Habermas on European Constitution and European Identity

ÉVA BIRÓ-KASZÁS[1]

Institute of Philosophy, Faculty of Arts,
University of Debrecen, Hungary

Abstract

For the last two decades or so philosophers have been reflecting on a set of practical and political concerns in connection with the new political structural arrangements beyond the nation-state. In this article two essays by Jürgen Habermas shall be examined. An attempt shall be made to tackle Habermas' philosophical concepts of personal and collective identity as well as the role that a constitution may play in building the post-national constellation. It has been shown that Habermas has normative answers. Firstly, according to him, the fragile balance between the legal order and the particular cultures and traditions of a community has to be protected by the constitutional state. For that reason the political culture has to be "decoupled" from the majority culture. Secondly, the democratically structured attempt to achieve shared meaning has to find the delicate balance between the context-transcending universal normative claims and the claims of particular individual and collective life. Thirdly, it is possible to expand legally mediated civil solidarity trans-nationally, across Europe – we may recognize this development as the emergence of European identity –, since the process of democratic will-formation of citizens may get loose from the structures provided by the state if both shared democratic political cultures as well as a European-wide public sphere exist. The European Constitution may have a catalytic function in materialization of these conditions. It has been shown that in his deliberations Habermas tried to find a reflective equilibrium between the normative and the empirical.

Keywords: Habermas, EU, Constitutionalism, Identity, Trans-National Solidarity, European Constitution

Introduction

For the last two decades or so philosophers have been reflecting on a set of practical and political concerns, about the new political structural arrangements beyond the nation-state. For example we can think of Habermas', Rawls', Taylor's and Walzer's essays on the post-national constellation. In what follows I shall examine two essays written by Jürgen Habermas[2]: *Multiculturalism and the Liberal State* (Habermas, 1995) and *Why Europe Needs a Constitution* (Habermas, 2001) and make an attempt to tackle Habermas' philosophical concepts of personal and collective identity and the role that a constitution may play in building the post-national constellation.[3]

In his address on multiculturalism Habermas raises the following puzzling question: "The controversial issue is briefly the following: Should citizens' identities as members of ethnic, cultural, or religious groups *publicly* matter, and if so, how can collective identities make a difference within the frame of constitutional democracy?" (Habermas, 1995, p. 849). In the

---

1   Postal address: 4032 Debrecen Egyetem tér 1. Hungary; E-mail: birokaszas.eva@arts.unideb.hu

2   Habermas' writings on Europe raise so many questions and hint at so many agendas that it is a vain effort to address all.

3   The European project is also present concern in his journalistic work and for the last ten years or so Habermas has devoted lot of thought to contemporary events. We may mention his recent speech in Frankfurt advocating the need for the extension of the concept of human rights to encompass human dignity. (Cf.: Habermas, 2010) We may say that he divides his deliberations between his philosophical system and the contemporary questions of our lifeworld.

second essay Habermas argues in favor of a European Constitution. Thus, the question is: if essentialist notions of identity are not accepted – either personal or group or national ones – then in what circumstances could group/collective identity help with constructing a more global, European identity?

It would be inappropriate to attempt any overall outline of Habermas' wide ranging relevant works to give a proper background to the matter in question, but it is necessary to say a few words, on one hand regarding Habermas' theory of communicative actions, and on the other hand, related to his democratic theory. In the second volume of his *The Theory of Communicative Action – Lifeworld and System. A critique of functionalist reason* – Habermas distinguishes three elements of reproduction processes maintaining the structural components of the life world: 1. "The cultural reproduction …secures a *continuity* of tradition and a *coherence* of knowledge sufficient for daily practice." 2. "The social integration of lifeworld ensures that newly arising situations are connected with existing conditions in the world in the dimension of social space: it takes care of coordinating actions by way of legitimately regulated interpersonal relations and stabilizes the identity of groups to an extent sufficient for everyday practice. The *coordination of actions and the stabilizations of group identities* are measured by the *solidarity* among members." (Habermas, 1987, p. 140) 3. "Finally, the socialization of members of a lifeworld ensures that newly arising situations are connected to existing situations in the world in the dimension of historical time." (Habermas, 1987, p. 141).

Regarding Habermas' democratic theory, his *The Postnational Constellation* and *Between Facts and Norms: Contributions Toward a Discourse Theory of Law and Democracy* are noteworthy. In a postscript to *Between Facts and Norms* Habermas states that "that there is a conceptual or internal relation, and not a simple and historical contingent association, between the rule of law and democracy. … For the individual, private rights cannot even be adequately formulated, let alone politically implemented, if those affected have not first engaged in public discussion to clarify which features are relevant in treating typical cases as alike or different, and then mobilized communicative power for the consideration of their newly interpreted needs. … The modern legal order may draw its legitimacy only from the idea of self-determination: citizens should always be able to understand themselves also as authors of the law to which they are subject as addressees. … Today ….a discursive or deliberative model replaces the contract model: the legal community constitutes itself not by way of a social contract but on the basis of a discursively achieved agreement." (Habermas, 1996, pp. 136-137). Regarding the question as to why discursiveness is the important feature of democracy for our present purposes, it is convenient to refer to Shivdeep Singh Grewal's admirable paper attempting to find the connection between Habermas' "journalistic" and more theoretical works. Grewal emphasizes that, according to Habermas, the third stage of social evolution within the modern state may be described as "a tension between system and lifeworld" and this has "a distinctly linguistic nature". The clashing languages are "the specialized 'languages' of price and law in the field of economy and the lifeworld-constructing "practice of everyday speech, sharing its *telos* toward mutual understanding". "As such, suggests Habermas, the lifeworld must be at pains to insulate itself against unwarranted incursions by systemic imperatives, lest it come unquestioningly to accept them as the sole rationales of social life. The institutionalization of such lifeworld 'resistance' forms the core of Habermas' democratic theory."[4] (Grewal, 2005, p. 195).

