

Democracy Beyond Nationalism

Transnational Identity, Universalism, and Social Evolution in
the Political Philosophy of Jürgen Habermas

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Introduction

In 1992, Jürgen Habermas published an article which puts the cause of *democratic transnationalism* in the forefront of debate in political philosophy. In his "Citizenship and National Identity: Some Reflections on the Future of Europe,"¹ Habermas's specific theme is the 'legitimation crisis' arising from the current situation within the European Community.² But the deeper philosophical point of the article is to develop a fundamental implication of Habermas's analysis of democracy in his new work, *Between Facts and Norms* (in which the article is included as an appendix):³ Habermas argues that the normative content of democratic citizenship can be institutionalized without identity-formation in by a 'national state' of the kind that still dominates our geopolitical landscape. The concept of democracy cannot be restricted to nationalist contexts; instead, by its very nature it points beyond such restrictions, and ultimately towards a global government that would ensure fundamental human rights worldwide. In the process, Habermas develops several ideas from his much earlier analyses of social integration and links them in revealing ways to his universalist conception of human rights. Finally, Habermas explicitly criticizes communitarian arguments that particularist criteria in immigration are permissible or required to maintain a political culture adequate for democratic citizenship.

These challenging arguments can only be properly evaluated against the background of Habermas's critical theory as a whole, including his earlier work on topics such as collective identity, motivation, moral development, and his systematic analysis of the relation between law and morality in *Between Facts and Norms*. The aim of this paper is to put Habermas's argument for democracy beyond nationalism in this larger perspective, and then to offer an analysis of its prospects for

¹Jürgen Habermas, "Citizenship and National Identity: Some Reflections on the Future of Europe," *Praxis International*, Vol. 12.1 (April, 1992): 1-19.

²This crisis has only deepened since this article was published, since the prospect of monetary union by the end of the century implies a European government with vital central-banking powers but (given the weakness of the European Parliament within the EU system) still without full and direct democratic accountability to the people of Europe.

³See Jürgen Habermas, *Between Facts and Norms*, pp. 491-515.

overcoming communitarian objections.

Background: Habermas's System

I. An Overview of Habermas's Critical Theory

The emancipation of democratic citizenship from the limitations of nationalist identity is an integral part of Habermas's "theory of social evolution," located within the "three-tiered research program" of Habermas's critical social theory as a whole:

- (1) General theory of communication or "universal pragmatics."
- (2) General theory of socialization: acquisition of communicative competencies.
- (3) Theory of social evolution, or reconstruction of historical materialism.⁴

As Thomas McCarthy explains in an outline of Habermas's overall program, these parts of Habermas's critical theory build cumulatively on one another. The theory of socialization, for example, involves forming an "integrated model" of ego-development that brings together "affect and motive formation" with a developmental account of the acquisition of "universal, `species-wide,' competencies."⁵ In Habermas's theory, these developmental competencies premised on initial linguistic competence are correlated with three kinds of ideal validity (illocutionary modes) that are raised by speech acts within a lifeworld of shared comprehension:⁶

Universal Validity Claims and Competencies

Objective truth (constative) Cognitive competence	Normative rightness (regulative) Interactive competence	Subjective truthfulness (expressive) Ego-development competence
Comprehensibility (overlapping lifeworld) Linguistic competence		

⁴Jürgen Habermas, *Communication and the Evolution of Society*, tr. Thomas McCarthy; Translator's Introduction, p.xvii [this is a schematic summary of Professor McCarthy's description].

⁵ibid, pp.xix, xx.

⁶Jürgen Habermas, *Postmetaphysical Thinking*, tr. William Mark Hohengarten, "Toward a Critique of the Theory of Meaning"; I have derived this table from Habermas's three truth-analogous validity claims (p.75); his "three basic modes" of illocutionary force belonging "either to constative, to expressive, or to regulative speech acts" (p.77); and the requirement of an overlapping "horizon of a shared lifeworld" (pp.79, 83).

Habermas's theory of socialization then combines these universal cognitive/structural components of "identity formation" with other psychological processes that tend to produce variations in needs and motivational development in different persons. These cognitive and affective sides of personal identities, then, are rooted in "the substantive values and need interpretations which are embodied in a shared lifeworld."⁷

In the theory of social evolution, however, another dimension is added to the picture. In this dimension, Habermas is concerned to show that societies and collective identities themselves pass through several stages in the historical "evolution of society." This evolution or "sociation" is brought about through the "rationalization of the lifeworld," i.e. the "'institutional embodiment of structures of rationality'...which makes learning at new levels possible" by preserving objective knowledge and forms of social integration learned in the past as resources for the future.⁸ As Habermas explains in his *Critique of Functional Reason*, such rationalization produces a "structural differentiation" of the lifeworld into culture, society, and personality, each of which evolves through three processes of reproduction:⁹

<u>Rationalization of the Lifeworld</u>		
Cultural reproduction continuation of valid knowledge	Social integration stabilization of group solidarity	Socialization formation of responsible actors
 Lifeworld (culture, society, personality) 		

In their relation to the lifeworld, these three types of reproduction roughly parallel the ideal validity

⁷Stephen K. White, *The Recent Work of Jürgen Habermas: Reason, Justice, and Modernity*, p.103. White gives this description in his discussion of "strong" and "weak" interpretations of the lifeworld. These aspects of the lifeworld contribute to individual socialization at every stage of the rationalization of the lifeworld.

⁸Habermas, *Communication and the Evolution of Society*, Translator's Introduction, p.xxii and xxiii.

⁹Stephen K. White, p.100; citation to *Theorie des kommunikativen Handelns, vol.2, Zur Kritik der funktionalistischen Vernunft*, p.208.

claims and competencies based on shared linguistic horizons. As components in the rational reproduction of the lifeworld, these processes may be called the three aspects of "communicative sociation" (or "social integration" in the more general sense).¹⁰

II. Communicative Sociation vs Systems Integration

Social evolution, however, occurs not only through the communicative rationalization of the lifeworld, but also through the forms of "purposive/rational action" (including "strategic" and "instrumental" action).¹¹ Rationality in this latter, narrower sense provides the basis for a "social systems" approach, which analyze society in terms of the latent, *functional* connections between social roles.¹² In light of this functional conception of rationality as White says, "the evolutionary development of societies can be understood as an increasing differentiation of social structures which enhances the capacity for material reproduction."¹³

This distinction between systems and actions perspectives, of course, is central to Habermas's argument throughout both volumes of the *Theory of Communicative Action*: "From one perspective the telos inherent in rationality appears to be *instrumental mastery*, from the other *communicative understanding*."¹⁴ Habermas does hold that the narrower "cognitive-instrumental" rationality of the systems approach (with its important connections to utilitarian rational choice theory¹⁵), can be accommodated within the more "comprehensive concept of communicative rationality" developed from the "phenomenological" or hermeneutic approach.¹⁶ However, in light of his universal

¹⁰Stephen K. White, p.105; as White notes, in the *Critique of Functional Reason* and elsewhere, Habermas may use "sozial Integration" in a broad sense as equivalent to "sociation" ("Vergesellschaftung").

