim' and do not respect what Rawls refers to as the 'burdens of reason', are incompatible with practical discourse in a constitutional state (Habermas 1993: 143). Such worldviews 'remove themselves from a "modern attitude become reflexive"' (McCarthy 1996:115), since they 'leave no space for reflection on their relationship to ... other worldviews with which they share *the same* universe of discourse and against whose competing validity claims they can assert themselves only with reasons (Habermas, 1993: 143/4). As Habermas recognises the requirement to adopt such a de-centred, reflective attitude to beliefs and values may prove quite demanding for some citizens. In this context his recent reflections on the burdens that a liberal state places upon citizens who adhere to religious

worldviews provide a useful insight into the demands associated with and difficulties inherent in the liberal political culture that informs constitutional patriotism. Indeed for Habermas religious toleration acts as a pacemaker for cultural rights and thus provides a framework for both their justification and their limits.

While Habermas insists that religious worldviews and by implication other traditional non-liberal ways of life, can contribute to public discourse from within their own perspective, such participation is premised on the assumption that such cultures and worldviews have ‘become modernised’ (Habermas 2003:6) and in the process have incorporated into their way of life or worldview the normative principles that underpin the liberal democratic culture, including a commitment to autonomy and the decentred, reflective attitude to beliefs and values associated with this. Thus, according to Habermas (2004:13), religious worldviews must differentiate themselves from the wider political community and must, from within their own worldview, develop the normative principles of the secular society that enable them to recognise why they ‘may realize that ethos inscribed in that view only within the limits of what everyone is allowed to do and to pursue’. Although Habermas (2006:8/10) acknowledges that the liberal state cannot expect *all* citizens to ‘justify their political statements independently of their religious convictions’, religiously grounded justifications expressed in the informal political public sphere must be ‘translated’ into secular reasons accessible to all if they are to impact upon formal political processes and citizens may only ‘express themselves in a religious idiom under the condition that they recognise the institutional translation proviso’. Thus to influence the formal political processes contributions to public debate must accord

with the liberal political culture.¹⁴ While Habermas (2005:27) recognises that the ‘requirement to show equal respect to each citizen regardless of his ethical self-understanding or his life-style’ may place a ‘heavy burden’ upon religious believers ‘whose ethical self-understanding derives from religious truth claiming universal validity’, he insists that these demands do not discriminate against such worldviews. Although the liberal political culture is not value neutral (Wertneutral), Habermas insists that it is neutral in its aims vis-à-vis conceptions of the good (Weltanschauungsneutral). Indeed, for Habermas (2004:7), the normative frame of the liberal state is best thought of as a module ‘constructed purely with the help of neutral reasons that do not draw on any particular worldview’ and which can be incorporated into a diverse range of belief-systems without denying the absolute truth claims that characterise these worldviews or ways of life.¹⁵

Yet, it is doubtful whether citizens, who subscribe to worldviews such as religious doctrines that claim universal validity, could accept the demands associated with a liberal political culture without revising the very substance of their ethical commitments. In this context Habermas’ discussion of the controversial question of abortion rights is illuminating. While, Habermas (2005:10/13) recognises that ‘[liberal regulations on abortion place a greater burden on believing Catholics, or any supporter of a pro-life position justified by a religious or other world view’, he insists that ‘[a]s citizens the participants [in political discourse] can nonetheless accept a norm as just (for instance, an abortion regulation whose effects they find harder to bear than other citizens) if this burden appears reasonable to them in comparison with the burden of the discrimination

which is thereby *eliminated*'. Yet it is precisely this balance of burdens that is contested in contemporary abortion debates. For many Catholics and other supporters of a pro-life position the right to life of the foetus outweighs the right to self-determination on the part of the mother. Furthermore, citizens who subscribe to ethical discourses, such as religious belief systems that claim universal validity, will consider their ethical claims regarding abortion as valid for everyone and not just those who subscribe to their conception of the good. For citizens who strongly oppose abortion on these grounds to accept legislation that views abortion as a question of individual choice would require a significant revision of either the substance of their ethical commitments or the manner in which they hold their beliefs. This, however, does not sit well with the claim that the liberal political culture that underpins constitutional patriotism can reflect the ethical concerns of diverse ethnic, cultural and religious groups.