---

4   Cf.: Habermas, 1998.

The identity of citizens

Affiliations and identity

At a first glance the above quoted question from Habermas' essay on multiculturalism – "should citizens' identities *publicly* matter" – suggests a sharp distinction between personal and collective identities. This initial consideration seems to be affirmed by the popular use of the term identity. In common usage identity seems to refer to a stable psychological and cultural object that may integrate into a community. The community itself is the sum of the individuals, of the different and unique identities. But an identity cannot develop and cannot be comprehended without connections to other people. In David A. Hollinger's apt phrasing – which is in accordance with Habermas' theory of lifeworld – "(t)o share an identity with other people is to feel in solidarity with them: we owe them something special, and we believe we can count on them in ways that we cannot count on the rest of the population. To come to grips with one's true identity is to ground, on a presumptively primordial basis, vital connections to other people beyond the family." (Hollinger, 2006, pp. 23-24). In the modern human condition it is evident that one may have multiple identities – national, ethnic, religious, professional, sexual, and so on – as he/she may have many active relationships. Therefore, solidarity/identity is willed experience, an active affiliation unlike a community-membership. "Solidarity implies a special claim, even if modest in dimensions, that individuals have on each other's energies, compassion, and resources." (Hollinger, 2006, p. 24). A membership in a community can be imagined to be purely formal without ethical and/or emotional binding. Such a formal affiliation might be the key feature of citizens of the new member-states of the European Community. Unquestionably, if we comprehend the meaning of identity/solidarity as being primarily a willed process of affiliation then we may counter the prejudice that the "dynamics of affiliation" are to be programmed by natural processes or by authority of traditions or by sheer state-power.[5]

To develop our point it is important to take into consideration that solidarity/identity is always embedded in some historical, social and power situation. It is not only the psychological and cultural dimensions of one's identity that has to be claimed and provided. According to Hollinger, solidarity/identity "when understood as performative, is also a commodity of shorts". "Hence the problem of solidarity has a political-economic structure as well as a social-psychological one" (Hollinger, 2006, pp. 27-28). It follows that we have to address the specific political, economic and cultural arrangements and their institutions in connection to the problems of identity/solidarity. At this point we have to turn back to the questions of Habermas, namely "Should citizens' identities as members of ethnic, cultural, or religious groups *publicly* matter…?" and "Why does Europe need a constitution?".

In the essays that are subjects of our analysis Habermas does not attempt to define the concepts of collective identity, or of equal respect but explores instead the conditions of collective identity construction and the political role that European identity may have in dealing with the contemporary problems of immigration in close connection with his democratic theory. Without going into detailed argument we can say that the characteristic of Habermas' approach is a confidence in the compatibility of the real values of humanity in principle, but it has to be brought about, it cannot be the result of some kind of automatism. In a democratic society the willed interactions of citizens may bring into being shared perspectives and values.

---

5   Holliger notes that contemporary philosophers, sociologists, political scientists as Appiah, Benhabib, Brubaker, Gutmann, Lie, Smith ponder on the problems of solidarity/identity. Cf.: Note 13. p. 30.

Constitutionalism

Multiculturalism and the Liberal State is a response to Charles Taylor's *The Politics of Recognition*. Habermas does not accept either liberalism or communitarianism as understood by Taylor and defines his stance as one in between. Concerning the principles of equal respect for and equal protection of everybody, liberalism defends human rights since the individual human being makes moral claims and is the subject of rights – it is in his/her liberty to pursue his/her own life project. However, Habermas does not consider the individualistic sense to be adequate with regard to rights. On the other hand, the communitarians commit themselves to the reproduction of traditions and cultural forms. Invoking the crimes committed in order to preserve certain traditions (e. g.: we can think of the so-called honor killing), Habermas states that "(l)egal guarantees of survival would deprive members exactly of this freedom to break off their own tradition – and would thereby destroy the very space for hermeneutical appropriation which provides the only way to maintain cultural forms" (Habermas, 1995, p. 850). However, we have to adopt the intersubjectivist approach of the communitarian project according to Habermas. In the intersubjectivist context, the liberal equal protection clause means that "(e)verybody has the same right to develop and maintain their identity in just those intersubjectively shared forms of life and traditions from which they first emerged and have been formed during the course of childhood and adolescence. From such membership rights, almost all of the immunities, protections, subsidies, and policies would follow, which Taylor demands for the French minority in Canada in his essay. These rights *need* not be conceptualized in terms of collective rights; moreover, they *should* not be so designated for the (self-defeating) purpose of granting 'survival'." (Habermas, 1995, p. 851). Habermas leaves it to us to make a distinction between a membership right and a collective right. Following the ideas of Hollinger we can paraphrase the intersubjectivist approach to the demand of equal protection. We can say that one's identity has to be grounded to other people beyond the family, thus solidarity/ identity is a willed experience, an active affiliation unlike a community-membership.

