MAKING AFFECT SAFE FOR DEMOCRACY?
ON “CONSTITUTIONAL PATRIOTISM”

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I.

The last few years have witnessed the rediscovery of an old distinction between “civic” and “ethnic” nationalisms. This renaissance has been driven in part by the new prominence of nationalism on the world political scene in the wake of the events of 1989. Yet the distinction between civic and ethnic nationalisms, however timely, has been taken up with special eagerness by political theorists because it also speaks to a problem in the theory of liberal democracy that antedates the most recent wave of nationalism; namely, the question of the relationship between liberal democracy and the affective dimensions of political life. Skeptical of passion and identification, liberals have tried to exchange the dangerous romance of polis and patria for the calm certitudes of reason, or for the
underrated pleasures of what Hobbes called “peaceable, sociable, and comfortable living.”¹ In turn, liberalism’s critics have charged that its aversion to affect is unsustainable. Modern procedural liberalism has no room for the strong passions of belonging, loyalty, and allegiance, and so it “cannot inspire the moral and civic engagement self-government requires.”² The concern, in Roger Scruton’s pithy expression, is that “the public sphere cannot stand so serenely above the loyalties that feed it.”³

The distinction between civic and ethnic nationalisms has offered liberals an attractive answer to this charge, because it promises to isolate a kind of affect upon which liberal democracies can safely rely as a source of citizen motivation. Whereas ethnic nationalism is grounded in attachment to a pre-political community of descent, civic nationalism, its proponents claim, expresses devotion to nothing other than liberal-democratic political principles and values themselves. Thus, liberal-democratic states can inspire their citizens with civic nationalism while keeping the divisive force of other, more pernicious attachments at bay.⁴ As Benjamin Barber announces: “A civic patriotism that eschews exclusion but meets the need for parochial identity can provide an alternative to the many pathological versions of blood kinship that are around today in places like ex-Yugoslavia, Romania, Rwanda, Tajikistan, Nigeria, the Ukraine, and Afghanistan, to name just a few.”⁵

Such theoretical deployments of the distinction between civic and ethnic nationalism represent what I call the strategy of redirection. This strategy claims to render affect safe for liberal democracies by redirecting our attachment and sentiment from one subset of objects—the “ethnic”—to another subset of objects—the “civic.” Since the ethnic conveniently turns out to be the source of all of affect’s pathologies, the “civic” can offer all the benefits of affect while “eschewing exclusion” at the same time. In this essay, I argue that the strategy of redirection rests on a misleading picture of the dynamics of political affect, and in particular of the relationship between affect and the
universal principles that are supposedly represented by the “civic.” The project of making affect safe for liberal democracy, I claim, founders on the troubling fact that even the reproduction of *civic* affect proceeds by tying citizens to historical institutions and concrete cultures that are never quite equivalent to the universal principles they purport to embody.

To develop this argument, I turn to one account of political affect that has assumed a prominent place in recent debates about civic and ethnic nationalisms: Jürgen Habermas’s conception of “constitutional patriotism” (*Verfassungspatriotismus*). Many of Habermas’s readers take the idea of “constitutional patriotism” to be a version of “civic nationalism,” and they understand Habermas himself to be a practitioner of what I call the strategy of redirection. Yet Habermas’s own writings on constitutional patriotism are not as straightforward as these interpretations suggest. Although many of Habermas’s characterizations of constitutional patriotism do suggest that he hopes to make affect safe for liberal democracy by directing it toward abstract, universal principles, there is also an important strand in Habermas’s thought—call it a minor theme—that powerfully *resists* the strategy of redirection, and gestures toward an alternative way of thinking about political affect. This essay draws out that strand by reading Habermas’s idea of constitutional patriotism both in light of his recent treatise on law and democracy, *Between Facts and Norms*, and in light of his concrete contributions to public discussions about nationalism, citizenship, asylum and immigration, and violence against foreigners in contemporary Germany. By reconstructing Habermas’s concept of constitutional patriotism in this way, I aim to identify the limits of the strategy of making affect safe for democracy by redirecting it toward safe and proper objects; along the way, I also hope to make a little trouble for the conventional wisdom about where Habermas’s work belongs on the map of contemporary political thought.

In the second section of this essay, I offer a preliminary reading of constitutional patriotism as an exemplar of the strategy of redirection, which tries to solve the problem
of political affect by directing affect toward universal normative principles *simpliciter*. This interpretation is rendered most plausible, I suggest, when constitutional patriotism is understood as the collective equivalent of what Habermas, in his writings on individual psychology, calls “postconventional” ego-identity. The third and fourth sections of the essay begin to trace the limits of this interpretation of Habermas—and the limits of the strategy of redirection itself—by reading the idea of constitutional patriotism against the background of *Between Facts and Norms*. There, Habermas theorizes the complex relationship between the law as a system of *effective sanctions* and the law a system of *valid norms*, drawing out both the mutual dependence of these two aspects of law, and the irreducible potential for conflict between them. As long as it is understood as an example of the strategy of redirection, I claim, constitutional patriotism is caught in an analogous tension: the universal principles toward which constitutional patriotism is supposed to direct our affect are not self-sufficient, but both depend upon and are threatened by a supplement of particularity that enables them to become objects of passionate identification. In the last section of the essay, I suggest that Habermas himself, especially in his writing on concrete political events in contemporary Germany, offers a better understanding of the meaning of constitutional patriotism—one which takes account of and responds to, rather than denying or repressing, this tense relationship of conflict and interdependence between the universal and the particular. If universal normative principles always depend upon supplements of particularity that enable them to become objects of attachment and identification, but which are also never quite equivalent to the principles they purport to embody, then constitutional patriotism can best be understood not as a safe and reliable identification with some pure set of already-available universals, but rather as a political practice of refusing or resisting particular identifications—of insisting upon and making manifest this failure of equivalence—for the sake of the ongoing, always incomplete, and often unpredictable project of universalization.
The term “constitutional patriotism” does not appear in Habermas’s work until the 1980s, when he invoked the idea in the course of the *Historikerstreit*, a heated public debate about the uniqueness of the Holocaust and the “public use of history” in which Habermas was a central player. Rather than jumping directly into the whirlpool of German cultural politics, however, I want to begin by framing constitutional patriotism against the background of theoretical questions about the relationships among identity, rationality, and social integration in modernity—questions that had already occupied Habermas for more than a decade when the *Historikerstreit* began.

