Giving Universalism Historical Depth

Three Questions Concerning Jürgen Habermas' Political Theory

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Abstract

This paper aims to suggest three questions concerning the relationship between historical heritage and moral universalism in Jürgen Habermas' political theory. Authors such as Ernst Böckenförde (1991), Michael Sandel (1982) and Charles Taylor (1997; 2007) argue that universalistic Kant-like political theories lack historical concreteness, as they underestimate the potential of traditions and cultural identities. Habermas admits that there is enough plausibility to such a criticism, as it points out some sociological and political weaknesses of too idealistic versions of universalism. Despite hinging upon universalistic Kant-like assumptions, Habermas' political theory does not shy away from a political identity which is primarily defined in historical terms. In what follows, I shall focus on three questions concerning Habermas' attempt to face the communitarian criticism by setting out my paper along the following lines: 1) pointing out how the state should refer to *ethnic and religious traditions*; 2) understanding which role *national traditions* play in building up «constitutional patriotism» (*Verfassungspatriotismus*); 3) verifying whether the shaping of a *European identity* requires any kind of rooted traditions to refer to.

1. Universalism, ethnic and religious traditions

I believe that of all universalist thinkers Habermas is the one who has considered the power of traditions to create collective identities most seriously. In particular, Habermas' universalism differs from John Rawls's, whose «originary position» is by definition abstract and unhistorical: actually Rawls's fictitious individuals must abstract from their social cultural and historical background (Rawls 1971). Every «comprehensive doctrine» must be left out, even if it is rooted within liberal values (Locke, Kant, Mill). What distinguishes Rawls' *moral* account from traditional conceptions of liberalism is that it tries to outline a reasonable «overlapping consensus» without appealing to any *ethical* metaphysical source[1]. Of course, a traditional system of ethical values can still be embraced by those who deem it a moral source in their lives. Moreover, they are free to assess how the abstract system of liberal rights fits into the larger portrait of their own ethical community (Rawls 1993). Yet, in Rawls' view, ethical arguments do not play any role in what Habermas calls the «discourses of justification» (*Begründungsdiskurse*)[2].

Habermas, on the other hand, finds an opposite way out: first of all he asks himself *why* traditions can no longer be the source of legitimate normativity in post modern societies. In brief: according to Rawls the overcoming of parochialisms must be the *premise* of a merely philosophical «theory of justice, which he as an expert is qualified to construct» (Habermas 1983, 66); on the other hand, in Habermas' account, it appears rather as the *final outcome* of a theory which tries to explain, from a sociological and not only philosophical point of view, *why* we should agree to relinquish the heritage of the traditional values we have grown up in. According to Habermas, secularization and individualization do not necessarily mean that religions loosen their grip on the culture of a society and on the personal conduct of life. Yet all subcultures and *Weltanschauungen*, whether religious or not, are required «to free their individual members from their embrace so that these citizens can mutually recognize one another in civil society» as members of the same political public sphere (Habermas 2008a).

Habermas' thesis is the following: citizens may find good reasons to endorse laws which transcend their cultural background only if they are not *constrained to eliminate* their cultural ethnic-religious roots, but rather *advised to translate* them into rational

arguments which each citizen can accept or refuse through a "yes" or a "no" (Habermas 2001; 2005). The reasons for this are not only sociological, but also include philosophical issues. Rawls' attempt to assess the boundary between ethics and morality relies on a substantive, as opposed to procedural, distinction between ethical and moral *contents*. But an ethical argument could still be of *moral* value, if only its metaphysical contents were *translated* into a rational and post-metaphysical language. So, in order to enable the faithful to make an attempt at translation, we must give them the opportunity to take part in the *Begründungsdiskurse*. Of course, they are expected to develop a «change in epistemic attitudes» (Habermas 2008a)[3] in order to fulfil certain cognitive conditions of communicative rationality. At any rate, the boundary between ethics and morality must be assessed *throughout* moral discourses and not *before* them (Forst 1996).

In *Zwischen Naturalismus und Religion* (2005), Habermas challenges Rawls on this very point. The principle of separation between church and state «is to be distinguished from the laicist demand that the state should defer from adopting any political stance which would support or constrain religion per se» (Habermas 2005, 6). Therefore, the state must not discourage the faithful from expressing themselves politically according to their own religious points of view. The faithful must rather endeavour *to translate* the dogmatic substances of their doctrines into a language which is equally accessible to all citizens, while secular citizens must get rid of their dogmatic "radical naturalism". Thus, post-metaphysical rationality remains neutral towards science and religion: no tradition (either religious or not) is left out; each tradition must be prepared for public criticism. Keywords such as *Osmose* (osmosis), *Porosität* (porosity), *Mitarbeit* (cooperation) and *Aufnahmefähigkeit* (receptiveness) are some of the terms through which Habermas points out the general requirements of a profitable dialogue between competing traditions sharing a reasonable «common sense» (Habermas 2001; 2006). In this way he definitely stresses «the open-ended character of discourse, and the need to include all voices and perspectives, requirements that Rawls's theory fails to meet» (Moon 1995, 159).