In the same way Habermas reflects on further important points: first, he considers the possibility of a clear-cut distinction between private and public identities of citizens. According to Habermas, the actual demarcation between them cannot be ontologically established. Private and public are in a complementary relationship being in constant flux and their state of balance is also regulated by specific historical circumstances. This is also the case concerning the dichotomy of good and right or of the universalism of constitutional principles and the particularistic context of each political community. This last tension is especially important for Habermas' conception of European constitution.

To put it in a different way, in the first place, the fragile balance between the legal order and the particular cultures and traditions of a community – between system and lifeworld – has to be protected by the constitutional state. For that reason, the political culture has to be "decoupled from" the majority culture "with which it was originally fused, and in most instances, still is". (Habermas, 1995, p. 852). As an example, we can think of romantic nationalism. Romantic nationalism nationalizes the culture and establishes the nation-state on this common culture. The idea behind romantic nationalism is that national culture – the particular way of life of the nation-constituting majority – is the expression of the common inner life as unifying force. In this way the majority culture gains supra-individual identity and at the same time the minority culture is doomed to extinguish.

Second, since citizens "share a political culture shaped by a particular history", they interpret the constitutional principles from their particular political perspective, "which provide at the same time the base for constitutional patriotism"[6] (Habermas, 1995, p. 851). In his *The Postnational Constellation* concerning the idea of constitutional patriotism, Habermas emphasizes once more

---

6   On constitutional patriotism cf. Habermas, (1992).

that the solidarity of citizens may be transformed into the more abstract base of constitutional patriotism only if the majority culture ceases to be the political culture (Habermas, 2006a, pp. 70-71). The abstract processes and principles help the communication of different lifeworlds. Although in this address Habermas does not further explain his theory on constitutional patriotism, in my view, Habermas' main point is that what makes it worthwhile living in a particular state arises neither from dedicating oneself to a realization of abstract rights nor are they some kind of pre-given (substantial, natural, traditional, etc.) values or 'we-feeling', but the concrete, particular, commonly shared aims, values worked out in the ongoing free, democratic interactions between citizens. (Némedi, 2000, p. 255). This democratically structured attempt to achieve shared meaning has to find the delicate balance between the context-transcending universal normative claims and the claims of particular individual and collective life. The shared aims and values have to concern the handling of common actual and future problems, the traditions, the culture (local, regional and national, etc.). The binding force of these shared values and aims has its roots in the citizen's own, particular hermeneutical processes of interpreting the universal laws and values. In his essay *What is a People?* Habermas says that the necessary condition of reaching shared decision is solidarity which appeared among the citizens of 19th century nation-states. (Habermas, 2006a, p. 23). Now we can thus rephrase our initial question: In what circumstances could identities (personal- or collective/group- or national) help with constructing a more global, European identity, since none of these can be culturally neutral.

Philosophical and political backgrounds

In the closing paragraphs of his address, Habermas gives hints of both the philosophical and political backgrounds of his stance on the issues as to how to find the proper balance of political identity and majority culture in modern constitutional democracy (Habermas, 1995, pp. 852-853). Regarding the philosophical background, Habermas maintains that although the term 'legal person' is an artificial construct it can be and should be "constructed as socialized individual". The state as community of legal persons is the sphere where legal individuals "are supposed to recognize each other as free and equal". Natural persons are by definition socialized individuals and "individuated by their unique life histories". The requirement of equal respect, however, also holds for all natural persons. Habermas is "critical of the liberal assumption that human rights are prior to popular sovereignty" and they may not be forced upon citizens in democratic states. Conversely, human rights may not be arbitrarily thrown out. Consequently, "human rights must be conceived in such a way that they are enabling rather than constraining conditions for democratic self-legislation".

Regarding the political context of Habermas' argumentation, the most important idea is the identity politics[7], a "struggle for recognition" of the suppressed collective identities. (Habermas, 2006a, pp. 67-69, 71-72). In Habermas' view, the recognition of minority identities cannot be traded off for material goods. It is a membership right (as being distinguished from the collective right) that is at stake. One of the most important aspects of identity politics is law. In this respect, I consider that personal membership rights could mean free access to one's own collective/group-culture; it is the right of non-interference – it is someone's duty not to prevent him/her free access to a particular group/collective culture. Regarding the problem of collective/group rights, Habermas finds it paradoxical that it is the claims of recognized groups that can have constitutional protection – e.g. women and ethnic minorities.

Concerning the questions of the content, of the functioning and even of the attributing group rights Habermas does not offer any hint. But if we take into consideration that he formulates as

---

7   This is the main issue in the exchange between Habermas and Taylor. Cf.: Taylor (1992) and Habemas (1993). Cook (1997) gives an excellent analysis of the dispute.

follows, "but even if collective rights *were* compatible with the individualistic design of modern legal orders based on subjective rights …" (Habermas, 1995, p. 850), we can draw the conclusion that collective/group rights may not be regarded as basic as individual rights.