In a 1974 address entitled “Can Complex Societies Form a Rational Identity,” Habermas put his own twist on an old Hegelian theme, suggesting that modernity introduces an “inevitable cleavage between ego-identity derived from universalistic structures and collective identity bound up with a particular community.” For Habermas, this cleavage was problematic because universalism both undermines and seems to depend upon the binding force of particular identities. “On the basis of universalistic norms,” Habermas wrote, “no particular entity possessing an identity-forming power (such as the family, the tribe, the city, state or nation) can set up bounds to demarcate itself from alien groups.” Yet “if this place is not filled”—the place from which socially effective bonds issue, previously occupied by families, tribes, cities, states, and nations—“universalistic morality, in the same way as the ego structures consistent with it, would remain a mere postulate.” How, if at all, could this tension between the binding force of identification and the universal norms of modernity be overcome?

In the 1974 essay, Habermas’s response to this problem was to suggest that modernity’s universalistic morality could become *self-sufficient*; that is, that the “basic
norms of rational discourse” could themselves become the foundation of a new form of collective identity through which universal principles would acquire effectiveness and social reality. This optimistic gesture echoed Habermas’s contemporaneous theorization of a “postconventional” stage in the development of the ego-identity of the individual, a theme he has continued develop in more recent work. On this account, the individual passes from a stage of conventional identification, in which he “blind[ly] subjugat[es]” himself to traditional social expectations and roles, into a mature stage of “postconventional” identification, in which he relates autonomously and critically to the social expectations he encounters. Habermas insists that these references to the autonomy of the individual are not to be taken to mean that the individual can “step outside of society altogether and settle down into a space of abstract isolation and freedom”—even postconventional identities depend upon and make reference to the dimension of intersubjectivity. But in the postconventional stage, the intersubjective has a different meaning and weight: it refers not to the actually existing others whose demands unilaterally determine the individual’s identity, but rather to the “anticipated” or “projected” community of others to which the postconventional subject appeals for recognition of his unique, autonomously formed identity. Analogously, Habermas implies that there may be a corresponding movement in the development of human societies away from various forms of conventional collective identification grounded in supposedly fixed and given attributes like kinship, ethnicity, or territory, and toward a postconventional collective identity, which would “no longer requir[e] fixed contents” but would be centered instead around a shared “consciousness of universal and equal opportunity to participate in value and norm-forming learning processes.” In short, postconventional collective identity would consist in something like an identification with the norms and procedures that constitute the idealized “unlimited communication community.”

This problem of collective identity in modernity, which Habermas explored in
abstract form beginning in the seventies, took on new concreteness and political immediacy in Germany in the 1980s. Even before the momentous events of 1989, a series of controversies over German history placed the issue of national identity at the center of public attention. In May 1985, President Reagan visited West Germany at Chancellor Helmut Kohl’s invitation to help mark the fortieth anniversary of the end of the Second World War. Reagan’s itinerary sparked an uproar, for he was scheduled to lay a wreath at a German military cemetery at Bitburg, which turned out to house the graves of forty-nine members of the SS as well as about two thousand Wehrmacht soldiers. Under pressure from outraged Jewish organizations, Reagan tacked a visit to the Bergen-Belsen concentration camp onto his plans, but by implying that the two sites were equivalent, Reagan’s concession only made matters worse. In a scathing essay in Die Zeit, Habermas argued that the visit was part of a troubling neoconservative campaign to normalize German identity—and, not coincidentally, to rehabilitate German nationalism—with “laundering” the German past. A year after Bitburg, Habermas published another article in Die Zeit criticizing an analogous “revisionist” movement in the writing of German history. This movement, Habermas argued, downplayed the singularity of the Holocaust in order to construct a national history of Germany that could become an object of pride. The resulting Historikerstreit lasted for a year and helped make Habermas into one of Germany’s best-known critics of the old idea of Germany as a Volksnation, a position he has deepened in subsequent public discussions of such issues as unification, immigration and asylum rights, and European union.

These disputes clearly reflected the “cleavage” Habermas had described in 1974 between the normative content of modernity—its “universalistic morality”—and the need to make that normative content effective as a source of social integration by grounding it in concrete identifications. On Habermas’s view, the neoconservatives had simply sacrificed the normative principles of modernity at the altar of “the functional imperatives of predictability, of securing consensus, [and] of social integration through the creation of
meaning.” In his contributions to the Historikerstreit, Habermas was not content to respond to the revisionists by reversing their priorities and declaring the irrelevance of social integration. Instead, Habermas followed the same route he had taken in 1974, this time in explicitly political terms. There was one kind of political attachment, he claimed, that could serve as a basis for social integration even while remaining true to the “universalistic morality” of modernity: a “connection to universalist constitutional principles,” or “constitutional patriotism.”

Read against this background, Habermas’s idea of constitutional patriotism does seem to be a sophisticated example of what I have called the strategy of redirection. For Habermas, constitutional patriotism seems to be a uniquely safe form of affect for liberal democracies because it is directed toward a distinctive kind of object. Love of family, ethnos, or nation all attach us to pre-political objects of affect and identification—that is, objects that are imagined to exist “independent of and prior to the political opinion-and will-formation of the citizens themselves.” These forms of political affect seem to correspond to the conventional stage of identity-formation Habermas describes in the context of individual psychology, in which the individual secures identity only at the cost of blindly accepting the traditional roles assigned to him by others. If postconventional ego-identity is an accomplishment of the mature individual who has learned to do without the certitudes of tradition and social convention, Habermas suggests that constitutional patriotism is, correspondingly, the appropriate form of affect for a mature politics that has outgrown the need for a pre-political ground—a politics that has “learn[ed] to stand on its own two feet.” Thus, rather than referring outside politics to “a prior homogeneity of descent or form of life,” constitutional patriotism directs citizen allegiance toward the nation now conceived simply as a “self-determining political community.”