¹¹Thomas McCarthy, *The Critical Theory of Jürgen Habermas*, p.24-25.

¹²Jürgen Habermas, *Communication and the Evolution of Society*, Translator's Introduction, p.xiv

¹³Stephen K. White, p.104

¹⁴Jürgen Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*, tr. Thomas McCarthy, p.15.

¹⁵Thomas McCarthy, *The Critical Theory of Jürgen Habermas*, p.24-25

¹⁶Jürgen Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*, p.14.

pragmatics, he argues that

..actions regulated by norms, expressive self-presentations, and also evaluative expressions, supplement constative speech acts in constituting a communicative practice which, against the background of a lifeworld, is oriented to achieving, sustaining, and renewing..a consensus that rests on intersubjective recognition of criticizable validity claims. The rationality inherent in this practice is seen in the fact that a communicatively achieved agreement must be based *in the end* on reasons.¹⁷

This argument implies that the rationality of practical discourse from the participant perspective cannot simply be reduced to theoretical discourse from the observer standpoint.¹⁸ As a result, it becomes especially important with regard to the "internal history" or developmental logic of world views and normative structures, which are essential to social integration [or `sociation']:

the thesis that developments in the sphere of social integration have their own logic...is the fruit of [Habermas's] long-standing insistence that *praxis* cannot be reduced to *techne*, nor rationality to purposive or instrumental rationality.¹⁹

The stages of social evolution, then, involve the learning processes of both forms of rationalization: "cognitive/technical and moral/practical."²⁰ White points out that in his *Critique of Functional Reason* (and elsewhere), Habermas insists that these different forms of rationalization *coordinate* actors in quite different ways:²¹

'Social integration' [com. sociation]	'Systems integration'
"mechanisms of action coordination which bring the <i>action orientations</i> of participants into accord with one another"	"mechanisms which stabilize the non-intended connections of actions across the functional web of <i>action-consequences</i> "

Since communicative rationality and sociation are the more fundamental schema, however, their

¹⁷ibid, p.17.

¹⁸ibid, p.19

¹⁹Jürgen Habermas, *Communication and the Evolution of Society*, Translator's Introduction, p.xxi

²⁰ibid, p.xxii

²¹Stephen K. White, p.105; the quotations he cites from the *Critique of Functional Reason* are at p.179 of the original translation.

universal structures will "generate crucial *constraints* on the rationalization of action."²² As White says, "society cannot be reduced to the model of an organic system" because the rationalized lifeworld will have "structural characteristics which are *resistant* to functional imperatives."²³

This point emerges in particular in Habermas's *Legitimation Crisis*. To the extent that a person's "inner nature" or motivations are formed by the *structural* components in his personal "socialization," he will be motivated by whatever counts as legitimation in the society into which he is integrated. The developmental logic of social evolution, then, tells us what *structural limitations* there are on "legitimate expectations" and normatively sanctioned duties in different stages. Likewise, the communicative "kind of socialization through which social systems have until now produced their motivations for action" limits what can count as 'rational motivation' to accept an action-norm as legitimate.²⁴

III. Structural Logic vs Developmental Dynamics

It is crucial to realize, however, that the evolution of society made possible through the communicative rationalization of lifeworld structures does not involve inexorable historical progress through the different evolutionary 'stages.' Rather,

These evolutionary trends can proceed, Habermas contends, only to the degree that communicative action functions as a medium for the reproduction of the lifeworld...rationally motivated action-orientations are sustained only when the different aspects of socialization are mediated by processes of understanding in which agents take up a performative attitude toward the different validity claims..²⁵

But at no stage are the evaluative elements in the shared lifeworld context ever completely rationalized,²⁶ and whether or not a society at a certain stage of development advances depends on a

²²ibid, p.103

²³ibid, p.105

²⁴Thomas McCarthy, *The Critical Theory of Jürgen Habermas*, p.372; quotation from *Legitimation Crisis*, pp.43-44.

²⁵Stephen K. White, p.99.

²⁶ibid, p.103.

number of factors not determined by the structural logic of rationalization stages. For example, Habermas shares with Marx a functional understanding of the changes which spur the paradigm-shifts to higher stages: they arise because of "the imbalanced growth of systematic integration imperatives" which earlier communicative rationalization of the lifeworld first made possible.²⁷

Thus Habermas hopes to reintegrate systems theory into the larger picture of communicative action theory:

..systems theory offers useful instruments for analyzing initial conditions for evolutionary innovations, namely the appearance of system problems that overload a [society's] structurally limited steering capacity..²⁸

Moreover, as McCarthy points out, even when people and social movements are faced with such "crises," "whether they succeed in institutionalizing new forms of social integration, and whether these institutions can be stabilized, are also dependent on contingent circumstances."²⁹

The overall processes of social evolution, then, must be distinguished from the universal stages discernable within communicative sociation. As Habermas argues in "Toward a Reconstruction of Historical Materialism,"

If we separate the logic from the dynamics of development--that is, the rationally reconstructible *pattern* of more and more comprehensive structures from the *processes* through which the empirical substrates develop--then we need require of history neither unilinearity nor necessity, neither continuity nor irreversibility.³⁰

In other words, the internal structural logic of social evolution clarifies the stages of sociation--and the normative structures of social integration in particular--which societies pass through *if* they are in fact evolving. The *structural logic* versus *contingent dynamics* distinction in the comprehensive theory of social evolution thus parallels the distinction between "structural" and "psychodynamic" aspects in the theory of individual socialization. Personal differences in psychological development

²⁷Stephen K. White, p.107-8.

²⁸Jürgen Habermas, *Communication and the Evolution of Society*, "Historical Materialism and the Development of Normative Structures," p.125.

²⁹Jürgen Habermas, *Communication and the Evolution of Society*, Translator's Introduction, p.xxiii.

³⁰Jürgen Habermas, *Communication and the Evolution of Society*, "Toward A Reconstruction of Historical Materialism," p.140.

mean that an individual's moral action may not match their structural level of moral consciousness;³¹ likewise, a society may only imperfectly fulfill the demands of its attained forms of social integration and legitimation.

These methodological considerations form the basis for Habermas's substantive arguments concerning the logic of social evolution, including its different stages in social integration and corresponding levels of legitimation. As we will see, Habermas's argument for the possibility of democracy beyond nationalism is based on further development and extension of this model of social evolutionary stages.

IV. Democracy Beyond Nationalism: The Problem

In "Citizenship and National Identity,"³² Habermas begins by acknowledging present tensions within Germany in particular, and Europe in general. While "the states of the European Community are gradually growing closer together" with the institution of the common market, "the nationality conflicts that are breaking out throughout Eastern Europe" force us to reconsider the relation of nation-states to democratic political processes (p.1). The distinction between these two is evident enough, "for the democratic processes that have gone hand in hand with the nation-state lag hopelessly behind the supranational form taken by economic integration" (p.1).

This situation has the form of a "legitimation crisis" for Habermas: "the complementarity between the requirements of the political-economic system and the legitimate expectations of society's members is breaking down."³³ Moreover, Habermas suggests that a similar phenomenon is developing with the reunified German federation itself:

Many German intellectuals have complained about the democratic deficit incurred by a process of unification that has been effected more at an administrative and economic level than by enlisting the participation of citizens" (p.2).