Although religious worldviews may allow for the exercise of some degree of autonomy, they typically do not regard individual autonomy as central to their way of life, nor do they hold their beliefs and values in the critical reflexive manner that Habermas demands. Furthermore, while Habermas insists that ethical questions are open to rational debate only within a concrete way of life or conception of the good, 'it is a fiction to suggest that that ethical discourse is limited to discourse *about* particular historical groups' (Bernstein 1996:1143). As Habermas (2003:7)) recognises major religious communities within contemporary liberal societies have by no means completed 'the cognitive reorganisation of doctrines and attitudes' demanded by the liberal public culture. The same can be said of many non-liberal ways of life. The demands associated with the liberal political culture

that underpins constitutional patriotism does not just entail the rejection of the claims of religious fundamentalists, radical nationalists and xenophobic ethnocentrists, but is liable to be problematic for many citizens who subscribe to one of the major religious worldviews or who are members of non-liberal communities. Given that the demands the liberal public culture places upon such ways of life and worldviews are more substantial than Habermas' image of a 'neutral module' suggests, adherents to such worldviews may well resist pressures to 'modernise'. Yet, on Habermas' account, the critical reflective attitude to values and beliefs associated with modernisation constitutes a vital pre-requisite for rational consensus in the face of ethical disagreement. After all if rational consensus is to remain possible despite profound ethical disagreements, participants in discourse must be able to distance themselves from their ethical commitments and be able to appeal to a shared moral discourse distinct from their different ethical commitments. Since groups that have not fully incorporated the normative principles of the liberal public culture into their way of life or worldview do not hold their ethical commitments in the critical reflective manner associated with a liberal commitment to autonomy and do not endorse Habermas' sharp distinction between ethical and moral discourse, Habermas cannot grant equal political recognition to such groups. While such citizens are entitled to the basic rights and benefits associated with citizenship, including the right to free speech, the demands that spring from their specific ethical commitments cannot be readily 'translated' into the liberal public culture and thus cannot form part of a reciprocal discourse that pushes 'beyond contested interests and values' in search for a common form of life.¹⁶ Although such individuals will be free to follow their worldviews and conceptions of the good, their ethical commitments are not allowed to

shape the agendas and negotiations within political institutions and the broader political process that determines what the benefits and burdens of citizenship are.¹⁷

Legitimacy, Solidarity and Diversity

Habermas' denial of equal recognition to members of groups that do not share the liberal commitment to reflexivity, critical rationality and autonomy highlights the tensions inherent in his conception of constitutional patriotism. While constitutional patriotism can only generate a true sense of loyalty to the state if it is based on a genuine commitment to the liberal political culture it seeks to uphold, it is difficult to see how a liberal state could win the loyalty and support of citizens with diverse conceptions of the good if the challenges cultural diversity poses to collective identity are not fully addressed and those members of society whose conception of the good does not coincide with the liberal commitment to critical rationality and individual autonomy are denied equal recognition. This is not only troubling given Habermas' long-standing concern with social cohesion and legitimacy, 'a denial of equal political recognition to some persons on the basis of the content of their substantive ethical commitments and convictions' borders on contempt and does not sit well with Habermas' own commitment to respect each person's capacity to form her own conception of the good life' (Cooke 1997:281). Nor does it sit well with the stated goal of constitutional patriotism to build a political culture that reflects the ethical commitments of citizens with highly diverse conceptions of the good and that enables such citizens 'to identify on equal terms with their own country' (Habermas 1989:257). Ultimately Habermas' optimism about the prospect of building a genuinely shared political culture underestimates the challenges that cultural