By grounding political integration in this way upon the very principles that also serve as the normative basis of political legitimacy in modernity, constitutional patriotism (thus understood) promises to bring the sustaining energy of affective identification into
politics while avoiding the possibility of conflict between citizens’ passionate attachments and their rationally grounded moral and political obligations. Once upon a time, Habermas admits, affect directed toward the pre-political unity of the Volksnation did help create and consolidate emergent liberal-democratic states. But the experience of the last few centuries of state-building has also taught us that the fantasy of a homogeneous community can only be pursued at the cost of intolerance and ethnic cleansing; and so, especially under contemporary conditions of accelerating pluralism, Habermas insists that such methods of securing political integration must finally be abandoned. The only normatively acceptable alternative is to focus political affect and identification around an increasingly abstract set of principles that can serve as a least common denominator among a “diversity of cultural life-forms, ethnic groups, religions, and worldviews.” Such an approach, unlike earlier forms of patriotism and nationalism, valorizes a set of universal norms rather than a concrete historical community; consequently, it does not generate irrational, anti-democratic hostility toward an unending series of people or groups whom it positions as its “others.”

The foregoing account of constitutional patriotism and the underlying understanding of postconventional identity-formation invite criticism in a number of ways, both at the level of individual psychology and at the level of collective identification, though I shall focus on the latter here. For example, Habermas often seems to move too quickly between, on the one hand, a description of the postconventional situation, which simply refers to the fact that “societal differentiation” and the “diversification of conflicting role expectations” have disrupted the simple, unreflective reproduction of traditional ways of life and rendered it impossible to sustain a purely conventional existence; and, on the other hand, his account of postconventional forms of identification, which supposedly make it possible for us to sustain coherent ego-identities and stable collective identities even in the postconventional situation. Habermas’s rough outline of the postconventional situation is compelling—though we
may want to suspend judgment on his tendency to associate that situation exclusively with Western modernity—yet his optimistic account of postconventional identity seems more problematic. Does the postconventional individual, simply by virtue of being thrown into a context in which no single conventional identity can serve as an unproblematic guide to action, somehow become so well-insulated from the weight of history and of social expectations that he can treat his historical and cultural context solely as raw material, to be incorporated critically and selectively into an autonomously shaped life? Can the abstract, universal principles around which postconventional collective identities are to be centered really command passionate attachment prior to and independently of identification with concrete historical communities, such that they can serve as a critical “filter” through which “national pride and collective self-esteem” can be passed, screening out their undesirable aspects? Or, to the contrary, does the reproduction even of civic and principled forms of identity proceed precisely by appealing to, rather than overcoming, the weightiness of the historical institutions and concrete cultures to which we find ourselves bound even prior to the process of critical reflection? If so, might the postconventional situation demand not that we search for a distinctive and safe form of identity, but that we adopt an ambivalent posture toward identification as such?

Surprisingly enough, I shall suggest, Habermas himself turns out to support this latter, less sanguine perspective on the possibility of postconventional identity, thereby undergirding a powerful and subtle critique of the whole strategy of rendering affect safe for liberal democracy by splitting it into “safe” and “dangerous” variants. To understand Habermas’s critique, however, we need to leave constitutional patriotism behind for the moment and turn to Habermas’s monumental recent treatise on law and democracy.

III.
The title of Habermas’s treatise—*Between Facts and Norms*—immediately suggests parallels with the “cleavage,” outlined in 1974, between the effective integrating force of collective identities and the universalist norms of modernity. Habermas does not disappoint: before advancing into particular controversies about constitutional interpretation, the social welfare state, civil society, and the separation of powers, he devotes the first four chapters of the book to a difficult but rich portrait of this relationship between “facticity” and “validity” in law and politics. However, Habermas’s approach to this relationship seems to have changed markedly. *Between Facts and Norms* does not lend support to the project of making universal norms self-sufficient, as Habermas’s 1974 essay might have led us to expect. Instead, Habermas shows that the relationship between facticity and validity is marked both by conflict and by interdependence. If Habermas’s 1974 essay gestured in (late) Hegelian fashion toward a moment of reconciliation, orchestrated by the philosopher, between the demands of social integration and the normative imperatives of modernity, Habermas now practices a kind of philosophical modesty. He treats the dependence of normativity upon factical resources that also threaten it as the constitutive tension of law and politics itself, to be negotiated by citizens, not transcended by the theorist. And, in so doing, Habermas paves the way for a more complex, dynamic account of the affective relation of citizens to the historical institutions in which political principles are inevitably embedded.

Habermas introduces *Between Facts and Norms* by observing that the study of law and politics has long been dominated by a division between the objective social sciences, which study the law simply as a system of causally effective rules, and normative theory, which tries to derive conclusions about the proper content of law from the requirements of practical reason. The former perspective attends to law’s facticity, and is exemplified for Habermas by Luhmann’s systems theory—although, in its exclusive focus on the function of law as a method of social integration, this perspective should also remind us of the position Habermas attributed to his neoconservative
opponents in the *Historikerstreit*. The latter perspective attends to law’s *validity*, and is exemplified for Habermas by the early Rawls. Habermas tries to overcome the false reduction of law to one or the other of these aspects, describing law instead as a point of intersection or “mediation” between facts and norms: “Legal norms,” Habermas says, “are at the same time but in different respects *enforceable laws based on coercion* and *laws of freedom*” (29, emphases added).

The phrase “at the same time but in different respects” is a placeholder for a complex relationship of *conflict* and *interdependence*. First, facticity and validity stand in a relation of potential conflict. This point should already be familiar from Habermas’s earlier description of the “cleavage” between concrete identities and universal norms in modernity. And, once again, Habermas explains the cleavage by telling a story about the birth of modernity. Modernity, he suggests, disturbs two other, older connections between facts and norms, which were sustained by “background assumptions, loyalties and skills” that we “always already” possess by virtue of our immersion in the lifeworld (22), and by “archaic institutions that present themselves with an apparently unassailable claim to authority” (23). Background knowledge is a sheer fact about us; we use it “involuntarily, without reflectively knowing *that* we possess it at all” (22); yet background knowledge is also *ours*: it does not compel us, but reflects our “intuitive” understanding of what *ought* to be done, and so maintains a tie to the dimension of validity (23). Likewise, the archaic institution is both a sheer fact that “imperiously confronts” people with threats of coercion, and an essential source of validity in societies where individuals are simply defined by their relationships to the collectivity.