³¹Jürgen Habermas, *Communication and the Evolution of Society*, Translator's Introduction, p.xxi.

³²All references to this text will be given parenthetically by the pages of the original *Praxis* article.

³³Thomas McCarthy, *The Critical Theory of Jürgen Habermas*, p.375, from the discussion of Habermas's argument in *Legitimation Crisis* (1975).

The same problem of *technocracy* threatens the European Union, due to the dominance of economic imperatives and "system integration" over "social integration through values, norms, and processes of reaching understanding" (p.8). As a result, "political integration via citizenship" (a key component of social integration) is subordinated to the "systems imperatives" of capitalism:

..the tension between democracy and capitalism is expressed in the vertical divide between the systematic integration of the economy and administration at the supernational level and the political integration that thus far works only at the level of the nation-state (p.8).

This suggests to Habermas that nation-states "constitute a problem along the thorny path to European Union" mainly because they fragment the public sphere into "national units." As a result,

The new elites of bureaucrats are, formally speaking, still accountable to the government and institutions in their respective countries of origin; factually, however, they have outgrown their national context...Professional civil servants form a bureaucracy that is aloof from democratic processes...For the citizen, this translates into an ever greater gap between being affected by something and participating in changing it" (p.9).

In Habermas's view, however, this deepening problem may not be solved merely by "the parliamentization of Brussels" and direct election of its members, because its roots lie in the very conception of democratic citizenship in nation-states. The emphasis on negative liberties of private ownership and social rights associated with the welfare state allows for the decline of active, participatory democracy, because these rights can be "grasped from a functionalist viewpoint" (p.10). As Habermas says, "rights of individual freedom and social security can just as well facilitate a privatist retreat from citizenship and a particular `clientalization of the citizen's role" (p.11). Likewise, in European politics, the goals set for the European Union, such as adoption of a single currency and subsequent "coordination in other policy fields as well," are guided only "by criteria of economic rationality." They do not address the need to form a European public sphere in which everyone affected by these changes could develop direct loyalty to each others' common interest (p.9).

Against this trend, Habermas seems to be in fundamental agreement with Jacques Delors's call for genuine "social union" against those who "hold to a purely utilitarian vision of Europe, to

what is customarily called `economic integration.'" ³⁴ Without real social integration, the European Union will not be able to embody a common *moral* life in Habermas's sense.

These opposed views on what form of `supranational' union to sanction involve philosophical differences that are not new. The utilitarian ideology conceives of the union as merely an association for mutual instrumental benefit, and thus supports "a loose federation of semi-sovereign individual states" (p.8). But as its critics have always argued, this *states rights* position undermines democracy by accepting administrative structures beyond the reach of democratic process. ³⁵ Thus in his inspired argument for world union, Jacques Maritain reminds us of Stringfellow Barr's dictum that "government must apply law to men and women, not merely to subordinate government."³⁶ In opposition to what he calls the "merely governmental theory of world organization," Maritain argues for a "*fully political* theory of world organization" based on the ideal of a genuine, freely generated "*World political society*."³⁷ Without a basis in an actual "political society" or "body politic," as Maritain says, "the World Government would be an absolute Super-state," and it would only be superimposed on the system of national states "even though it were born of popular election and representation."³⁸ Habermas's point in regard to European Union is exactly analogous. Without the development of a "common *political* culture" in Europe (p.12), even the direct election of the Brussels Parliament will not correct the imbalances or connect people's motivations to rational will formation at the European level.

V. The Evolutionary Strategy of Habermas's Argument

In order to show that the exercise of democratic popular sovereignty is *possible* at regional

³⁴Jacques Delors, *The Single Act and Europe: A Moment of Truth* (from Delors' Jean Monnet Lecture at the European University Institute in Florence, November 21, 1986), p.3.

³⁵Thus while conservative opponents of European `big government' criticize the sprawling bureaucracy of the E.C., it should rightly be argued that their own utilitarian ideology is bound up with the roots of the problem.

³⁶Jacques Maritain, *Man and the State*, p.197.

³⁷ibid, p.202-203.

³⁸ibid, p.203.

levels (and eventually the global level), Habermas presents an argument that "republican citizenship" does not essentially require a basis in a particular national or cultural form of life. He begins by considering two different meanings of "nation." On one view, "the nation constitutes the prepolitical unity of a community with a shared common historical destiny" (p.2). This corresponds to the old Roman usage: "*Natio* refers, like *gens* and *populus* and unlike *civitas*, to peoples and tribes who are not yet organized into political associations" (p.3).³⁹ It was only much later that "nations" in this ethnic sense became the social basis for organized "nation-states" with legal status.

There were also several forms of *state* or political order prior to this point in European history. Habermas mentions several, including the "premodern form of empire," the Swiss federation, but concludes that "it was *territorial states* with a central administration that exerted a structuring influence on the system of European states" in the 16th century (p.2). The democratization of these territorial polities, however, was initially achieved only by allowing prepolitical racial nationality "to play a constitutive role in defining the political identity of the citizen within a democratic polity" (p.3). In the 18th century,

the nation state laid the foundations for cultural and ethnic homogeneity on the basis of which it then proved possible to push ahead with the democratization of government ...although this was achieved only at the cost of excluding ethnic minorities (p.2).

This extremely plausible analysis of the birth of democracy becomes the central to Habermas's argument. In the context of his theory of social evolution, it implies that "nationalism" in the sense of social integration by identification with a particular ethnic and cultural heritage was crucial in the *dynamic* development of democracy, but is nevertheless *not an essential structural component* of democracy. Thus Habermas says that nationalism "founded a collective identity that played a *functional* role for the implementation of the citizenship that arose in the French Revolution" (p.4).

Since they have only a "socio-psychological connection" (p.4), however, "the initial fusion of republicanism with nationalism only functioned as a catalyst" (p.3). In time, Habermas argues,

³⁹The root of "natio" in this sense is the same "nat" we see in "natural" origins and "nativity."

"hereditary nationalism gave way to an acquired nationalism" based on the citizen's more personal and reflective identification his nation (p.4). In particular, Habermas refers to the systematic importance of national patriotism as instrumental in this change: "Nationalism and republicanism combine in the willingness to fight and, if necessary, to die for one's country" (p.4). By the 19th century, it then became possible for jurists to conceive of a nation as "a nation of citizens" which

..does not derive its identity from some common ethnic and cultural properties, but rather from the *praxis* of its citizens who actively exercise their civil rights. At this juncture, the republican strand of "citizenship" completely parts company with the idea of belonging to a prepolitical community (p.3).

Unlike the shift from territorial to nation-state, the shift from hereditary to acquired nationalism does signify an evolutionary development at the level of structural logic, because collective identity formation starts to be based on a different conception of legitimacy itself. Thus Habermas argues that in the philosophy of Kant and Rousseau, "popular sovereignty...signified the transformation of authoritarian into *self-legislated power*."