diversity poses for the idea of a shared collective identity and political consensus. The march of modernisation as rationalisation is neither as relentless nor as inevitable as Habermas assumes. Hence the rational consensus on liberal constitutional principles that is to provide the basis for a shared political culture remains elusive. Far from acting as a common denominator for a diverse range of cultural, ethical and religious worldviews, Habermas' constitutional patriotism entails a substantive commitment to liberal values.¹⁸ Constitutional patriotism is therefore best seen as the expression of a distinctively liberal form of civic nationalism. While such a civic nationalism can undoubtedly mitigate the violence and exclusion associated with other forms of nationalism, it is not as amenable to diversity as supporters such as Habermas assume. These difficulties lend credence to the worries expressed by critics who have questioned attempts to sharply distinguish between civic and ethnic nationalism.¹⁹ Even in a political community 'based solely on a shared commitment to political principles', there would be 'plenty of room [for] exclusion and suspicion of difference' (Yack 1996: 208). In the final analysis constitutional patriotism too entails some of the political risks associated with other forms of nationalism.

In the light of these difficulties it is tempting to simply abandon Habermas' search for rational consensus in favour of accounts of democratic legitimacy that take the depth of diversity that characterises modern pluralist societies as a given. This is indeed the avenue pursued by a number of political theorists, including Stuart Hampshire (1999), Richard Bellamy (1999), John Gray (2000) and Bikhu Parekh (2000). While these writers advocate a variety of responses, all try to develop 'thin' procedural accounts of

democratic legitimacy that focus first and foremost on the need to secure peace and stability in the face of persistent and far reaching disagreements regarding fundamental values. In contrast to Habermas' account, which demands that citizen incorporate the normative principles of the liberal public culture into their way of life or worldview, thin procedural models merely require that all parties to the negotiations renounce the use of force in favour of a peaceful, negotiated settlement of their disputes. Although these accounts share Habermas' preoccupation with the democratic procedures that govern conflict resolution, they do not view negotiation, compromise and majority rule as steps on the road to rational agreement. On the contrary, on this view democratic procedures aim to bring about outcomes that are recognised as legitimate in the *absence* of an agreement on rational acceptability. While procedural fairness demands that all parties must be able to participate in the deliberation of public issues and the formulation of public policy and insists that all views be given a fair hearing, on these accounts procedural rules do not generate substantive conclusions. Consequently political agreements are always provisional and subject to challenge and revision.

Such 'thin' procedural accounts of democratic legitimacy are arguably well placed to recognise the depth and complexity of the pluralism that characterises many contemporary liberal democracies. Since these accounts merely require participants to respect the constraints imposed by the procedural rules that govern democratic decision-making, they promise to be significantly more inclusive than Habermas' account. Indeed, while critics frequently express the fear that such accounts are liable to give rise to political settlements that simply favour the views of the majority, these models may well

be able to generate a genuine sense of political legitimacy through innovative procedures and institutions that safeguard the interests of minorities and ensure that political disputes are not reduced to purely strategic struggles of power.²⁰ However, while such approaches may in principle be able to generate a sense of political legitimacy in the face of a profound diversity of conceptions of the good, it is less certain that such models will be able to address the ‘motivational’ or ‘solidarity’ gap that has confronted modern states since their inception. From a procedural perspective the state derives its stability solely from the legitimacy of its decision-making procedures. The loyalty of citizen to the state therefore does not obtain from the solidarity of citizens who feel responsible for and committed to one another as members of a single political community, but simply rests on the ability of citizens to get a ‘fair hearing’ for their views and ‘fair protection’ of their interests. While such a state will promote a range of goods that are of instrumental benefit to citizens, such as law and order, security and a range of common provisions, securing common goods in this sense is not enough to turn a diverse group of citizens into a single people. Indeed such a picture is not only reminiscent of Hobbes’ view of the state as an association of self-interested individuals, but also gives rise to similar concerns. As critics of Hobbes, like Jean Hampton (1986), have been quick to point out, a commonwealth composed of self-interested individuals, whose attachment to the state is purely instrumental, is unlikely to succeed in the long-run. Just as Hobbes’ sovereign relies upon the willingness of his subjects to incur risks in order to come to his aid in enforcing law and order, so modern states rely upon the willingness of citizens to make sacrifices for the common good, be it in terms of the everyday redistribution of income to meet welfare needs or the more significant sacrifices that may be required in times of