Immigration and civil solidarity

At the end of his address, Habermas briefly refers to the problem of immigration. First of all, considering the situation of a receiving country, we understand that it does not have legal reasons for a liberal immigration policy but that it may have moral ones. Secondly, if we take into consideration the case of the immigrant, we may recognize his/her legal right to asylum. Applying Hohfeld's analysis of legal rights could help us comprehend more clearly which is the main issue. The right to asylum belongs to the liberty rights or privileges since no one has a duty to allow him/her to exercise the right and it is compatible with others inhibiting the practice of this kind of right.[8] Hobbes' natural person can personify this privilege. Similarly, a legal immigrant has to attest to the constitution of the receiving country. According to Hohfeld's classification, naturalization means endowing someone with claim rights, powers and immunity among others. That is, if someone who claims a right demands that the state and/or other citizens has/have the duty of service or of not interfering. In brief the new citizen is endowed with rights (provision, service, etc.) and duties. However, "(a) legally required *political* socialization may not have an impact on other aspects of the collective identity of the immigrants' culture of origin" (Habermas, 1995, p. 853). We therefore have not got closer to solving the problem of constructing European identity. In the future we may face unforeseeable consequences. In this respect we may find very much to the point Schmitter's comment: "EU is not a mere repetition of previous nation, state and regime-building processes and it may well be leading to an outcome that is unprecedented." (Schmitter, 2006, p. 47).

Considering another aspect of the immigration-problem even Habermas states the above discrepancy clearly: "(S)imply policing the Fortress of Europe is not a real answer to these problems …In truth the key question is whether it is possible to expand civil solidarity trans-nationally, across Europe." But he does not deliberate the problem and in the next sentence he immediately states that "(a)t the same time, a common European identity will develop all the quicker, the better the dense fabric of national culture in the respective states can integrate citizens of other ethnic or religious origins."[9] (Habermas, 2006b). Contrary to cosmopolitan[10] liberalism of Habermas and to Rawlsian political liberalism, David Ingram considers the first and foremost problem "that the rights of groups no less than the rights of individuals will have to be politically recognized within liberal democracy typically and not just occasionally. Only in this way can the rights of women, immigrants, and subnationalities be fully protected". That is to say, "an adequate account of human rights must accommodate differences in social standpoint, both within and between nations" (Ingram, 2003, p. 386). In David Ingram's view, the only lasting basis on which to build peace and justice is an international democratic federation of liberal democracies and interest groups. So, on the indispensableness of a European-wide federation Habermas and Ingram are in concert.

---

8   W. E. Hohfeld: *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. Hohfeld's classification is discussed e.g. in Miller, D. (ed.) (1991). *Blackwell Encyclopedia of Political Thought*. Oxford: Blackwell. See under rights. And cf. Knowles, D. (2001). *Political Philosophy* London: Routledge, pp. 139-140.

9   His speech held on being awarded the state prize of North-Rhine Westphalia.

10   This time I can't go into the details, here I understand the term 'cosmopolitan' as someone "who puts right before country and universal reason before the symbols of national belonging" (Nussbaum, 1994).

European Constitution

Aims of integration

The essay from 2001 *Why Europe Needs a Constitution* applies the ideas of *The Postnational Constellation and the Future of Democracy* - we can say that Habermas reorganizes his arguments around this very pressing and current question. Concerning the need for European constitution, Habermas develops his reasons in three steps. The first recalls the demands for European unification immediately after WWII and contrasts it with the contemporary academic and political projects contemplating the carrying on of this project. He proceeds, arguing that none of the original aims of the integration (ending warfare, protection against Nazism, especially the crimes against European Jewry, economic growth and welfare) may be regarded as adequate justification of furthering the European project. Since we may not go into details to sum up this line of arguments following the analysis of Christian Joerges, we can state that although the original ideals of the post-war period may not be considered as outdated, they have lost their mobilizing strength (Jorges, 2005, p. 250). In addition, it is not at all clear for the European citizenry how the necessary coordination of many fields of the lives of the member states will affect their material concerns. Others say that one of the reasons behind the constitutionalization debate is "the ambivalent heritage of law in Europe". Accompanied by Derrida, Habermas joined to this line of thinking and made an important manifesto on this subject in the *Frankfurter Allgemeine Zeitung* 31st May, 2003. "The memory of the failures and weaknesses of the law" can be considered to "provide an indispensable waymarker in the debate on good European constitutionalism". (Jorges, 2005, p. 247).

The second line of Habermas' argument is in favor of an "ever closer union" (Habermas, 2001, p. 6). He assents to the speech of French Prime Minister Lionel Jospin delivered in 2001: "Till recently the efforts of the Union were concentrated on the creation of monetary and economic union … But today we need a broader perspective if Europe is not to decay into mere market, sodden by globalization. Since Europe is much more than a market, it stands for a model of society that has grown historically."[11]

To develop his third point, Habermas draws attention to the empirical fact that "national governments, whatever their internal profiles, are increasingly entangled in transnational networks, and thereby become ever more dependent on *asymmetrically negotiated* outcomes." Unfortunately – says Habermas –, economic globalization is no more than a transnational form of capitalism. Therefore, the pressing question is whether a neoliberal vision is compatible with the prevalent normative European self-understanding – according to which the formative background for social solidarity is provided by the political tradition of the workers' movement, the social doctrines of Christianity and social liberalism. "In terms of a comparative cultural analysis, we might speak of the unique European combination of public collectivisms and private individualism." (Habermas, 2001, p. 10). Concerning the problems of globalization and the transnational form of capitalism it is necessary to initiate public debate to find possible solutions. By putting forward the idea of public debate concerning the neoliberal vision, Habermas implicitly brings into play the republican idea of law-making. He warns that the logic of the market has to be complemented with public deliberation or, to put it differently, the logic of the system has to be harmonized with the lifeworld (Habermas, 2006a, pp. 76-77). The procedural outcome of creating the necessary conditions of public debate could be the "creation of a more encompassing political framework" (Habermas, 2001, p. 12). The project of Europe cannot succeed without an elaborated political project.