VI. Nationalism, Collective Identity, and Normative Cores

Habermas's argument for democracy beyond nationalism thus depends on an evolutionary understanding both of democratic citizenship and of nationalist identification which separates the two. We will be able to identify the underlying premises of this argument more easily when it is understood against the background of Habermas's earlier work on the structural logic (communicative sociation aspect) of social integration, in which he considers three tightly interwoven but systematically distinct concepts: *collective identity, legitimation, and state organization*.

In his essay on "Historical Materialism and the Development of Normative Structures," Habermas argues that there are "homologies between the structures of the ego and of world-views." With certain caveats, he lays out a provisional set of correspondences:⁴⁰

⁴⁰Jürgen Habermas, *Communication and the Evolution of Society*, "Historical Materialism and the

(continued...)

World Views

"Sociomorphic" mythology
of world centered around
tribal group

Archaic societies organized
through state dominion;
"conventional stage of
moralized law"

"Developed civilizations;"
"Cosmological world views,
philosophies, higher religions"

Modern state;
capitalist economy;

Ego Demarcations

Egocentric/Preoperational
stage of child's ego

"Sociocentric-objectivistic" ego;
child at "the stage of concrete
operations"

"Formal-operational thought;"
"Unity that the youth can
establish at the stage of universalism"

Subjective turn;
Unity secured only reflectively.

While there are also certain "homologies between the structures of ego-identity and of group identity," Habermas argues that there is one crucial difference. While an individual's identity depends on the intersubjective recognition of it by others, "by contrast, the self-identification of a group is not dependent on intersubjective recognition by another group."⁴¹ This becomes important in Habermas's subsequent analysis of empires. Apparently with forms of cultural and ethnic identity in mind, Habermas also characterizes "collective identity" in a more precise way:

I would like to reserve the expression *collective identity* for reference groups that are essential to the identity of their members, which are in a certain way "ascribed" to individuals, cannot be freely chosen by them, and which have a continuity that extends beyond the life-historical perspectives of their members.⁴²

Collective identity, then, is in a sense *holistic*, because it operates like a form of systems integration. It is therefore to be distinguished from "identity that persons claim for themselves and maintain in communicative action."⁴³

According to Habermas, collective identity also differs from individual ego-identity in other

⁴⁰(...continued)
Development of Normative Structures," p.104-5.

⁴¹ibid, p.107-8.

⁴²ibid, p.108.

⁴³ibid, p.109.

important ways, especially because "collective identity regulates the membership of individuals in society (and exclusion therefrom)." ⁴⁴ Thus different forms of collective identity for a society would seem to set limits on the intersubjective recognition of individual identities as well. However, we cannot simply infer homologies between stages of ego-development and different forms of collective identity, because of "the complexity of the connection of collective identity with world views and systems of norms." Thus Habermas writes:

Following Parsons, we can distinguish cultural values, action systems in which values are institutionalized, and collectives that act in these systems. Only a *certain segment* of the culture and action system is important for the identity of a collective--namely the taken-for-granted, consensual, basic values and institutions that enjoy a kind of fundamental validity in the group. ⁴⁵

It is this crucial point that allows Habermas to fit *legitimation* into his anthropological analysis of social integration through collective identity formation. In Habermas's view, it is to these "normative cores" of basic consensual values, which already have a *communicative* meaning, that different forms of collective identity correspond.

On this basis, Habermas then summarizes several stages of social integration, starting with "neolithic societies" in which a common cosmogonic ancestor was the basis for group identification. Next, "the transition to *societies organized through a state* required the relativization of tribal identities" in favor of identity based on "belonging in common to a territorial organization." Political domination in the case of empires, however, had to be based on "the legacy of an order of a world" grounded in universal cosmologies and philosophies recognizable to more than one people. It is at this point that the decisive "break with mythological thought" occurs, in Habermas's view.

The analysis of imperial states is especially significant, because different conceptions of empires often enter into current debates about regional federations and a possible world union. Habermas makes the intriguing argument that empires formed collective identities in his sense (because they were "not dependent on a system of reciprocal recognition" with other empires); and

⁴⁴ibid, p.111.

⁴⁵ibid, p.111

yet within the collective paradigm they nevertheless had to assert the *totality* of their collective identity, since it was supposed to be based on universal claims:

The great empires were not universal in name alone. Their peripheries were fluid; they consisted of allies and dependents. In addition there were barbarians...aliens who were potential members but who, so long as they had not the status of citizen, did not count as fully human.⁴⁶

On Habermas's analysis, this is possible precisely because only "I-thou-we" relations are necessary for group identity: hence "a group can understand and define itself so exclusively as a totality that they live in the idea of embracing all possible participants" while those outside (the barbarians) become "neuter."⁴⁷

Inwardly as well, the empires did not achieve social integration through the kind of conventional roles based originally on kinship structures [which became feudal roles in small kingdoms]. Rather, their "highly stratified civilizations" were integrated through allowing "a broad spectrum of belief attitudes toward the same tradition."

In this respect, the nation-states developing at the beginning of the modern era are the antithesis or inversion of the old empires. The sovereignty of emerging sixteenth-century nation-states was based essentially on reciprocal recognition by other sovereign states, and the universalism that previously just concealed "the particularity of domination" in empires was actually realized in a "depoliticized and market-regulated economic system." Hence the state arising out of capitalism was organized "on universalistic principles in the framework of bourgeois civil law," and developed towards a more abstract identity:

..emancipated members of bourgeois society, whose conventional identity had been shattered, could know themselves as one with their fellow citizens as (a) free and equal subjects of civil law (the citizen as private commodity owner), (b) morally free subjects (the citizen as private person), and (c) *politically free* subjects (the citizen as *democratic citizen* of the state)...However, these abstract determinations are best suited to the identity of *world citizens*, not to that of a particular state that has to

⁴⁶ibid, p.113.

⁴⁷ibid, p.108.

maintain itself against other states [*italics mine*].⁴⁸

Here we clearly have a crucial component in Habermas's recent argument that democratic citizenship does not essentially require nationalism. If the nationalist homogeneity that made possible the democratization of nation-states is not fundamentally in agreement with the universalism of their "normative core," then it should be possible to organize a state on the basis of that core without nationalism. In other words, "the modern understanding of republican freedom can cut its umbilical links to the womb of national consciousness" (p.4).

In fact, Habermas's claim in "Historical Materialism and the Development of Normative Structures" is somewhat stronger. He suggests that because the social identity of mobile persons in modern states has a universalist core, patriotic loyalty for conscription had to have a separate basis: hence "the double identity of the citizen in the modern state--he is *homme* and *citoyen* in one."⁴⁹ Thus a 'legitimation crisis' threatens the system of nation-states threatens not only because of the expansion of supranational bureaucracies for international economic coordination, but also because the normative core of democracy undermines the ethnocultural particularism behind *nationalist* patriotism:

..the nation is the modern form that defused and made bearable to contradiction between the intrastate universalism of bourgeois law and morality, on the one side, and the particularism of individual states, on the other. Today, there are a number of indications that this historically significant solution is no longer stable....Conflicts that are ignited below the threshold of national identity are breaking out everywhere, in connection with questions of race, creed, language, regional differences, and other subcultures.⁵⁰

Published in 1976, today this statement can only be regarded as terribly prophetic. In light of this analysis, moreover, we should not be deceived into thinking that the contemporary resurgence of racist separatism in the world counts against Habermas's arguments for transnational democracy. Instead, it tends to confirm the accuracy of his analysis. Unfortunately, one way people solve the

⁴⁸ibid, p.114.