national crisis. While even citizens whose attachment to the state is purely instrumental may well be willing to incur some costs in return for the benefits that membership bestows, such ‘fair-weather’ citizenship does not provide the best foundations for political stability. As Margaret Canovan (1996:86) notes ‘in times of crisis ... citizens of this sort tend to prefer exit over loyalty or voice’. Even though a modern state can afford a purely instrumental allegiance on the part of some citizens, it may struggle to sustain itself should such an attitude become widespread. Without a strong sense of solidarity there is, as Habermas (2001b) cautions us, a real danger that the political community will splinter and fragment as subcultures seal themselves off from one another. The challenges that cultural diversity and value pluralism pose for contemporary states cannot be resolved by solely focusing on legitimacy. Habermas (1998a:407) is therefore right to insist that the modern pluralist state must find ‘a functional equivalent for the fusion of the nation of citizens with the ethnic nation’. He is, however, mistaken to assume that this functional equivalent is already latent in the values and practices of citizens in contemporary liberal democracies. While ‘thin’ procedural approaches underestimate the importance of a sense of solidarity, the difficulties inherent in Habermas’ conception of ‘constitutional patriotism’ highlight the challenges that difference and diversity pose for any attempt to build a strong sense of collective identity. If modern pluralist states are to find a functional equivalent to the fusion of republicanism and nationalism, they may well have to abandon Habermas’ proclaimed goal of state neutrality in favour of the civic equivalent of nation building, with all the uncertainties, challenges and dangers that that entails. Such a project would require the state to actively promote the core liberal values that underpin constitutional patriotism and may, for example, entail steps to contain and

curtail the spread of non-autonomy valuing life-styles through a public education that actively promotes a decentred and reflexive attitude to beliefs and practices. Yet such steps not only risk further marginalising those members of society whose conceptions of the good do not endorse these ideals, but may even impact upon the extent to which such citizens can exercise their basic right. An education designed to promote the values associated with a liberal culture may, for instance, infringe on the general right of parents to make educational choices for their children.²¹ Like other forms of nation building, civic nation building runs the risk, at least in the short-run, of reinforcing exclusion and heightening suspicion of difference. As with other forms of nation building, there is always a danger that the ensuing tensions will undermine the long-term project. Citizens who subscribe to ways of life or worldviews that cannot be readily reconciled with a liberal culture may well resist policies that actively promote such a culture, giving rise to a hardening of attitudes as such subcultures seek to protect themselves from the impact of policies designed to promote liberal values. Although writers like Habermas are correct to reject models of democratic citizenship that seek to ground political stability in legitimacy alone, the challenges associated with building a genuinely shared political culture are more complex and troubling than Habermas acknowledges. If the modern pluralist state is to avoid the dangers of fragmentation and political instability associated with a citizenry whose allegiance to the state is predominantly instrumental, it must address, what Habermas aptly terms, the ‘motivational’ or ‘solidarity gap’. Yet the very measures that in the long-run may to help build a shared political culture that is strong enough unite subjects into citizens of a single political community are in the short-run liable to heighten the kind of tensions that threaten to undermine the project of civic

nation building. However, if the modern states are to build a strong sense of solidarity in the face of difference and diversity these risks may well be unavoidable.

Conclusion

While Habermas offers an astute analysis of the difficulties that confront modern pluralist states, the problems that surround his proposed solution suggest such states may well struggle to find an effective functional equivalent to the peculiar fusion of republicanism and nationalism that gave rise to the nation state. Although Habermas' sophisticated conception of constitutional patriotism sets out to strike a careful balance between a commitment to universal principles and the recognition of particularity, his optimism regarding the prospect of building in modern pluralist societies a genuinely shared political culture is misplaced. Not only does he underestimate the difficulties inherent in any attempt to decouple the majority culture from the wider political culture, his notion of constitutional patriotism entails a more substantive commitment to liberal values than he acknowledges. However, while Habermas' solution to the 'solidarity gap' that confronts many contemporary liberal democracies remains problematic, he is right to point to the importance of a shared political culture that is strong enough to turn strangers into fellow citizens. Yet the difficulties that surround his conception of 'constitutional patriotism' suggest that modern states will face profound challenges in their attempts to build a basis for such a collective identity.