At this point we have to refer directly to the arguments of the essay *The Postnational Constellation and the Future of Democracy*. In Habermas' view, the process of democratic will-formation of

---

11   Speech to the Foreign Press Association, Paris, 28 May 2001. Quoted by Habermas (2001, p. 9).

citizens owes its legitimacy to three factors: participation, voting and open deliberation. This means that the process of deliberation – and democratic legitimation – may get loose from the structures provided by the state. This way, e.g. non-governmental organizations could have the necessary legitimation and take part in international bodies (Habermas, 2006a, pp. 100-101).

Likewise, Habermas argues that the "discrepancies between an advanced economic and a retarded political integration could be overcome by the construction of higher-order political agencies, capable of 'catching up' with the pressures of deregulated markets" (Habermas, 2001, p. 14). At the same time, the so-called 'democratic deficit' of the European authorities is to be dealt with. The most pressing task is to answer the question as to how the European Commission could be endowed with legitimacy. Habermas puts forward his general thesis: "we should support and promote the project of a European Constitution" (Habermas, 2001, pp. 13, 15). I have to add that the democratic deficit is a problem not only on European but also on state-level. One can think of the ever-present antisemitism and the growing problem of xenophobia. Habermas is well aware of this problem – this matter has been tackled above in connection to the questions of collective/group rights.

European-wide public sphere

Regarding the structural problems of the Union – dense integration through market and loose integration of governments – and the political deficit resulting from the situation of missing "European people"[12], Habermas refers to the portion of the citizen body of Europe in which final authority is located. In this respect, Habermas draws attention to the voluntaristic character of a civic as opposed to ethnic nation since civic nation originates in both the stabilizing contexts of traditional communities as well as in the democratic processes. The formation of consciousness of the national political subject is a "painful process of abstraction, leading from local and dynastic identities to national democratic ones" (Habermas, 2001, p. 16).

In this line of argument we may discover that Habermas has the American Constitution as the ultimate ideal in his mind (Rogowski & Turner, 2006, p. 5). So, we may refer to Alexis de Tocqueville, who states in his *Democracy in America* that freedom – the most important value of the human world – can only be maintained in circumstances formed by self-imposed duties and relations in all spheres of human life, in short, under the shelter of democratic constitution and civic society. The civic deliberations concerning the pressing questions of lifeworld may transcend the structures provided by the state and Habermas anticipates that European citizenry can emerge in this process.

How could the results of the ongoing process of deliberation be reified, especially if we think of them as unconfined by state boundaries? In other words, in addition to a shared democratic political culture there are necessary empirical conditions "for the extension of that process of identity formation beyond national boundaries" (Habermas, 2001, p. 16), namely these are European civil society and public spheres. In Habermas' view a constitution may have a catalytic function in materialization of these conditions. The constitution could initiate a circular movement of stating what has already changed and fostering additional development of the fulfillment of the conditions. In this manner "(t)he focus of politics would move to some extent from national capitals to the European centers" – even the initiatives of citizens at large could have a presence in Brussels (Habermas, 2001, p. 17).

But the most essential network to be created is the "European-wide public sphere" which would facilitate the mutual contact, institutionalized democratic decision-making in all political and non-political bodies and an infrastructure for mass communication. Over time it could be the

---

12   Ernst-Wolfgang Böckenförde, *Welchen Weg geht Europa?* Munich, 1997. Quoted by Habermas (2001, p. 15).

ground of public-opinion-formation. However – warns Habermas – "(a) European-wide public sphere must not be imagined as a projection of a familiar design from the national onto European level" (Habermas, 2001, p. 18). In other words, in Habermas' view the European Union should not be imagined as a super-nation-state although he gives neither detailed description of a different kind of system/network of human contact nor of the new practices.

In this respect Habermas first addresses the problem of political unity and linguistic diversity in Europe. He considers that the integrity of different national cultures depends on the equal and mutual recognition of different languages. English could serve as a working language for the purposes of cross-border communication. Secondly, the political unity requires a shared political culture. Shared political culture cannot be the commonness of substantial elements rather it has to be a kind of attitude, a balanced response to the structural conflicts and lasting tensions. "These are dispositions that act as a spur to critical reflections on our blind spots, and to a de-centering of selective perspectives." (Habermas, 2001, p. 20). The egalitarian and individualistic universalism which informs the normative self-understanding is considered to be the third indispensable element of a shared European culture. Habermas regards all of the three necessary elements as the achievements of modern Europe. His confident statement is "the challenge before us is not to *invent* anything but to conserve the great democratic achievements of the European nation-state beyond its own limits." (Habermas, 2001, p. 6). At this point we may refer back to the Habermasian ideal of constitutional patriotism and we recognize a tension. "Whilst it takes the ethnic or cultural '*demos*' out of constitutionalism and democracy, it arguably retains a 'personification' of political community because it relies on the ultimately substantive – in the sense of community-specific – idea of constitutional patriotism" – says Wilkinson (Wilkinson, 2002).