⁴⁹ibid, p.115.

⁵⁰ibid, p.115.

`cognitive dissonance' between nationalism and democracy, with its normative core of universal rights, is to abandon the latter.

This normative core of democracy did not become immediately obvious from the self-determining nature of "acquired nationalism" however. Habermas acknowledges that

For a long time... `Staatsbürgerschaft,' `citoyennete,' or `citizenship' all only meant...political membership. It is only recently that the concept has been expanded to cover the status of citizens defined in terms of civil rights" (p.5).

In this way, self-determining identity was still linked to the individuals's identification with a historically defined national-cultural heritage. In *Between Fact and Norm*, Habermas characterizes this same transitional stage as follows:

In place of religious or metaphysical self-interpretations, history now becomes the medium in which cultures and peoples find their self-assurance...During the nineteenth century a posttraditional identity first took on definite shape under the banner of a kindred relation between nationalism and historicism. But this was still nourished on a national-historical dogmatism that has since then been in the process of disintegration.⁵¹

Despite this transitional form, then, the demand for "a conscious and self-critical appropriation" of one's own life history had already begun with Rousseau.⁵² Thus Habermas can argue that from the beginning, republican citizenship was correlated with a normative core based on the same universal conception of normative rightness which had only become fully apparent with the civil rights of participation for *active* citizenship: "The republican meaning of citizenship...has as its reference point the problem of societal self-organization and *at its core* the political rights of participation and communication" (p.5--emphasis added).

Real freedom and autonomy, on this view, are *not* essentially defined by liberal negative rights the social welfare rights:⁵³ "It is indeed only political rights of participation which endow the citizen with this kind of self-referential competence" (p.10). It is only these rights of active

⁵¹Jürgen Habermas, *Between Facts and Norms*, Chapter Three, mss. p.20.

⁵²ibid, p.19.

⁵³Although Habermas of course admits that such rights to distributive justice can provide "the legal basis for the social independence necessary for an effective exercise of political rights" (p.10). Clearly though, in this way their link to real autonomy is derivative.

citizenship that cannot be understood from a functionalist viewpoint; it is only the freedom they define which cannot be assimilated to inclusion in functional systems of integration. Habermas's claim is that this conception of active citizenship later enshrined in participatory civil rights was already the philosophical meaning of republican "popular sovereignty" for Rousseau and Kant:

This concept of popular sovereignty does not refer to some substantive collective will which would owe its identity to a prior homogeneity of descent or form of life. The consensus achieved...stems in the final instance from an identically applied *procedure* recognized by all. This procedure assumes differentiated form in the constitution of a democratic state (p.4).

All that is required to *participate* in the procedure of discursive will formation is *humanity* itself. Thus republican popular sovereignty is a 'structural' advance over territorial nationalism. It provides a fundamentally new normative core for group identity, and changes "the very mode of how political authority is constituted and legitimated" (p.4). Thus Habermas can say: "only briefly did the democratic national state forge a close link between 'ethnos' and 'demos.' Citizenship was never conceptually tied to national identity" (p.4).

The intimate connection between republican citizenship and the universalist core of later civil rights is thus a basic premise in Habermas's evolutionary argument. In short, it contends that republican citizenship involves a "mode" of legitimation different from the kind of normative core around which "nationalist" collective identity can easily be formed. There is at least one other basic premise required for the argument, however: the distinction between legitimation and state organization.

VII. Legitimation and State Institutionalizations

Habermas gives a much fuller account of how stages in collective identity correspond to "modes" of legitimation, and the latter to forms of state organization, in his essay on "Legitimation Problems in the Modern States." Habermas begins by arguing that "only political orders can have

and lose legitimacy."⁵⁴ Legitimacy only applies to states as particular political organizations, not to "nations" in the first sense, i.e. "prestate, so-called primitive, societies that are organized according to kinship relations:"

To be sure, in these societies there are myths that interpret the natural and social order. They fix membership in the tribal group (and its limits) and thus secure a collective identity. Mythological world views here have a constitutive significance rather than a subsequent legitimating significance."⁵⁵

Legitimacy in Habermas's sense, then, seems to be correlated with the emergence of law in archaic societies--we might think of the "Code of Hammurabi" for example. Thus the kind of "political domination" capable of legitimization is seen in "the function of the royal judge," where political sanction has a basis in some form of legal norms.⁵⁶

The relation between forms of state organization and collective identities is also complex. Because collective identity depends on a normative core of shared meaning, states "cannot freely dispose of the capacities of social integration or of the definitional power through which the identity of a society is fixed." The idea here seems to be that because this definitional power is communicative, it cannot just be manipulated without being destroyed. As Habermas says in the article, "there are good reasons why modern compulsory law does not apply to the motives and beliefs of its addressees" (p.6).

The state does not, it is true, itself establish the collective identity of the society; nor can it itself carry out social integration through values and norms, which are not at its disposition.⁵⁷

⁵⁴Jürgen Habermas, *Communication and the Evolution of Society*, "Legitimation Problems and the Modern State," p.179.

⁵⁵ibid; This last point seems somewhat questionable, however. It suggests that the identification produced by myth and ritual in aboriginal societies is taken as completely unquestioned fact backed with threat, with no communicative element of evaluative meaning at all. This interpretation seems to come from Habermas's homology between collective identity in primary societies and the "preconventional" stage of moral development, in which "the physical consequences of action determine its goodness or badness regardless of the human meaning or value of these consequences" ("Moral Development and Ego Identity, p.79). This view also embodies the notion that there is a stage of "mythos" which is entirely devoid of "logos" or communicative meaning--a thesis which Gadamer calls the essential paradigm of enlightenment thinking.

⁵⁶ibid.

⁵⁷ibid, p.180,

However, state power is linked to collective identity, because state sanction is supposed to "prevent social disintegration," and thus maintain society "in its normatively determined identity." This indirect connection does mean that "different forms of identity" are only compatible with certain kinds of state organization, but the two remain distinct:

A world empire, a polis, a medieval commune, a nation--these express the connection of different political orders with different forms of life (ethos).⁵⁸

Thus we might think of societies organized through forms of state as syntheses of collective identities (ethos) with forms of political domination that serve to preserve their normative core.

As a result, conflicts over the legitimating doctrine behind state authority have to refer to the normative core of that society:

They had to relate to definitions of collective identity; and these could in turn be based only on structures that established unity and guaranteed consensus, like ethnic background, tradition, or indeed reason."⁵⁹

In other words, "the *claim to legitimacy* is related to the social-integrative preservation of a normatively defined social identity." On these grounds, Habermas is able to argue that legitimacy itself has an evolutionary logic corresponding to collective identity and indirectly to states. These two must thus be distinguished as "*legitimizing grounds*" versus "*institutionalizations of domination*." It is the former that are most strongly tied to rational motivation. Thus Habermas says that although legitimations do depend "on empirical motives" (which are psychodynamically contingent), "these motives are not formed independently of the (formally analyzable) justificatory force of the legitimations themselves."⁶⁰ These different "formally analyzable" kinds of justification then constitute something like 'stages' in a structural logic of legitimation. Habermas calls these "levels of legitimation."