Endnotes

¹ Habermas first formulated the concept of constitutional patriotism in response to debates surrounding German national identity in the wake of German reunification. Given German history, Habermas argues that a modern German identity must be based on respect for the constitution and the fundamental democratic rights safeguarded therein rather than any appeal to ethnic nationhood. Consequently, for Habermas the incorporation of the East German states into the Federal Republic is best seen as the restoration of democracy and a constitutional state rather than the reunification of a prepolitical community with a shared history and destiny. For a discussion of German reunification and the Historikerstreit (historian's dispute) see Habermas 1989. In his later work Habermas contends that all modern constitutional states must move towards a constitutional patriotism, if they are to respond adequately to the challenges posed by demands for recognition on the part of traditionally marginalized group. See for example Habermas 1998a.

² For a discussion of this line of criticism see Ingram (1996), Yack (1996) and Markell (2000).

³ Ethical-political questions address the community's shared form of life and ideals that members feel should shape their common life, while pragmatic questions assess the consequences of particular actions and seek to establish the best strategy for attaining our ends. In *Between Facts and Norms* Habermas distinguishes ethical political discourses from moral discourses. Whereas moral discourses aim at a universal and impartial point of view, ethical-political discourses express the authentic self understanding of a particular community. Thus while moral discourse encompasses all of humanity and seeks to establish norms that are in the equal interest of all, ethical political discourse takes place among the members of a specific political community. Consequently the discourse principle, which demands that only 'those action norms are valid to which all possibly affected persons could agree as participants in rational discourse', merely takes the form of a universalisation principle in relation to moral norms (Habermas 1996a 107). As the expression of a particular form of life, the formation of political will, on the other hand, is shaped by ethical and pragmatic as well as moral reasons and consequently is always tied to specific and contingent contexts. However the distinctive political identity of a particular state must not violate the demands of moral discourse. Not only must every constitutional state ensure that the human rights of all citizens are protected, it must also strive to be neutral between various conceptions of the good and the different socio-cultural subgroups within the state.

⁴ According to Habermas (cited in McCarthy 1986:xxvi) the lifeworld constitutes a culturally transmitted and linguistically organised stock of interpretive patterns'. The implicit knowledge inherent in the lifeworld provides actors with a set of unproblematic background convictions 'upon which they draw in the negotiation of common definitions of situations' (McCarthy 1986:xxvi). While actors can reflect upon and criticise particular aspects of their lifeworld, they cannot step outside it.

⁵ While at one level these two forms of rationality are complimentary developments, 'in other respects they are counteracting tendencies'. (Habermas, 1986:341). For Habermas the 'discontents of modernity are not rooted in rationalisation as such, but in the failure to develop and institutionalise all the different dimensions of reason in a balanced way' (MacCarthy 1986:xxix). In the absence of institutions that protect the lifeworld, the reifying dynamics of economic and administrative subsystems have increasingly marginalised communicatively structured interaction. To stem this process does not entail insulating the lifeworld from the processes of modernisation, but requires the expansion of communicative rationality. The communicatively rationalised lifeworld therefore has to develop institutions that limit and subordinate the subsystems of power and money. In *The Theory of Communicative Action* Habermas identifies a number of potentials for protest that challenge the influence of the subsystems of power and money. According to Habermas (1987:392), advanced Western societies have seen a shift away from 'the welfare state pattern of institutionalised conflict over distribution' to conflicts in the areas of 'cultural reproduction, of social integration and socialisation'. These new conflicts do not focus on economic compensation, but seek to protect or restore endangered ways of life or aim to establish reformed ways of life. The underlying deficits in these conflicts 'reflect a reification of communicatively structured domains of action that will not respond to the media of power and money' (Habermas, 1987:392). Such protests can be sources of

emancipation and resistance. While in *The Theory of Communicative Action* Habermas discusses developments such as the ecology, antinuclear, peace and women's movements, the contemporary politics of recognition can be seen as a part of this wider phenomenon of protest.