In these cases, however, we encounter not just an intersection but a “fusion” of facticity and validity (23). In background knowledge and archaic institutions, we might say that the factual *exhausts* the normative, and thus remains insulated from criticism and challenge (25). In “modern societies,” by contrast, social complexity, differentiation, and pluralization have contributed to the “disenchantment” of both conventional know-how
and sacred authority (25). For us, Habermas says, “validity and facticity—that is, the binding force of rationally motivated beliefs and the imposed force of external sanctions—have parted company as incompatible” (26). Thus, the phenomenon that characteristically links facticity and validity together in modernity—the law—can only “mediate,” and cannot reconcile, the tension between them.

But if facticity and validity have “parted company as incompatible” in modernity, why not let them go their separate ways, which is (after all) what Habermas thinks systems theory and normative political philosophy have done? The answer is that although facticity and validity are incompatible, they are also interdependent. This interdependence of facts and norms has two faces. First, Habermas argues, law can perform its (factual) function of securing social integration in modernity only if it is more than a system of effective sanctions: it must also satisfy normative criteria.

Modern law can stabilize behavioral expectations in a complex society with structurally differentiated lifeworlds and functionally independent subsystems only if law, as regent for a “societal community” that has transformed itself into civil society, can maintain the inherited claim to solidarity in the abstract form of an acceptable claim to legitimacy (76).

Conversely—and much more importantly for our purposes—Habermas also argues that validity is inevitably intertwined with the factual dimensions of law and politics, and this is the argument that represents the most substantial departure from his earlier gesture toward the possible self-sufficiency of universal norms. This moment of interdependence arises most fundamentally from the incapacity of practical reason alone to motivate moral action—a gap which only a system of legal sanctions can fill. In modernity, Habermas argues, morality has become detached from the “customary practices” that once gave it a strong motivating force. As mere knowledge, however, morality possesses only the
“weak motivating force of good reasons” (113–14). The internalization of morality in the form of conscience can help compensate for this weakness, but the reproduction of conscience is itself notoriously unreliable. Thus, Habermas concludes:

A morality that depends on the accommodating substrate of propitious personality structures would have a limited effectiveness if it could not engage the actor’s motives in another way besides internalization, that is, precisely by way of an institutionalized legal system that supplements postconventional morality in a manner effective for action (114, emphasis added).

The law provides this supplement, Habermas says, because consists of a system of incentives and punishments that produces external conformity to norms, though from wholly amoral motives. “Coercive law overlays normative expectations with threats of sanctions in such a way that addressees may restrict themselves to the prudential calculation of consequences” (116). In order to function in this way as a motivational supplement to practical reason, however, law must be more than a set of valid norms, for the merely philosophical specification of such norms would still lack the power of sanction. Thus, an effective system of law must involve the creation of “specific rights,” which “stem from the decisions of a historical legislature” (125). Moreover, because these rights have a historically specific genesis and govern a socially and geographically discrete collectivity, a valid legal order must include “rights that regulate membership in a determinate association of citizens,” and which allow us to “differentiate between members and nonmembers, citizens and aliens” (124). Yet, since considerations of validity cannot themselves establish “proper” boundaries between determinate communities, abstract normative principles demand a further supplement of particularity from “historical chance [and] the accidental course of events,” which define the territory
and membership to which historically specific systems of positive law apply. Finally, even a historically specific system of basic rights applied to a determinate association of citizens would remain “incomplete in essential respects,” because a system of rights “cannot stabilize itself” without the further creation of a political institution—the constitutional state—to reproduce, implement, and enforce the law (132).

In its dependence upon the sanctioning power of a specific body of positive law, applicable to a territorially and historically delimited community, and backed up by the coercive power of the institutions of the state, the normative core of law refers beyond itself, toward its own factual particularization. This dependence keeps the normative core of law involved in a dangerous, uneasy alliance with institutions that threaten to displace and overwhelm it (39). As we shall see, this fragile structure of conflict and interdependence also provides a useful framework for understanding the problem of identity and affect in modernity, and will help us understand the problems encountered by all attempts to solve the problem of political affect through the strategy of redirection—Habermas’s included.

IV.

In Between Facts and Norms, Habermas suggests that the creation of positive law and the founding of the coercive state provide necessary supplements to the normative principles of a legal order. They give the universal norms of modernity an effective binding force that they cannot exert on their own, and thereby enable them to become foci of social integration. Yet in this work, Habermas analyzes only one of the ways in which law and the state serve this supplementary function. Law and the state overlay valid norms with sanctions, he says, effectively exploiting the instrumental motivations of citizens to secure social integration around valid principles. At least in Between Facts and Norms, Habermas overlooks the ways in which positive law and the state also
produce new motives for compliance with legal norms by producing shared identifications among citizens. Attending to these mechanisms—which Habermas does obliquely address in other recent work, including his brilliant essay on the history and future of the European nation-state—will bring us back to the subject of constitutional patriotism.

Law and the state produce identifications by addressing people as citizens—that is, as both subjects and authors of the institutional order that governs a given territory. When arrests are made, when votes are taken, when juries are assembled, when cars are registered, when taxes are assessed, and so on, the participants in these moments of interpellation are made and remade into members of an “imagined community” of citizens. In this way—as Habermas himself acknowledges in his account of the rise of the European nation-state—law and the state mediate between citizens, creating a “new and more abstract form of social integration” by tying each person to a single, central idea: the idea of “the people” to which all belong. While positive law fills in the motivational deficits of practical reason by imposing effective sanctions that appeal to self-interest, the production of identifications fills in these same deficits in a different way: by broadening the reference of the “self” in “self-interest” to include the members, institutions, and practices of a community that we come to regard as ours, or even as “us.”

This analogy between the motivational effects of legal sanctions and the motivational effects of legally and politically produced identifications suggests, however, that identifications may be caught in the tension between facticity and validity in the same way as sanctions. Legal sanctions, remember, represented one point of interdependence between facts and norms: universal legal norms can only become effective as sanctions if they are embodied in a particular system of positive law and coercive state apparatus, the particularity of which is not given (and cannot be given) by norms themselves, but provided by the supplement of facticity. Something similar holds
true for identification. For the interpellingating address of law and the state to identify people effectively as members of some “imagined community” of citizens, that community must indeed be imagined; it must be given some definite shape, even if the definition of the community remains subject to interpretation and re-imagination through practices of cultural politics. Moreover, this definite shape cannot be given by the abstract normative core of law and politics itself: identification, too, must reach beyond the normative and toward the factical in order to obtain its necessary supplement of particularity. Habermas makes the point himself: “The identity of a person, of a group, of a nation or of a region,” he says, “is always something concrete, something particular”; it requires the presentation of an “image” to oneself and others, and it “can never consist merely in general moral orientations and characteristics, which are shared by all alike.”