These levels of legitimation are "connected with social-evolutionary transitions to new

⁵⁸ibid, p.180.

⁵⁹ibid, p.182.

⁶⁰ibid, p.183.

learning levels,"⁶¹ i.e. levels of the communicative rationalization of the lifeworld. In the analysis that follows, Habermas gives an informal sketch of these levels, working from the premise that "certain systems of institutions are compatible with a given level of justification; others are not."⁶² There are three basic divisions in this analysis, as well as further subdivisions within the three superparadigms of legitimation:⁶³

Levels of Legitimation

Legitimizing grounds	Typical Institutionalizations of domination
1. (Cosmogonic narrative --not genuine legitimation)	Tribal ruling families; Kingdoms based strictly on mythology (Egypt);
2. Cosmological philosophy and higher religions (traditional values in rationalized world-views)	Polis or city-state; Archaic kingdoms based on law (ancient Israel) Ancient empires with political orders;
3.a. Liberal natural law valid independent of cosmological metaphysics	Emerging modern territorial state (development of capitalism; negative liberties of private commodity owners)
3.b. Procedural/reflective justification (Hobbes, Locke, Rousseau, Kant)	Modern democratic nation-states

The last level in this series corresponds to the legitimation by fair *procedure* which Habermas regards as the basis for republican popular sovereignty ('the first basic premise'). While each stage in this evolution brings forward a whole new *kind* of reason as justificatory, in the last instance "the formal conditions of justification themselves obtain legitimating force."⁶⁴

The crucial distinction between levels of legitimation and their possible institutionalizations forms the second basic premise for the Habermas's argument for the possibility of democracy without nation-states. Taken with the first premise, it has extremely important consequences for the

⁶¹ibid, p.185.

⁶²ibid, p.183.

⁶³ibid; summarized from pages 184-185.

⁶⁴ibid, p.184.

evolutionary analysis. Habermas argues that while Rousseau introduced the procedural contract, he still "mixed the introduction of a new principle of legitimation with proposals for institutionalizing a just rule."⁶⁵ But the evolutionary analysis of social integration suggests that these should be distinguished. If this is accepted, then democracy is not a particular form of *state* organization, but a *level of legitimation*:

If one calls democracies precisely those political orders that satisfy the procedural type of legitimacy, then questions of democratization can be treated as what they are: as organizational questions. For it then depends on the concrete social and political conditions, on scopes of disposition, on information, and so forth, which types of organization and which mechanisms are in each case better suited to bring about procedurally legitimate decisions and institutions.⁶⁶

The contingencies of context, then, should affect what specific constitutional shape democracy might have in a particular society, but this question of *institutionalization* remains distinct from democracy itself.

If we then put Habermas's levels of legitimation together with his stages of collective identity, the resulting picture (see diagram in Appendix A) places integration through nationalism in structural correspondence with a pre-modern legitimation: i.e. a normative core based on identification with the ethical values of a particular culture reproduced through rationalized tradition. The nation-state then appears as a *transitional form* of state organization, which is also an inherently unstable type of institutionalization when democracy by fair procedural justification has become the normative core. The internal logic of social evolution then suggests the projection of a further stage in which trans-national states could be the preferred form of institutionalization for democracy within societies whose group identity can only be defined relative to a universalist normative core (e.g. pluralistic, multicultural societies).

VIII. An Outline of Habermas's Grounds for the Two Basic Premises

⁶⁵ibid, p.186.

⁶⁶ibid, p.186.

As we have seen, Habermas's separation of republicanism from nationalism turns on the distinction between democracy and its state forms, and on the deep connection Habermas sees between republican popular sovereignty (democratic citizenship) and the Kantian basis a procedural morality supporting universal human rights. These theses are defended in much greater detail in *Between Fact and Norm*, in which Habermas argues that when republican popular sovereignty is understood as a principle of *communicative* justification, then the universal human rights underlying democratic citizenship emerge as principles for *any* just institutionalization of popular sovereignty employing the rule of law.

On this approach, a democratic constitution can then be understood as founding "a state power" that "legally institutionalizes civic autonomy" by providing stability for the expectations guaranteed in its basic rights.⁶⁷ A specific democratic constitution is "a legally binding interpretation of the system of rights," in which the unsaturated basic categories of the legal code are "*specified* according to circumstances" in a particular society.⁶⁸ But because fundamental categories of rights in this "legal code" forming "the principle of democracy" can be derived from the interpenetration of the discourse principle and the legal medium as such,⁶⁹ we can determine in advance the set of unsaturated "legal principles by which the constitutional law-giver orients herself."⁷⁰ On this basis, it is possible to distinguish the normative core of democracy from the specific constitutional state forms in it is reflexively established:

Thus one can understand the basic rights selected by historical constitutions as context-dependent readings of the *same* system of rights.⁷¹

This clearly backs up Habermas's earlier claim in the analysis of social integration that "democracies are distinguished from other systems of domination by a rational principle of legitimation and not by

⁶⁷Jürgen Habermas, *Between Facts and Norms*, Chapter Four, ms. p.1-2.

⁶⁸Jürgen Habermas, *Between Facts and Norms*, Chapter Three, mss. p.62-63.

⁶⁹Jürgen Habermas, *Between Facts and Norms*, Chapter Three, ms. p.53

⁷⁰ibid, mss. p.59,

⁷¹ibid, mss. p.63.

types of organization marked out a priori."⁷²

Habermas presents his argument for the connection between republican popular sovereignty and universal rights through a fairly complex historical and philosophical analysis of law and morality. In this context, I can only consider a few parts of this argument directly related to democracy and nationalism.

At the outset, Habermas notes that the connection between modern law and "subjective rights" (or private liberty to do anything not in violation of others' liberties) explains "why modern law is suitable for the social integration of economic societies" which rely on individual rational interest-based action for much of their internal coordination.⁷³ If the legitimacy of rights is only that of positive law based on popular sovereignty (political/public autonomy), however, then we seem to be unable to take the foundational rights of political participation themselves as subjective liberties (although they also must be in a sense). This problem "with the central position of civil rights" cannot be resolved, in Habermas' view, as long as we remain with the philosophy of the subject. We end up either with the "subordination of subjective rights to objective law" and a positivist understanding of legitimacy as whatever is simply decided in popular sovereignty,⁷⁴ or with the principle of democracy subordinated to the moral principle of universalizability, as in Kant's philosophy.⁷⁵

Habermas proposes to resolve the tension between "morally grounded human rights" and the democratic "principle of popular sovereignty" by arguing that "what self-legislation or moral autonomy signifies in the sphere of personal life conduct corresponds to the rational-legal interpretation of political freedom, i.e. democratic self-legislation for the constitution of a just society."⁷⁶ Unlike Kant, who grounds subjective rights in an the morally autonomous person's innate

⁷²ibid, p.186.

⁷³ibid, ms. p.1-2.