⁶ In *Moral Consciousness and Communicative Action* Habermas makes an intriguing link between his modernisation thesis and individual moral development. Here he (1990:117) contends that Lawrence Kohlberg's 'theory of moral development offers the possibility of (a) reducing the empirical diversity of existing moral views to variation in the *contents*, in contrast to the universal *forms*, of moral judgement and (b) explaining the remaining structural differences between moralities as differences in the state of development of the capacity for moral judgement'. Drawing on Kohlberg's work, Habermas (1990:177) argues that, if successful, individual moral development will give rise to a principled morality that 'robs the social world, with its legitimately ordered interpersonal relations, of its natural stability and compels it to justify itself.' The establishment of such a principled morality goes hand in hand with the differentiation between moral questions and evaluative questions. While moral questions can in principle be rationally decided by an appeal to justice or the universalisability of interests, evaluative questions refer to questions of the good life and are accessible to rational discussion only *within* the horizon of a concrete historical form of life or an individual life style' (Habermas 1990:178)

⁷ In terms of moral discourse majority decisions are interim results in the search for impartial, universally valid norms, whereas in ethical discourses they constitute steps in the search for an all-encompassing political culture and a common form of life.

⁸ According to Cooke (1999: 178) Habermas here 'draws attention to the important difference between the form of coercion involved in the exercise of power within the framework of democratic laws and that which is involved wherever this framework is not presumed.' This is not to suggest that Habermas fails to recognise that democratic decision-making involves coercion. Hence, as Cook notes, the worry, expressed by Mansbridge (1994) and Cornell (1995), that Habermas denies the moment of coercion, is unfounded.

⁹ Indeed, according to Habermas (1996b:1492/3), 'if essentially relevant value conflicts and oppositions must penetrate *all* controversial political questions, then in the final analysis we end up with something resembling Carl Schmitt's understanding of politics'. Hence for Habermas democratic legitimacy is only possible if we assume that questions of justice can transcend the ethical self-understanding of competing forms of life.

¹⁰ According to Habermas (1998b:145/6) 'several different routes to the elusive goal of a "difference sensitive" inclusion are ... available: federalist delegation of powers, a functionally specified transfer or decentralisation of state competencies, above all guarantees of cultural autonomy, group specific rights, compensatory policies, and other arrangements for effectively protecting minorities'.

¹¹ On Habermas' account the cultural rights of immigrants are akin to those of 'born' ethnic, cultural and national minorities. For Habermas (1993) cultural rights are only legitimate when exercised as individual liberties. While the state should ensure that individual members of minority groups are able to pursue their way of life, it should not seek to preserve cultures in the same way in which we may attempt to preserve endangered species. Indeed he is very critical of the demands by some natural born minorities for corporate group rights designed to maintain and perpetuate their particular way of life. According to Habermas, policies, such as the Quebec language laws, which specifically seek to socialise future citizens into the language, value and norms definitive of a particular culture, extend well beyond what can be justified in terms of the provision of meaningful cultural choices for individuals.

¹² According to Habermas (cited in Markell 2000:52) an integrative force is pre-political if it is 'independent of and prior to the political opinion- and will-formation of the citizens themselves'.

¹³ It is, of course, a concern with these forms of discrimination which leads Habermas to argue for the need to decouple the majority culture from the wider political culture. However, if the political culture itself is already shaped by the majority culture, decoupling will not address these concerns. Indeed a sharp

distinction between political and cultural integration may make it more difficult to identify and raise awareness of the more subtle ways in which the assumptions and prejudices that underpin the political culture marginalise the concerns of minority communities.