The tension between the normative and the factical in the context of identification is well-illustrated by Habermas’s treatment of popular sovereignty. In order to create sufficiently strong identifications to sustain social integration, Habermas suggests, the image of the community to which citizens belong has to be given more definition than the “abstract” idea of popular sovereignty, on its own, can provide. The problem here is that the idea of “the people” that lies behind the normative principle of popular sovereignty—the pure demos—does not correspond to any “visibly identifiable gathering of autonomous citizens.” The will of the people resists all representation: it “withdraws” into a “subjectless and anonymous state”; it becomes “elusive,” leaving its traces and effects but never becoming present. In its elusiveness, however, the pure demos also frustrates identification: it offers no images in which citizens can find themselves mirrored. Identification with the “people,” which is a necessary component of effective social integration around the principle of popular sovereignty, thus requires some extra-normative supplement to give substantiality to the demos.

But this means that identification with the demos constitutively involves misrecognition, since the demos is never equivalent to any purported representation of it.
Historically, Habermas observes, the figure of the nation as a cultural, linguistic, and historical unity has often filled the gap left by the *demos*, serving as a “cultural substrate” that would be “vivid and powerful enough to shape people’s convictions and appealed more strongly to their hearts and minds than the dry ideas of popular sovereignty and human rights.” Yet in filling this gap, nationalism performs a twofold misrecognition: first, the nation never *is* the pre-politically given entity it purports to be, but is instead *produced as* a pre-political “fact” in the very same act of address that produces the individual *as* citizen. And, second, the *demos* never *is* the historical, linguistic, and cultural unity represented by the image of the nation; such an image is, at best, the trace of the “people,” the sloughed skin of a *demos* on the move. Habermas thus says that the “republican achievement [of the national state] is endangered when, conversely, the integrative force of the nation of citizens is traced back to a prepolitical fact of a quasi-natural people”—yet it is *also* true that the republican core of the state *exposes itself* to this danger by virtue of its dependence on a supplement of particularity. The normative principles of law and politics *invite* the very “naturalistic conception of the people” that *also* threatens them.

This dynamic of dependence and threat creates serious difficulties for the project of constitutional patriotism—at least as long as that project is understood in terms of the *redirection* of political attachment and affect toward safe and proper objects. As we saw earlier, Habermas’s *original* image of constitutional patriotism posited the possibility of reproducing identification with and loyalty to abstract normative principles independently of any identification with particular national or historical communities. This prior attachment to universal principles was supposed to serve as a “filter” that could screen out the dangerous elements of national pride and historical consciousness. On this account, only after we have established an independent affective connection to normative principles will we be properly equipped to decide “which of our traditions we want to continue and which we do not.” Yet Habermas’s own reflections about the
interdependence of facticity and validity suggest that this kind of attachment to pure principle is impossible: the norms “behind” a constitution can only become objects of identification and loyalty via an admixture of particularity.50

This point has not been lost on Habermas himself. After his initial contributions to the Historikerstreit, and perhaps in a tacit response to critics who had complained about the apparent thinness of constitutional patriotism, the terms of Habermas’s own account of political affect shifted in a slight but vital way. His Sonning Prize speech, for example, glosses constitutional patriotism not as loyalty to universal principles but as attachment to “the political order and the principles of the Basic Law”—that is, to a set of particular institutions and a historical constitution.51 The same speech later returns to more abstract formulations of constitutional patriotism, but immediately adds: “Of course constitutional patriotism’s ties to these principles have to be nourished by a heritage of cultural traditions that is consonant with them.”52 Elsewhere, Habermas refers to constitutional patriotism as a way of “enduringly link[ing]” principles “with the motivations and convictions of citizens” by “situat[ing]” these principles “within the historical context of a legal community.”53 And often, Habermas now simply refers to a “shared political culture” as the supplement of particularity that abstract principles require if they are to become objects of attachment and affect.54

Even here, Habermas’s impulse to make affect safe for democracy does reassert itself: in a final defense of the strategy of redirection, Habermas suggests that nationalisms grounded in this way in the “shared political culture” and “institutions” of a polity, precisely because they are political, do not bear the “ambivalent potential” that had made “pre-political” conceptions of nationhood at once a resource for and a danger to liberal-democratic politics.55 This, however, confuses two senses of “political.” Take the example of culture: to say that the political culture of a community is “political” is to name the segment of society to which that culture belongs: the political culture is “political” in the sense that it pertains to institutions and practices of governance,
decision-making, or the allocation and use of power. The modifier “political” carries a much different sense as a component of the distinction between “political” and “pre-political.” Consider again how Habermas uses this distinction:

But this republican achievement is endangered when, conversely, the integrative force of the nation of citizens is traced back to a prepolitical fact of a quasi-natural people—that is, to something independent of and prior to the political opinion- and will-formation of the citizens themselves.\(^{56}\)

In this sense, the political culture of a community, too, is something pre-political. The content of the constitution and the particular interpretations that constitution has been given over a long history of adjudication; the political history of the country; the symbols, songs, events, dates, and people who capture our political imagination; the patterns and structures of civil society; the vocabularies of political analysis and polemic, the “national fantasies” that “circulate through personal/collective consciousness”\(^{57}\)—all these and more constitute a cultural inheritance that the demos did not choose. This is not to say that political culture is fixed or that we are completely determined by it: the political culture we leave behind is never the same as the one we first found, and some of that change is due to precisely the kind of cultural critique and transformation that Habermas rightly urges us to practice. But that, after all, is not uniquely true of political culture; it is true of culture in general. And, conversely, what is true of culture in general is also true of political culture. Its givenness, its facticity, lends it the particularity it needs to become the focus of an “imagined community” of passionate identification; yet, at the same time, political culture is neither as unified and coherent as our representations of it suggest, nor is it as purely expressive of universal principles as we believe. Consequently, we constitutively misrecognize ourselves in our “shared political culture”
or “common institutions” just as much as we do in other nationalisms. And, just as in other nationalisms, the narcissistic defense of a common political identity has the capacity to inspire violence and exclusion.\textsuperscript{58} This is not to say that civic and ethnic nationalism are equivalent, or that there are no good reasons to prefer, for example, civic over ethnic rules of political membership—but it does suggest that the practice even of constitutional patriotism or other forms of civic nationalism carries political risks analogous to those borne by other nationalisms, and that the strategy of redirection, with its promise of a safe form of political affect, leads us to overlook these dangers.