⁷⁴ibid, p.10.

⁷⁵ibid, p.4.

⁷⁶ibid, p.21-22.

or "primordial human right" to "equal subjective liberties backed by entitlements to coercion," Rousseau bases legitimacy itself in a social contract that expresses the formal conditions of fair intersubjective agreement.⁷⁷

Habermas's insight consists in realizing that on this approach, no metaphysical basis is required:

the normative content of human rights rather enters into the very mode of carrying out popular sovereignty; the united will of the citizens is bound through the medium of universal and abstract laws to the democratic legislative procedure, which excludes per se all nongeneralizable interests and only admits regulations that guarantee similar subjective liberties for all.⁷⁸

However, under the influence of the republican tradition, Rousseau still "gives the idea of self-legislation more of an ethical than a moral interpretation."⁷⁹ He thus ends up strengthening the common misunderstanding that human rights relate to moral self-determination, while popular sovereignty is "the expression of ethical self-realization" in the pursuit of collectively valued ends.⁸⁰ Instead, Habermas argues that the principle of legitimacy embodied in Rousseau's social contract must be reconstructed as a principle for "rational acceptability" based on "the *pragmatic* conditions of discourses in which the only thing that counts is the compelling force of the better argument."⁸¹

Habermas is referring here to his formulation of the "Discourse Principle" for the justification of norms by participants in *practical* discourse, i.e. discourse aimed at the formation of a general will based (ideally) on the force of reasons offered to redeem validity claims:

(D) Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*.⁸²

⁷⁷ibid, mss p.25-26.

⁷⁸ibid, mss p.26.

⁷⁹ibid, mss p.27.

⁸⁰ibid, mss p.24. Here we also see how the dynamic "nation state" symbiosis discussed above entered into Rousseau's formulation of republicanism: "He counts on political virtues that are anchored in the ethos of a conspicuous, more or less homogenous community integrated through common cultural traditions" (mss. p.27).

⁸¹ibid, mss. p.28.

⁸²Jürgen Habermas, *Discourse Ethics*, in *Moral Consciousness and Communicative Action*, tr. Christian Lenhardt and Shierry Weber Nicholsen, p.66.; Habermas gives a similar formulation in *Between Facts and Norms*, mss. p.34.

On this basis, Habermas can avoid Rousseau's conclusion that "the rational will can only constitute itself in the macrosubject of a people or a nation,"⁸³ and yet retain the intersubjective *procedural* basis of legitimacy in the social contract:

The sought-for internal connection between popular sovereignty and human rights lies in the normative content of a mode of exercising political autonomy, a mode that is not secured simply through the form of general laws but only through *the communicative form* of discursive processes of opinion and will formation.⁸⁴

This resolves the paradox of political (public) and private (subjective) autonomy in a most original way: by asserting the *equiprimordiality* of the system of universal rights and the democratic principle of legitimation through popular sovereignty [see Diagram B]. Both emerge *simultaneously* from the Discourse principle for communicative justification in general, *if* this principle of legitimation is to be given determinate shape through legal institutions: "the system of rights states precisely the form of communication necessary for politically autonomous law-making can be legally institutionalized."⁸⁵

But as Habermas says, in a postmetaphysical age, the rationalization of the lifeworld is such that "society" as a whole can only be integrated through a legal system⁸⁶--as we already saw, this is practically given from the emergence of capitalist individualism onwards. For a modern society, law must serve as the "expectation stabilizing complement to morality."⁸⁷ Once the Discourse principle is to be embodied in the legal institutions of constitutional law, however, it is possible to derive several categories of rights which any just constitution must secure in some form. Three of these categories "regulate the relationships of freely associated citizens with one another *prior to any*

⁸³Jürgen Habermas, *Between Facts and Norms*, Chapter Three, mss. p.29.

⁸⁴ibid, mss p.28-29.

⁸⁵ibid, mss p.30.

⁸⁶ibid, mss p.23.

⁸⁷ibid, p.49.

objective-legal organization of a state authority,"⁸⁸ and they therefore "establish the legal code as such."⁸⁹ Among them is "the right to equal rights of membership in a voluntary association of consociates under law" which "presupposes a spatiotemporal delimited collective with which members can identify."⁹⁰

Habermas's penetrating argument for this basic right-category includes considerations that are absolutely essential to (although not always fully spelled out in) his defense of liberalized immigration laws in other publications. The legal code must include basic rights to membership, because by its very nature, law applies to "the interaction contexts of a concrete society." The inherent "positivity of law" means that it can only exist in an actual society, with a "geographically delimited legal area" and a "socially delimitable collective of legal consociates."⁹¹ This requirement for a concrete context for law as a means of organization implies that any legal code must include "rights that regulate membership in a *determinate* association...thus allowing one to differentiate between members and non-members, citizens and aliens."⁹² But because of the impartiality of the Discourse principle that defines *legitimate* procedure for popular sovereignty, citizens cannot simply decide who to admit and who to exclude. Habermas argues that for membership rights to be just, they must regulate membership "in the equal interest of members and petitioners" alike.⁹³ Furthermore, Habermas makes the extremely significant point that the requirement that the legal code apply to a concrete society and have a factual context *does not imply that this context must be sub-global*. The entire world could count perfectly well as a concrete context in the sense required for the legal organization of state authority:

For every earthly monopoly of force, *even if it were that of a world government*, has finite dimensions--which remain provincial in comparison to the future and the

⁸⁸ibid, mss p.55.

⁸⁹ibid, mss p.58.

⁹⁰ibid, Chapter Four, mss p.3.

⁹¹ibid, Chapter Three, mss p.56-57.

⁹²ibid.

⁹³ibid, p.58.

universe. [my italics]⁹⁴

In other words, a civil society in which democratic principles are established through just constitutional law could be a *global civil society*. This structural possibility is implied by the nature of the legal medium itself.

Finally, the fourth category of basic rights "to equal chances at participation in the process of opinion- and will-formation in which citizens exercise their *political autonomy*" embodies the principle that civil rights of participation are essential to democratic popular sovereignty: "For political rights ground the status of free and equal citizens of a state."⁹⁵ This fourth category acts as a kind of bridging principle to constitutional institutionalization in Habermas's system, which indicates the absolute centrality of the political rights of participation for active citizenship, on his analysis. The right to equal rights of politically autonomous participation in law-making requires that the constitution in which the other three categories of unsaturated rights are specified *itself* be enacted through the fair procedure of popular sovereignty which this right defines. The *reflexivity* of this fundamental right thus ensures that the rights constituting democratic popular sovereignty are neither the decisionistic basis for the legitimacy of other rights adopted in a constitutional convention, nor the moral right innate to human beings prior any constitutional organization of the legal system:

The citizens themselves become those who deliberate and, in the role of constitutional law-giver, decide how they must fashion the rights giving the discourse principle the legal shape of a principle of democracy.⁹⁶

The constitution-founding acts are therefore "an originary use of a political autonomy that thereby constitutes itself."⁹⁷

⁹⁴ibid, mss p.57.

⁹⁵ibid, mss p.55.

⁹⁶ibid, mss p.61.