¹⁴ By implication those claims and demands that cannot be ‘translated’ cannot influence formal political processes. According to Habermas the liberal state must remain neutral vis-à-vis conceptions of the good and therefore cannot tolerate religious justifications in the legislative process itself. However the liberal state cannot oblige them ‘personally to supplement their public statements of religious convictions by equivalents in a generally accessible language’ (Habermas 2006:9) Instead Habermas (2005:28) conceives of the translation proviso as a co-operative process that requires secular citizens to ‘take part in the efforts to translate *relevant contributions* from the religious language into a publicly accessible language’ (my emphasis) and thus insists that such a proviso does not place an undue or asymmetrical burden upon citizens who hold strong religious convictions. However, as Habermas (2005:27) himself recognises, ‘secular citizen with limited metaphysical baggage, who can accept a morally “free-standing” justification of democracy and human rights’ can easily recognise that the “right” enjoys priority over the “good”. As a consequence secular citizens are arguably liable to find the demand to be respectful and sensitive to the truth potential of religious worldviews easier to bear than the burdens the institutional translation proviso places upon religious citizens.

¹⁵ Habermas takes the notion of the normative frame of the liberal state as a ‘module’ from Rawls. Indeed Habermas’ notion of a civic sense of the nation in many ways mirrors Rawls’ notion of political liberalism and the difficulties that Habermas encounters are akin to those facing Rawls. While Rawls maintains that his conception of political liberalism will gain the endorsement of, or at least will be compatible with, all reasonable doctrines, numerous critics have been quick to point out that far from providing a basis for an overlapping consensus that can encompass citizens with highly diverse conceptions of the good, political liberalism privileges liberal principles at the expense of worldviews and ways of life that challenge Rawls’ sharp public/private distinction. Ultimately, Rawls’ distinction between political and comprehensive liberalism rests upon a sharp differentiation between the political and the non-political, which ignores the complex interrelationship between the two spheres. For an overview of a range of critical perspectives on Rawls’ conception of political liberalism see Baumeister (2000).

¹⁶ Since on Habermas’ account the basic rights and benefits associated with citizenship are derived from the application of *universal* norms, these rights and benefits must apply to all citizens equally.

¹⁷ On Habermas’ own understanding of the complex relationship between individual liberty and democracy this exclusion may have far reaching implications for the standing of such citizens. Given that persons are individuated through the processes of socialisation, Habermas maintains that the capacity of individuals to pursue their chosen way of life can only be effectively safeguarded if the context within which an individual’s identity is formulated is also protected. This can only be achieved if all citizens participate in the formulation and interpretation of the rights and norms that safeguard individual freedom. If the ethical commitments of citizens who subscribe to non-autonomy valuing life-styles are not allowed to shape democratic discourse, the rights and norms derived from such discourses are unlikely to support the wider life context within which their identities have been formulated. This may make it difficult for such citizens to even pursue their chosen way of life in the private sphere.

¹⁸ This suggests that the wider worries expressed by many generally sympathetic commentators regarding Habermas’ continued preoccupation with consensus are justified (see for example Bernstein 1996, Bohman 1995 & 1996, Chambers 1995 & 1996, Dryzek 2000, Fraser 1992, McCarthy 1996, Rehg and Bohman 1996).

¹⁹ See for example Yack (1996).

²⁰ Habermas (1996b), for instance argues that, in the absence of a search for rational agreement, political disputes will be reduced to a purely strategic struggle for power. While such worries cannot be easily dismissed, advocates of ‘thin’ procedural models have begun to develop innovative procedures and

institutional models that seek to ensure that majority and minority can participate in dialogue and political negotiation on equal terms, encourage both the majority and the minority to reflect upon existing norms and practices, and promote mutual adaptation and a search for common ground. I have explored a potentially promising model in a previous paper (Baumeister 2003).

²¹ Quong (2004), for example, argues that the imposition of such an education may well infringe the general right of parents to make educational choices for their children, but concludes that such an infringement is justified in order to secure the long-term stability of liberal democratic regimes. However, the degree to which such measures will indeed promote long-term stability will in practice depend upon the way in which citizens respond to such infringements of their rights.

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