Future of European cooperation

Returning to the essay on constitutionalism, at the end of it Habermas gives a list of problems to be answered in the near future: 1./ defining "the territorial boundaries of the Union"; 2./ distributing competences between federal and national institution; 3./ deciding "which countries will finally belong to, and which are to be excluded from, the Union" 4./ finding a workable balance between majority and consensual decisions in order to meet the requirements of the principles of equal protection; 5./ securing the possibility of inter-parliamentary discourses. Again, we may ask in practice whose task it is to solve the above questions, who will answer them: whether highly prepared specialists or European-wide referendum or intergovernmental negotiations, etc. For our current purposes it is enough to note that the first and the third questions are addressed by many e.g. Benhabib, Wilkinson, and Castles, etc. – all of them think that some kind of solution could be reached by furthering the ideal of federalism.

Finally, Habermas addresses the two different attitudes toward the future of European cooperation. He mentions the 'federalists' and the 'sovereignists'; the federalists "regard the harmonization of important national policies as urgent" and the sovereignists would like to deprive all central institutions of all fiscal powers. Accordingly – he states – "no reform of procedures and institutions can succeed before the content of the political project behind it becomes clearer" and a European Constitution could settle the core political issues (Habermas, 2001, p. 26).

According to Mike Wilkinson the deeper significance of the constitutional discourse is a concern for democratization and a particular vision of integration. We can recognize the ambivalence inherent in the concept if we take into consideration that both Europhiles and Eurosceptics advocate a European constitution. The discussion is about the "relationship of a constitution not just to democracy in the abstract or to a *demos* as a given, but also to a '*demos*' in particular. It is not only that the precise boundaries of the community are questioned (and changing), but

also the claim that at a non-state level there is a political community capable of sustaining a public sphere, civil society or a constitution at all" (Wilkinson, 2002). If we try to analyze the types of desired constitutions we can differentiate between neo-liberal and social democratic attempts. "For those who favor a move from a liberal market to a social democratic transnational 'Rechtsstaat' through constitutional integration the theoretical background which provides much of their intellectual currency is a vision of Habermasian deliberative democracy and his procedural law paradigm – perhaps the most compelling theoretical resolution of the tension between constitutionalism and popular sovereignty." (Wilkinson, 2002). The base of the procedural law-paradigm is the association of free and equal persons under law and the state has to secure equal opportunity for the use of equally granted basic rights. Wilkinson finds problematic to apply this theory to supranational level although Habermas is optimistic in this respect[13]: "The forms and procedures of the constitutional state, together with the democratic mode of legitimation, simultaneously forge a new level of social integration." Habermas furthermore claims that "the ethical-political self-understanding of citizens in a democratic community [can] be taken as the fluid content of a circulatory process that is generated through the legal institutionalization of citizen's communication"[14]. Wilkinson warns us not to take the idea of 'circulatory' process as self-evident: we cannot be sure "whether the constitutionally regulated circulation of communicative power – from public sphere to political system – is the norm or the exception in contemporary 'democratic' societies" and there is a possibility that the top-down system of the paternalistic model of power is the norm (Wilkinson, 2002).

Problems

In his speech held in 2006 Habermas disappointedly established that "the theme of Europe has been devalued, the national agenda has taken priority" (Habermas, 2006b). He names four risky problems "that will remain unsolved if we stuck along the way to a Europe that is politically capable of action and bound in a democratic constitutional framework". These problems are: 1./ The European member states have lost their democratic substance as a result of European unification since Brussels decides upon more and more questions and the member-states only apply the decisions to the national law. The whole process eliminates the political public of the member states. "There is no European public space." 2./ It is long overdue to develop the "classic international law to a politically defined world community". 3./ Since "the relationship of politics to the market has gotten out of balance on a global scale" the national governments are powerless in establishing "acceptable social standards"; 4./ The fundamentalist challenge to cultural pluralism can only be answered on European level. Therefore in this respect the main question is for Habermas "whether it is possible to expand civil solidarity trans-nationally, across Europe". We may recognize this question to be the other side of the question having been raised above: how could be, if at all the European identity formed in practice. And concerning the readiest means: is it possible to convert previous nation-or state-building processes to European level?[15] May we find positive instances of trans-national civil solidarity?

---

13   As quoted above from Habermas (2001, pp. 16-17).

14   Habermas, J. (1998), *The Inclusion of the Other: Studies in Political Theory*, C. Cronin, C. & de Grieff, P. (eds), (pp. 159, 161) Cambridge: MIT Press - quoted by Wilkinson.

15   We may cite again Habermas' confident statement: "the challenge before us is not to *invent* anything but to conserve the great democratic achievements of the European nation-state beyond its own limits." (Habermas, 2001, p. 6).