Though Habermas’s final theoretical defense of the strategy of redirection is not ultimately persuasive, Habermas’s own practice of cultivating constitutional patriotism through his interventions into German public life does rather elegantly exemplify the tensions that come to inhabit even civic attachments. In his second major contribution to the \textit{Historikerstreit}, entitled “On the Public Use of History,” Habermas already saw the necessity of grounding political affect not in abstractions but in concrete historical phenomena. Writing in \textit{Die Zeit} to a broad public audience, Habermas made a powerful argument against the revisionist historians by describing, in the first-person plural, the obligations of remembrance, solidarity, and critical fortitude that the fact of Auschwitz—the memory of which is itself a part of German political culture—imposes on “us.”\textsuperscript{59} Habermas’s address assigns these obligations by, we might say, interpellating the author himself and his readers in an imagined—and therefore determinate—community. Precisely in the service of constitutional patriotism, Habermas invokes a historical community of descent that imposes unchosen and inescapable obligations on its members. He writes:

\begin{quote}
Our own life is linked to the life context in which Auschwitz was possible not by contingent circumstances but intrinsically. Our form of life is connected with that of our parents and grandparents through a web of
\end{quote}
familial, local, political, and intellectual traditions that is difficult to disentangle—that is, through a historical milieu that made us what and who we are today. None of us can escape this milieu, because our identities, both as individuals and as Germans, are indissolubly interwoven with it.60

This invocation of a community defined by supposedly “pre-political” ties in the course of a struggle to instill loyalty toward constitutional principles is not a contradiction. It is an expression of the interdependence of validity and facticity in the context of identification, an interdependence that also has its dangers. In this passage, which ought to provoke our admiration even while it makes us nervous, the strategy of making affect safe for democracy through redirection finds its limit.

V.

If the strategy of redirection cannot make affect safe for liberal democracy, is there a way of at least attenuating its dangers? In this section, I want to suggest an alternative reading of constitutional patriotism, grounded less in Habermas’s theorization of postconventional identity than in his occasional essays on contemporary events in Germany, that may be of some help. On this reading, constitutional patriotism is not a kind of affectively charged identification with a set of universal principles; instead, in keeping with the risks and dangers that come to inhabit the reproduction of all sorts of identity (even in the postconventional situation) constitutional patriotism is a habit or practice that refuses or resists the very identifications upon which citizens also depend.

To begin, consider two assumptions that have, so far, pervaded this discussion of the dynamics of attachment and affect. First, I have treated “affect” very flatly, as a whole, and have not addressed differences among affects, much less the possibility of a
plurality of affects toward a single object. This is, in large part, true of political theory more generally. Certainly in most discussions of the varieties of nationalism, the relative virtues of patriotism and cosmopolitanism, and the politics of identity, the affects under consideration are presumptively positive: love, loyalty, or pride. (A few writers, notably Anthony Appiah, have mentioned shame, if only in passing.) Yet if there is a structural ambivalence in the production of political affect as such, and especially “constitutional” or “civic” affect—if loyalty to political principles must be mediated through particular cultures, institutions, and practices that are not themselves identical with, and may even threaten those principles—then perhaps we would do well to attend to the possibilities that inhere in analogously ambivalent patterns of political affect. In an essay on power in democratic politics, Jane Mansbridge suggests that “citizens must fight the very coercion that they need”; perhaps, too, citizens must learn also to fear, be angry at, and be ashamed of the very institutions and cultures that claim their attachment and allegiance.

At the same time, the dynamics of affect I have described are all what we could call centered; that is, they all involve the production of attachment and affect toward some central imaginary object—a culture, a history, or even simply an institution, like the state. This, too, corresponds to contemporary tendencies in theoretical discussions of affect and identification. Habermas’s own account of how the nation-state originally produced “imagined communities” of citizens—a project he hopes to continue, only without the help of the “nation”—presumes that relationships of solidarity and attachment among individuals who are themselves “strangers” are first established by tying each individual to shared institutions at the center. On this view, the vertical identification with the central imaginary object is primary; the horizontal love for one’s fellow-citizens (and the resentment, hatred, or fear of those others upon whom we project responsibility for the fragility of the collective imaginary) are its secondary effects.

But what if the direction of these flows of attachment and affect could be reversed? After all, the interdependence of facticity and validity works both ways. In
their struggles for legitimation, positive law and the constitutional state create associations of citizens who, once brought together in various spaces of democratic politics, sometimes refuse to confine their encounters and their collective actions to the reiteration of official identities. Rather than only allowing our relation to the central imaginary object to guide our relations to individual others, might we sometimes also allow love, sympathy, indebtedness, or gratitude toward particular others to generate new, different affects toward the state, the constitution, or the political culture? Affects, perhaps, like fear, anger, or shame?

These possibilities are exemplified by some of Habermas’s recent interventions into German political discourse. I will discuss only one example here. In the early morning hours of November 23, 1992, neo-Nazis threw firebombs into two homes in Mölln, a town in the northern German state of Schleswig-Holstein. Bahide Arslan, a 51-year old Turkish citizen who had lived in Germany for many years, her ten-year-old granddaughter Yeliz Arslan, and her 14-year-old niece Ayse Yilmaz were all killed. The murders in Mölln were hardly the first instances of violence against foreigners in the newly unified Germany, but the public response to the attack in Mölln was distinctive. In the days following the attack, thousands of people attended demonstrations against violence in the streets of Mölln; on December 6, around 400,000 people marched in a candlelight vigil in Munich; and subsequent demonstrations drew huge crowds in Hamburg, Berlin, Frankfurt, Nuremberg, and other large German cities. In an essay on the asylum debate in Germany first published in Die Zeit on December 11, Habermas pointed to such demonstrations as admirable examples of constitutional patriotism. He wrote: “Resolute and credible opposition to xenophobia and anti-semitism is not coming from the proponents of the asylum debate; it is not the political elites who are displaying empathy and democratic indignation, nor the servants of the state who are practising constitutional patriotism.” Instead, he said, “especially since the murders in Mölln,” grassroots demonstrations and protests like the one in Munich “have been putting a stop
to the half-hearted and ambivalent reactions on high.”