But Habermas recognizes a problem here: «Yet in the final instance it is the faith and practice of the religious community that decides whether a dogmatic processing of the cognitive challenges of modernity has been 'successful' or not», and a specular problem

arises in the case of secular dogmatic beliefs (Habermas 2005, 14). In brief, it is about to find out whether Habermas' proposal of *translating* traditions may perhaps appear to the individuals involved as an unacceptable attempt *to alter* their nature. Thus, the very Habermasian question comes back into play once more: universalism must not only be philosophically cogent, but also sociologically acceptable, as Hauke Brunkhorst has underlined in a recent book (2006).

Rawls himself states the problem in these terms, with a question which would be the first one of my paper: *as religious communities still claim a role in the life of deeply secularized societies, «how is it possible ... for those of faith ... to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline*?» (Rawls 1997, 783).

2. Universalism and national traditions

Habermas assumes that constitutional arrangements must rest upon universal principles. Yet citizens do not merely approve the constitutional code rationally: on the contrary, they feel part of their national history, in which the constitution has concretely taken roots. Generally speaking, constitutional identification is impossible without reference to history (Taylor 2007). Therefore, the only solution seems to be to exploit the emancipatory potential already present in historically- and culturally-grounded democratic institutions and to transform it into procedural systems of law and politics that protect the interests of all equally (Habermas 1995a). Even the cultural heritage of religious traditions has played (and is still playing) a role in this process. Solidarity, for example, is a typical feature of rights-based modern democracies, but is also strictly related to the ethical sources of religious solidarity (Brunkhorst, 2008).

Democracy demands an universalistic frame of procedural rules and ethically-neutral abstract rights. But at the same time, democracy requires cohesion. In order for a democratic constitution to meet both requirements, the internal linkage between national identity and universal constitutional rights cannot be swept aside. The Habermasian notion of «constitutional patriotism» (*Verfassungspatriotismus*) takes both aspects of the problem into consideration. It is *constitutional*, because it is based on moral and

political principles, but it is also called a *patriotism* because citizens are fiercely attached to their particular national historical tradition. Habermas' «constitutional patriotism» requires not only Kantian rationality, but Rousseau's republican *ethos* as well: «Citizens do not internalize constitutional norms in an abstract form, but concretely, in the context of their respective national histories» (Habermas 2004, 78). Put otherwise: citizens, after detaching themselves from the particolarism of their own traditions – either religious or not – find themselves anyway constrained to rely on a further *tradition*, namely the national one, which is shared by everyone, but which is nonetheless particularistic.

In order to highlight the issue that arises from the above, I will briefly take into account Habermas' reply to a criticism by Frank Michelman (1999): according to Michelman, it is paradoxical for the citizens' will to hinge upon constitutional norms and laws of lawmaking, which were not voted by them, but rather imposed by the Fathers of the constitution. If the only source of legitimate normativity is the self-determining will of the People, neither basic principles nor constitutional norms should be meant to set limits to it. Habermas replies by confirming the «co-originality thesis» (*Gleichursprünglichkeitsthese*), which he had already stated in *Faktizität und Geltung* (1992): neither are rights paramount to the general will (Kant), nor are they the mere outcome of it (Rousseau); citizens must feel «in the same boat as their predecessors», because when the general will adjudicates on a matter, it is not subject to the constriction of the costitutional code, but rather develops it «actualizing the still untapped normative substance of the system of rights laid down in the original document of the constitution» (Habermas 2001a, 772).

The distinction between the Habermasian procedural account and the Rawlsian substantive theory of justice comes back into play once more, because in a Rawls-like political theory «the act of founding the democratic constitution cannot be repeated under the institutional conditions of an already constituted just society» (Habermas 1995b, 128). From a strictly procedural point of view, then, constitutional rights and political will are mutually legitimate, through a never-ending implementation and monitoring process, in the light of principle "D", which is *neutral* towards the distinction between politics and morality[4]. Yet, as Alessandro Ferrara has noticed in a brilliant review of Habermas' essay, it is not sufficient to advocate for the abstract

universality of principle "D": for instance, «in order for today's German citizens to feel in the same boat as *their* predecessors, as opposed to feeling in one and the same boat as the *American* framers (who, incidentally, were equally responsive to principle "D"), we have to inject much more substance into the model», and, in particular, into the notion of «constitutional patriotism» (Ferrara 2001, 787). In brief: should we read principle "D" as a «quasi-transcendental principle, ultimately anchored in certain universal-pragmatic structures» or rather as a «way of capturing the view of normativity found at the core of the communal identity of peoples living within the modern life form»? (Ferrara 2001, 788). Put otherwise: how does the historically-grounded side of «constitutional patriotism» affect the strictly procedural character of principle "D"?