Trans-national civil solidarity

Turning our attention exclusively to these last questions we have to consider again the problem of identity formation. Following Habermas we have mentioned above that civic nation – as opposed to ethnic nation – has its origins in traditional communities and in the voluntaristic context of democratic processes. The process of identity construction is a neverending story and in this respect we cannot speak about final results. Whenever we engage in collective action and/or collective deliberation we thereby also engage in the constitution of a 'we', our collective identity. So, pure deliberating processes like democratic processes can form collective identity (Habermas, 2001, p. 15). Modern collective identity can emerge from a process of public debate concerning common aims, collective actions and different ideas of collective identities e.g. historically given culturally specific narrative resources and vocabularies, and their interpretations – these all have their origins in the particular lifeworlds. As we have seen above in his essay '*What is a People?*', Habermas says that the necessary condition of reaching shared decision is solidarity. In this respect we can distinguish two types of solidarity: one is based on the immediate, direct social practices and norms of the particular lifeworld and the "legally mediated solidarity". Legally mediated solidarity between strangers springs from democratic citizenry and this solidarity does not necessarily come to an end at the borders of nation-states. "[Legally based] solidarity – the third source of societal integration besides money and administrative power – arises from law only indirectly, of course: by stabilizing behavioral expectations law simultaneously secures symmetrical relationships of reciprocal recognition between abstract bearers of individual rights. These structural similarities between law and communicative action play a constitutive role in the production (and application) of legal norms." (Habermas, 1996, p. 136). Legally based solidarity is not a stable condition but a process of constant struggle and negotiation regulated by concrete laws. The ephemeral results of this negotiating process can be captured and assume a new stability by being enacted. This way the circular movement of negotiations and new codifications can shelter what has been already achieved and initiate new development of lifeworlds, norms and identities. As we have seen in the essay on multiculturalism, the actual demarcation between private and public identities of citizens or between good and right or between the universalism of constitutional principles and the particularistic context of each political community cannot be ontologically established according to Habermas. These are complementary relationships in constant flux and their state of balance is regulated by specific historical circumstances. Solidarity goes hand in hand with respect and recognition. The subject of respect and recognition is some other collective identity, some other culture or a concrete member of some other collective identity/culture. In Habermas' view the foremost issue of the "struggle for recognition" is the inclusion all of the suppressed collective identities into the sphere of the constitutional protection (Habermas, 2006a, p. 69). The second issue is to integrate the republican feelings of the inhabitants into patriotic constitutionalism, and this can be reached if the historical symbiosis of republicanism and nationalism is ended (Habermas, 2006a, p. 71).

In the impressive volume – *The Shape of New Europe* – of Rogowski and Turner the focal points are Jürgen Habermas' arguments for a European constitution. I refer only to the essays of Philippe C. Schmitter and of Richard Kearney. They represent two very different standpoints concerning the constitutional ideals of Habermas. Schmitter in his contribution to the volume argues that the European Union does not need a constitution for three reasons: The constitution as an act of foundation does not have sense because "(t)he founding moment has already occurred – a half century ago"; secondly, EU is succeeding with successive treaties; thirdly in the coming years when EU will have to face both the effects of monetary unification and the problems generated by enlargement. The EU will need "the flexibility provided by the lack of an agreed distribution of competences between it and its member states and, especially, the absence of a common definition of its political end-state." (Schmitter, 2006, pp. 46-47)

Kearney states that the being of postnational constellation is a fact and chooses as his example the historic British-Irish Agreement of 1998. "The zero-sum game of mutually exclusive 'national identities' was over. For the first time in history, the emerging postnationalist scenario allows the citizens of Northern Ireland to profess different degrees of allegiance to an expanding range of identifications: from regional townland, parish or province to national constitution (British or Irish or both) and to the transnational union of Europe." (Kearney, 2006, p. 169). Kearney also states that "what the Belfast Agreement allows, in short, is that the irrepressible need for identity and allegiance be gradually channeled away from the fetish of the nation-state, where history has shown its tenure to be insecure and belligerent, to more appropriate levels of regional and federal expression" (Kearney, 2006, p. 179). "There is no such thing as primordial nationality. If the nation is indeed a hybrid construct, an 'imagined community', then it can be re-imagined in alternative versions. The 'postnational constellation' envisaged by political visionaries as diverse as John Hume and Jürgen Habermas, need no longer be considered a utopian dream." (Kearney, 2006, p. 180).

Conclusion

In Habermasian spirit we may say that post-national democracy or democracy beyond the state could be a possible alternative for Europeans. The basic elements of the shared European identity are formed both by democratic processes and by drawing the relevant lesson of European history (e.g.: of nationalist excesses). The member-states of the European Union should not forget their national traumas of the dark times of Europe. The mutual recognition of these traumas and their comprehension may have identity creating force. In this respect Ingram speaks about toleration, which means "openness to interdependency and mutual vulnerability". He is also optimistic concerning the possibility of European federation "(u)ntil this federation becomes a reality (and we have no reason to think that it cannot), full toleration and trust between nations will remain elusive." (Ingram, 2003, p. 387)

Summarily we can say that Habermas has normative answers for the questions of European, national and group identities. This is not surprising. Political philosophy is practical philosophy and its main task is to deliberate the possible answers to the question of what we ought to do in certain circumstances. Thus, concerning our initial question, namely, in what circumstances could the different types of identity (personal- collective/national identity) help with constructing a more global, European identity we may have an answer. It is possible to expand legally mediated civil solidarity trans-nationally, across Europe – we may recognize this development as the emergence of European identity –, since the process of democratic will-formation of the citizens may get loose from the structures provided by the state if both a shared democratic political culture and a European-wide public sphere exist. The European Constitution may have a catalytic function in materialization of these conditions. In his deliberations Habermas tries to find a reflective equilibrium between the normative and the empirical. Habermas' "journalistic" works are in close connections with the most pressing issues on the European agenda. His considerations and proposed solutions are to be deliberated and following his theoretically based insights we might get promising visions of further deliberations for attaining European self-understanding and avoiding destructive tendencies.