What are we to make of Habermas’s claim that these demonstrations express “constitutional patriotism”? On the one hand, Habermas’s analysis of the demonstrations after Mölln does, at one moment, sound like a reiteration of the strategy of redirection. “The political affect driving [the protest culture] forward is unmistakable,” he asserts: “the demonstrators were defending the standards of civic intercourse which were acquired and partly taken for granted in the old Federal Republic.” This might be taken to mean that, for Habermas, the demonstrations exemplify constitutional patriotism because they are grounded in a passionate identification with a certain set of abstract principles—the “standards of civic intercourse”—that had been betrayed by the neo-Nazi attacks.

But Habermas’s text and the details of the case suggest that the dynamics of political affect here are more complicated and subtle than the strategy of redirection would allow. Notice, for example, how Habermas draws a close association between constitutional patriotism and the affective postures of “empathy” and “democratic indignation.” Indeed, these postures were prominently visible in the public demonstrations and vigils after Mölln. Protesters carried signs bearing such slogans as “We are all Turks” and “In solidarity and mourning for our fellow-citizens”; in Hamburg, at least 10,000 people—equivalent to more than half the population of Mölln—attended the funeral service for the three murdered women. And this responsiveness to suffering, at least in some cases, also generated expressions of shame and anger over the behavior of the German state. The enormous Munich demonstration was launched “under the motto ‘Munich: A City Says No,’” and the event’s organizers made clear that its purpose was to say “no” not just to neo-Nazi violence but also to the Kohl government’s failure to respond quickly and forcefully to earlier attacks. “By participating,” the organizers said, “people will show that we do not accept attacks on hostels for asylum-seekers, vandalism of Jewish cemeteries and assaults on foreigners, that we are ashamed by the helplessness
and slowness of our Government, and that we are increasingly ready to defend democracy.” Some demonstrators went further, suggesting that the state’s inaction was not a simple omission, but part of a scheme by Kohl and the Christian Democrats to drum up public support for a more restrictive asylum policy. Thus, some protesters in Mölln chanted the slogan “Deutsche Polizisten schützen die Faschisten”—“German politicians are protecting the fascists”—and a letter to the editor in the Hamburg edition of the left-wing Tageszeitung called for citizens to protest against the “politicians of this republic, who, through the debate around refugees and immigrants, have fomented ‘race’-hatred and instrumentalized it for their populist purposes.”

To be sure, the demonstrations were not unambiguously politicized in this way. The later and larger candlelight vigils seem to have drawn huge crowds at least in part because they seemed safely apolitical. Some critics who, like Habermas, hoped for vocal displays of “democratic indignation” publicly criticized the vigils for just this reason, suggesting that they were narcissistic affairs that merely soothed the consciences of the participants. Whether Habermas was right or wrong in his generous estimate of the overall significance of the demonstrations, the important point is that for him, the aspect of the demonstrations that exemplified constitutional patriotism was the aspect that exceeded the narcissistic affirmation of a collective German identity. Earlier in the same article, Habermas had criticized an editorial published in the Frankfurter Allgemeine the day after the attack in Mölln for just such a self-reassuring posture. The editorial never mentioned what Habermas calls the “complicity of officialdom” in the attacks; instead, it downplayed any possible connection between the attack and the public discourse around asylum policy, and portrayed “the republic,” and even the “representatives of ‘the system,’” as either the actual or possible targets of right-wing extremism, just like the murdered Turkish women. Consequently, the editorial suggested that there was “no call for mass demonstrations”; instead, it pleaded for “sympathy, attentiveness, and vigilance,” which did not need to be grounded in a “love for foreigners” but could rest
instead on “love for one’s country, which should not be exposed to shame.”

Like the advocates of the strategy of redirection, in other words, the Frankfurter Allgemeine editorial assumes that by cultivating a positive attachment to some central imaginary object—the German republic—it could help check the spread of violence and racism in the newly unified Germany. For Habermas, by contrast, the demonstrations were important not because they expressed an identity but because they resisted an identification; that is, because they refused the claim of the state to be a true or adequate instantiation of the will of the German people. The solidarity, anger, and shame generated by the combination of right-wing violence and government complicity suddenly and momentarily made what Habermas calls the “elusiveness” of the demos manifest: on the streets of Mölln and Munich, the people sloughed the skin of the German state. This is by no means an endorsement of mob rule over the rule of law: the masses in the streets were not a true or adequate instantiation of the will of the German people either, though such spectacles do invite populist misinterpretations. The demos as such did not appear on those days, but its trace could be seen in the gap or space that suddenly opened up between the crowds in the streets and the officials in Bonn.

If normative principles always depend upon supplements of particularity that enable them to become objects of attachment and identification, but which are also never quite equivalent to the principles they purport to embody, then perhaps constitutional patriotism is best understood not as a safe and reliable identification with some pure set of always-already available universals, but rather as a fragile political culture that habitually insists upon and makes manifest this failure of equivalence for the sake of the ongoing, always incomplete, and often unpredictable project of universalization.

AUTHOR’S NOTE: Earlier versions of this essay were presented at the 1997 APSA and to the Political Theory Research Workshop in the Department of Government at Harvard. For comments, I’m especially grateful to Seyla Benhabib, Bill Connolly,
Michaele Ferguson, Andrea Frank, Jill Frank, Peter Gordon, Bonnie Honig, Pratap Mehta, Sankar Muthu, Jennifer Pitts, Jackie Stevens, Tracy Strong, and an anonymous reviewer for this journal. Thanks also to the Program for the Study of Germany and Europe at the Minda de Gunzburg Center for European Studies at Harvard University for its generous support.

NOTES


6. Habermas indicates that the term was coined by Dolf Sternberger: see Jürgen Habermas, “Political Culture in Germany since 1968,” in *The New Conservatism*:


8. My hope is that this might help open up the space for unexpected alliances: for example, the view of “universals” and their relationship to affect and identification developed here has affinities with the perspective advanced by Ernesto Laclau in a number of recent essays, though Laclau himself positions Habermas exclusively as an enemy. See the essays collected in Emancipation(s) (New York: Verso, 1996); as well as Linda Zerilli’s extended review essay on that Laclau, “This Universalism Which Is Not One,” Diacritics 28, no. 2 (Summer 1998): 3–20.


ausbilden?” which was eventually anthologized in *Zur Rekonstruktion des historischen Materialismus* (Frankfurt am Main: Suhrkamp, 1976).