The matter appears in a clearer light if we consider the German situation, in which this «dialectic of universality and situation» is most evident (Pensky 1995, 69). In the German case, the national identity has been built up without continuity with a democratic past, and indeed thanks to a break with the Nazi heritage. The question, then, is whether the German rule of law, which was foisted upon democracy *from the outside*, will still succeed in providing a durable collective *German* identity. Some conservative historians such as Ernst Nolte and Andreas Hillgruber thought that it was necessary to "normalize" the abnormal German past by finding historical *reasons* which would explain the catastrophe: the Holocaust could be seen for instance as an extreme but still historically explicable reaction to Stalin's purges (Nolte). Habermas, taking sides within this so-called "Historians' Debate" (*Historikerstreit*), has rejected every kind of revisionism, stressing the necessity for critically facing the past, in order to be able to work out a new future, which can be definitively relieved of the Nazi heritage burden (Habermas 1987).

Yet, Nolte's revisionism and Habermas' anti-revisionism rely on the same assumption and share the same concern: given the internal linkage between «constitutional patriotism» and national history, it is necessary to work out an ideal of *situated* German citizenship which can be *historically* grounded, either by relativization/revisionism in Nolte's view or by critical admission of guilt in Habermas' view. Hence, the German case shows clearly that principle "D" is not the only force playing a role in shaping «constitutional patriotism». Indeed, if we want to come back to the Habermasian metaphor, citizens will conceive of themselves as «in the same boat

as their predecessors» only on condition that they deem their predecessors not only *abstractly equal* in the light of principle "D", but also *historically deserving* to have preceded them. As American citizens feel deeply part of their democratic history, in the same way German citizens can morally identify themselves with the "Basic Law" (*Grundgesetz*) only after filtering German history from the Weimar Republic on (Pensky 1995). In both cases, «constitutional patriotism» anchors in the force of national tradition, albeit in different possible ways (see Müller 2007).

But here a second question arises, which I believe would be worth discussing: *how can national traditions condition constitutional arrangements without blurring the boundary between ethics and morality?*

3. Universalism and European identity

What kind of legitimacy may international institutions claim (if any)? Hauke Brunkhorst provides a valuable answer: «The co-originarity of subjective rights and democratic sovereignty can become the political-constitutional yardstick of all institutions endowed with a constitution» (Brunkhorst 2006, 112). In this passage, Brunkhorst's insistence on the notion of "constitution" is not accidental at all. According to him as well as to Habermas, the juridical term "constitution" (*Verfassung*) differs from the notion of "contract" (*Vertrag*), because in the former case the normative dimension of "consensus" (*Einverständnis*) is prior to the pragmatic one of the "agreement" (*Vereinbarung*). With reference to the European case, this means that supranational institutions must not confine themselves to drawing up sporadic "westfalian" covenants, but indeed work out a normative shared project, whose final result should be a European *constitution*[5]. European law should be able to draw its own legitimacy from a political constitution, which would give voice both to the democratic will of the peoples of Europe and to shared moral-political principles.

Yet we know that according to Habermas every constitution must be in a sense the outcome of a concrete democratic history that citizens feel a part of. But is there such a political tradition at the European level? Of course, European political culture is rooted within a tangle of competing traditions, both religious (Roman Catholicism,

Protestantism, Islam) and secular (Enlightenment, Romanticism, Socialism). Nonetheless, only national states have managed to disentangle these potential sources of normativity through the moral-political filter of rooted institutions and to turn them into well-ordered (national) political values. In the European history, the only "international" body that bore some resemblance to fully-fledged national states was the Roman Catholic Church. In fact, there is a common view that the *unique* European common tradition lies in its Christian roots (Ratzinger 2004). Yet, although according to Habermas every constitution must refer to a common tradition, it is obvious that no universalistic constitution can be rooted within religious heritages. Habermas' solution to this issue seems to me to be traversed by an internal tension: in fact, the Habermasian ideal of "European citizenship" is, if compared to the national *Verfassungspatriotismus*, on one hand a) *more pragmatic*, but, on the other hand, b) *more abstract*.