References:

1. Benhabib, S. (2005). Borders, Boundaries, and Citizenship. *Political Science and Politics*, 38(4), pp. 673-677.

2. Brubaker, R., & Cooper, F. (2000). Beyond 'Identity'. *Theory and Society*, 29(1), pp. 1–47.

3. Castles, S. (2005). Hierarchical Citizenship in a World of Unequal Nation-States. *Political Science and Politics*, 38(4), pp. 689-692.

4. Cook, M. (1997). Authenticity and Autonomy: Taylor, Habermas, and the Politics of Recognition. *Political Theory,* 25(2), pp. 258-288.

5. Grewal, S. S. (2005). A Cosmopolitan Europe by Constitutional Means? Assessing the Theoretical Foundations of Habermas' Political Prescriptions. *European Integration,* 27(2), pp. 191-215.

6. Habermas, J. (1987). *The Theory of Communicative Action 2. Lifeworld and System. A critique of functionalist reason.* (Translated by Th.McCarthy). Boston: Beacon Press.

7. Habermas, J. (1992). Staatsbürgerschaft und nationale Identität. In Habermas, J. *Faktizität und Geltung* (pp. 632-665). Frankfurt am Main: Suhrkamp.

8. Habermas, J. (1993). Struggles for Recognition in Constitutional States. *European Journal of Philosophy* 1(2), 128-55.

9. Habermas, J. (1995). Multiculturalism and the Liberal State. Address. *Stanford LawReview*, 47(5), pp. 849-853.

10. Habermas, J. (1996). Postscript to Between Facts and Norms. In Deflem M. (Ed.), *Habermas, Modernity, and Law* (pp. 135-150). London: Sage Publications.

11. Habermas, J. (1998). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy.* Cambridge: Polity.

12. Habermas, J. (2001). Why Europe Needs a Constitution. *New Left Review,* 11(Sept/ Oct), pp. 5-26.

13. Habermas, J. (2006a) The Postnational Constellation and the future of Democracy. In: Habermas, J. *The Postnational Constellation* (Hungarian translation: *A posztnemzeti állapot* (Translated by Ruzsacz I.)). Budapest: L'Harmattan, pp. 58-112.

14. Habermas, J. (2006b). Opening up Fortress Europe. Jürgen Habermas on Immigration as the Key to European Unity. *Signandsight November* 16, 2006. Retrieved Aug 27, 2010, from http://www.signandsight.com/features/1048.html.

15. Habermas, J. (2010). Das utopische Gefälle. *Blätter für Deutsche und Internationale Politik,* 8, pp. 43-53.

16. Hollinger, D. A. (2006). From Identity to Solidarity. *Daedalus,* 135(Fall), pp. 23-31.

17. Ingram, D. (2003). Between Political Liberalism and Postnational Cosmopolitanism. Toward an Alternative Theory of Human Rights. *Political Theory* 31(3), pp. 359-391.

18. Joerges, Ch. (2005). Introduction to the Special Issue: Confronting Memories: European 'Bitter Experiences' and the Constitutionalization Process: Constructing Europe in the Shadow of its Past. *German Law Journal*, 6(2), pp. 245-54.

19. Kearney, R. (2006). A Postnational Council of Isles? The British-Irish Conflict Reconsidered. In R. Rogowski & Ch. Turner, Ch. (2006). *The Shape of New Europe* (pp. 167-184). Cambridge: Cambridge University Press.

20. Némedi, D. (2000). *Társadalomelmélet – elmélettörténet*. Budapest: Új Mandátum Kiadó.

21. Nussbaum, M.C. (1994). Patriotism and Cosmopolitanism. *Boston Review* 19(5). Retrieved Aug 27, 2010 from http://www.bostonreview.net/BR19.5/nussbaum.php.

22. Rogowski, R. & Turner, Ch. (2006). *The Shape of New Europe*. Cambridge: Cambridge University Press.

23. Schmitter, Ph.C. (2006). Why Constitutionalise the European Union? In R. Rogowski & Ch. Turner, Ch. (2006). *The Shape of New Europe* (pp. 46-58). Cambridge: Cambridge University Press.

24. Taylor, Ch. (1992). The politics of Recognition. In Gutmann, A. (ed.) *Multiculturalism and the "Politics of Recognition"*. (pp.3-24) Princeton: Princeton University Press.

25. Wilkinson, M. (2002). Postnationalism, (Dis)organised Civil Society and Democracy in the European Union: Is Constitutionalism Part of the Solution or Part of the Problem? *German Law Journal* 3(9), Without page numbers. Retrieved Aug 1, 2010 http://www.germanlawjournal.com/index.php?pageID=11&artID=192.