11. Habermas, “On Social Identity,” 94. Compare this latter horn of the dilemma with the later accusation, leveled by the German jurist Ernst-Wolfgang Böckenförde, that Habermas’s constitutional patriotism is a “‘anodyne’ academic idea”; Habermas quotes this objection in “On the Relation Between the Nation, the Rule of Law, and Democracy,” in *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran Cronin and Pablo De Greiff (Cambridge, MA: MIT Press, 1998), 132.


15. Ibid., 183.


17. Habermas, “On Social Identity,” 100. Habermas doesn’t actually use the term “postconventional” to characterize collective identity in this essay, but the usage seems consistent with his intentions in this piece and the contemporaneous “Moral Development and Ego Identity.”


22. See for example the essays collected in Jürgen Habermas, The Past as Future, trans. Max Pensky (Lincoln: University of Nebraska Press, 1994) and A Berlin Republic:
Writings on Germany, trans. Steven Rendall (Lincoln: University of Nebraska Press, 1997).


24. Ibid., 227.


27. Ibid., 492–500.

28. Habermas, “The European Nation-State,” 117; see also “On the Relation Between the Nation, the Rule of Law, and Democracy.”


31. I hope to give more attention to Habermas’s account of individual identity-formation in a subsequent essay on the appropriation of Mead’s social psychology in the work of
Habermas and Honneth, which will focus on the question of the unconscious and the meaning of the “I.”

32. Habermas, “Individuation through Socialization,” 183.


34. The terms “facticity” and “validity” more precisely reflect the German title of the work, *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, revised and expanded ed. (Frankfurt am Main: Suhrkamp, 1994).

35. All page in parentheses in this section refer to *Between Facts and Norms*.

37. In fact, filling this motivational deficit is only one of three ways in which Habermas says that law supplements practical reason. Moral judgment makes formidable cognitive demands on persons, which political legislation, positive law, and the courts relieve by “decid[ing] which norms count as law” and “sett[ling] contests of interpretation” (115). Law also helps resolve problems of coordination and organization which, in complex societies, might otherwise hinder the satisfaction of positive duties in particular (116–17).


41. On this, see Yael Tamir, Liberal Nationalism, chap. 5. Here, I’m only making a claim about the motivational effectiveness of identification, while Tamir makes the further, normative claim that the fact of an identification with some community gives you a good reason to give it preference in your action.

abstractions and images: “In specific historical moments, where we can recognize a real social movement, real historical struggles, we also become aware that people do not fight for abstractions—despite the three great and ineradicable goals of the French Revolution. People do not fight for abstractions, but with images...” (145).


45. Habermas, “The European Nation-State,” 113. I have altered the translation in one place, substituting the more literal “substrate” for “basis”; for the original see *Die Einbeziehung des Anderen: Studien zur politischen Theorie*, enlarged ed. (Frankfurt am Main: Suhrkamp, 1997), 137.


47. Ibid., 115.

49. Habermas, “Historical Consciousness and Post-Traditional Identity,” 263.

50. Even from a cognitive perspective, Habermas insists that the philosophical specification of abstract principles is “exposed ex post facto as an artifice. No one can credit herself with access to a system of rights in the singular, independent of the interpretations she already has historically available. ‘The’ system of rights does not exist in transcendentual purity” (Between Facts and Norms, 129).


52. Habermas, “Historical Consciousness and Post-Traditional Identity,” 262.


56. Ibid., 115 (emphases added).


58. Thus both Yack and Singer (and both with reference to the French Revolution) argue that the dilution of “political definitions” of nationhood by principles of descent and territoriality may have been the condition of the possibility of the emergence of a politically tolerant (but limited) public sphere. See Yack, “The Myth of the Civic Nation,” 208; Singer, “Cultural versus Contractual Nations,” 332–37.

59. For a sophisticated and sensitive exploration of the themes of memory and responsibility that uses Habermas’s writings on constitutional patriotism as a touchstone (and consequently captures more of the tensions that inhabit those writings than do most readers) see W. James Booth, “Communities of Memory: On Identity, Memory, and Debt,” *American Political Science Review* 93, no. 2 (June 1999): 249–63.

60. Jürgen Habermas, “On the Public Use of History,” in *The New Conservatism*, 233. This passage has been discussed by Tracy B. Strong and Frank Andreas Sposito in “Habermas’s Significant Other,” in *The Cambridge Companion to Habermas*, ed. Stephen K. White (Cambridge: Cambridge University Press, 1995), and by Maier, *The Unmasterable Past*, 59–61, 151–54. Strong and Sposito claim that in passages like this, which pursue universality through appeals to a particular “we,” Habermas threatens to give the impression that, say, Germans or Europeans or Westerners have privileged
access to valid normative principles. My aim here is not to defend Habermas against this charge, but simply to observe that this threat perfectly exemplifies the way in which the defense of an imagined political community can inspire exclusion and prejudice, and to insist that since the pursuit of universality requires the risky supplement of particularity, the answer cannot be to abandon the project of pursuing intimations of universality found in ambivalent and dangerous particulars.


64. See especially Habermas’s chapter on civil society in Between Facts and Norms, although part of the purpose of the book is to show how communicative power can be manifest within the state as well as outside it.


66. On the local demonstrations see Lewis, The Neo-Nazis and German Unification, 63–64 and Bascha Mika, “Halb Mölln protestiert gegen das Pogrom,” Tageszeitung


70. Quoted in Kinzer, “German Leaders Vow to Battle Violence,” A3.


76. Jacques Rancière offers an analogous example of French protests during the Algerian war: “For my generation politics in France relied upon an impossible identification—an identification with the bodies of the Algerians beaten to death and thrown into the Seine by the French police, in the name of the French people, in October 1961. We could not identify with those Algerians, but we could question our identification with the “French people” in whose name they had been murdered. That is to say, we could act as political subjects in the interval or gap between two identities, neither of which we could assume.” “Politics, Identification, and Subjectivization,” in The Identity in Question, ed. John Rajchman (New York: Routledge, 1995), 67. Now see also Rancière, Disagreement: Politics and Philosophy, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1999).