a) We come across problems, which cannot actually be solved within the single-state boundaries. In a recent *Dankesrede* Habermas has argued that euro-skeptical politicians underestimate the importance of European institutions: problems such as ecology, international terrorism and the political interference of multinational economic powers require a «rooting» (*Vertiefung*) of international bodies able to face them (Habermas 2006). Borrowing the terminology from *Faktizität und Geltung*, we could say that at the European level «pragmatic questions» seem to take precedence over «moral questions», which are, on the contrary, the juridical kernel of national democratic constitutions based on universal principles. That is why I am talking about an ideal of "European citizenship", which is *more pragmatic* than the one of national citizenship: citizens should cooperate in the creation of a European identity mainly for *concrete political needs*, rather than for strictly normative reasons. From this pragmatic point of view, the legitimacy of Community law does not require or presuppose the extension of the scope of supranational governance by analogy to the forms of representative or majoritarian democracy. This approach, in other words, would set aside the problem of "moral" legitimacy and democratic inclusion.

b) According to Habermas, it is neither possible nor advisable for international institutions to be endowed with a coercive power comparable to that of the states; therefore, "European citizenship" must necessarily be an *anarchical* citizenship. Peter Niesen has underlined that such a conclusion is nothing but the enforcement and

clearing of the anarchical core, which is latent in the basic assumptions of the discourse-ethics (Niesen 2007): the only acceptable constriction is that of the best argument (*zwangloser Zwang*), which can not be coercively imposed by a superior power. From this point of view, the ideal of "European citizenship" is *more abstract* than the one of national citizenship: the European citizen conceives of himself as part of a cosmopolitan – Kantian flavoured – project, in which the lack of a centralized coercive power may in the long run foster anarchically self-regulated democratic settlements. Theoretically, such an account could even appear consistent with the model of «directly deliberative polyarchy» by Cohen and Sabel, who have proposed, in disagreement with Habermas' "realism", a radical and utopian transformation of the institutional arrangements, which should be achieved by enforcing the deliberative devices of the public sphere (Cohen-Sabel 1997; Cohen 1999).

While the first perspective advocates rooting European institutions able to cope with international problems, from the second point of view the existence of international bodies still connected with separate sovereign states could even turn out to be an unfortunate obstacle to the establishment or even the pursuit of cosmopolitical justice. The point of departure for this "anarchical" scepticism lies in the criticism that the role of civil society actors in European Union governance is increasingly being underestimated (see Smismans 2003). Both solutions contain a hidden drawback: the former risks undermining the importance of matters of principle, the latter sacrificing all political realism to matters of principle. The first solution does not seem to be able to justify the strong pressure which is increasingly being placed on national democratic political processes, especially concerning questions of democratic inclusion (Habermas 2008b). The second solution, on the other hand, does not sufficiently account for the specific *pragmatic* character of European Community law, which has always had as its prime function the *pragmatic* constitutional unification of the common market through economical integration of national markets (see Joerges 1994).

Yet, Habermas' swinging between these two opposite solutions definitely shows that he really takes the problem of traditions *seriously*: the lack of a common secular ethical history is indeed what hampers the birth of a consistent *and universalistic* project for the European constitution: the "*Geltung*" of universal principles should always be in dynamic tension with the "*Faktizität*" of concrete historical-political situations.

Therefore, while in reference to points 1) and 2) the question must be raised as to how universalism can be consistent with the *presence* of some traditions, now the question is, paradoxically, how it can be possible *without* them.

So, the third and last question which I would like to suggest would be: *lacking a common European secular tradition able to trigger a European «constitutional patriotism», how is it possible to achieve an ideal of European citizenship, which would be neither bound to merely pragmatic questions, nor excessively anarchical?*

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Notes

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[1] The basic assumption is the Habermasian distinction between *ethics* and *morality*. Ethical arguments rest on the way of life of a given community, while moral arguments derive their normative status from a universalistic viewpoint. In this "post-metaphysical" view, ethics and metaphysical sources are seen as strictly related. See Habermas (1990) and Forst (2001).

[2] For the distinction between «discourses of justification» and «discourses of application» (*Anwendungsdiskurse*) see Günther (1988).

[3] See also Habermas (2005, 14): «Religious citizens must develop an epistemic stance toward the priority that secular reasons enjoy in the political arena».

[4] Principle "D": "Just those actions are valid, to which each possibly affected person could agree as participant to rational discourses". Principle "D" is not the same as the Kantian moral universalization principle, which Habermas calls principle "U". For more details see Habermas (1983) and (1992).

[5] See Habermas (2001c).