⁹⁷ibid, mss p.63; in other words, the discourse principle can apply to this constitutional process, and it also establishes democratic procedures of "opinion and will formation in which the discourse principle finds application" (mss p.61). It seems to me that this remains a critical, normative interpretation for the constitution-founding process, since it does imply that some constitutional adoption processes would be

(continued...)

In summary, the system of rights define the democratic principle which ensures that a constitution embodies democratic popular sovereignty, and the three basic categories of right that are necessary for *any* just constitution. The fourth basic right tells us that there can be no democracy without a constitutional state embodying the civil rights of democratic popular sovereignty. There can be no legitimate state organization, however, except through the rule of law. And there can be no legitimate law without the three basic categories of rights.⁹⁸

There are therefore strong rational grounds for the theses that (a) democracy is distinct from its various forms of institutionalization in different constitutional states, and that (b) the mode of legitimacy involved in republican popular sovereignty is inseparable from the universal human rights embodied in democratic civil rights to equal participation. As Habermas says,

The substance of human rights..resides in the formal conditions for the legal institutionalization of those discursive processes of opinion- and will-formation in which the sovereignty of the people assumes a practical shape.⁹⁹

The two premises required for the structural possibility of democracy beyond nationalism thus rest on a substantial normative analysis of the relation between law and morality.

IX. Against an Ethical-Cultural Interpretation of Democracy

This background helps to clarify Habermas's arguments in response to communitarian analyses of democracy. In the article on "Citizenship, Democracy, and National Identity," he first acknowledges that the communitarian interpretation of active citizenship as a form of social integration is superior to the "individualist and instrumentalist" interpretation of the liberal natural law tradition. For example, Charles Taylor advances what Habermas calls a "holist" view of citizenship as "a joint practice of self-determination:"

⁹⁷(...continued)
illegitimate, even if they resulted in just constitutions. It cannot therefore license an interpretation of the founding act as one of raw decisionistic power.

⁹⁸ibid, mss p.58.

⁹⁹ibid, mss p.30.

..the citizens are integrated into the political community like parts into a whole, i.e. in such a manner that they can only form their personal and social identity in this horizon of shared traditions and intersubjectively recognized institutions (p.6).

Unlike the instrumental organization model, this "holist model of a polity" has the advantage of emphasizing that "political autonomy is a purpose in itself" and thus based on genuinely cooperative action with a communicative meaning (p.6).

The danger with this holist approach, in Habermas's view, is that it requires democratic patriotism to be based essentially on "common identification with a historical community founded on certain values," including freedom (p.7). Habermas is concerned that this appears to contradict his conceptual separation of "republicanism and nationalism," but points out that

Taylor's remarks boil down to the requirement that the universalist principles of democratic states need anchoring in the political culture of each country (p.7).

As we have seen, Habermas agrees this requirement. The principles of democracy can only be realized in particular constitutional states, with specific legal interpretations of the basic rights that have a contextual basis in the actual historical and cultural conditions of the society. As Habermas repeatedly says, "the system of rights does not exist in transcendental purity," and hence the unsaturated rights of the legal code itself

..must be *interpreted* and *given concrete shape* by a political legislator according to circumstance....Only in a determinate constitution-founding interpretation do these rights first enter consciousness at all.¹⁰⁰

Disagreement arises because Taylor and other communitarians take their analysis to imply for democratic consociates that "they are *situated* in the horizon of the history of a nation of citizens in such a way as to be connected with their motives and convictions," and therefore that "the `citizen' must identify himself patriotically with a particular form of life" (p.7).

On Habermas's analysis, however, the requirement that a democratic constitution be rooted in a particular political culture does *not* imply that citizens must identify with the history of a specific national community. The communitarian analysis goes astray first because they fail to distinguish

¹⁰⁰ibid, Chapter Three, mss. p.63.

clearly between the universal meaning of democracy and its state institutionalizations. This is the same "republican" error which Rousseau himself tended to make, and thus he also took republican citizenship to be based on shared *ethical values*, including autonomy. But more importantly, the communitarian interpretation also seems to require the collective identity of citizens to be defined *in advance* by shared their shared values (including freedom). And this is the kind of collective identity that one has involuntarily through *cultural* heritage. It is as if the democratic civil society must already be constituted by its "form of life" before it has a social identity capable of serving as a base for democratic popular sovereignty.

In his new analysis of "The Principles of the Constitutional State," Habermas further suggests that this republican tendency to seek an ethical basis arises from its ties to the philosophy of consciousness. The uncorrected republican notion of popular sovereignty, which admits an "impenetrable decisionistic core of politics that splits law and morality," is also linked to a consciousness-philosophy understanding of collective identity:

The subject-philosophical conceptual basis of rational law still obscures the sociological view of the socially integrative force of the quasi-natural substrate of premodern societies; in fact, the complex of law and political power was able to *join forces* with this substrate for a long time.¹⁰¹

This is the same argument Habermas makes with regard to nationalism, which is a pre-modern "quasi-natural" [i.e. ethnic] substrate for collective identity. The form of state organization in nation-states made instrumental use of such pre-existing national identity, but in for democratic constitutional states, the legitimation of specific structures of state judicial, legislative, and executive power must actually have a normative ground.¹⁰²

Therefore Habermas argues, against this communitarian interpretation of citizenship, that social integration in a democratic society does not have to be based on a particular quasi-natural substrate:

¹⁰¹ibid, Chapter Four, mss. p.9.

¹⁰²ibid, Chapter Four, mss p.1-2

a *political culture* in the seedbed of which constitutional principles are rooted by no means has to be based on all citizens sharing the same language or the same ethnic and cultural origins. Rather political culture must serve as a common denominator for a constitutional patriotism which simultaneously sharpens an awareness of the multiplicity and integrity of the different forms of life (p.7)

This is the paradigm for integration in a *federal* state that overarches different ethnic backgrounds and traditional "forms of life." Habermas refers here to the United States and Switzerland as models, and now we see why Habermas was concerned to differentiate federation from empire. Although European history was dominated by territorial kingdoms, empires, and nation-states, a "federal form of state" had emerged in Lorraine following the Carolingian empire, and

It was, in particular, Switzerland where a *federation* sprang up strong enough to balance the ethnic tensions within a multicultural association of citizens (p.2).¹⁰³

This triumphant Swiss model is clearly a microcosm for the kind of Europe Habermas would like to see. Thus he says that "a future Federal Republic of European States" must be based on

the overlapping consensus of a common supranationally shared political culture of the European Community. Particularist anchoring of *this sort* would in no way impair the universalist meaning of popular sovereignty and human rights (p.7).

The key to this argument is clearly the idea that there can be a *substantial* "political culture" which is not identified with the particular "form of life" or ethos arising from the cultural values of any single tradition. The same premise is also evident in Habermas's argument against the communitarians on the subject of immigration and membership.

X. A Universalist Basis for Membership Rights

Habermas begins with the argument, supported by his analysis of the relation between law and morality, "that citizenship rights guarantee liberty because they contain a core composed of universal human rights" (p.13). For precisely this reason, constitutional courts have recognized that many of the fundamental liberties of citizens also apply to resident aliens: "Since the structure of the *Grundgesetz*..is based founded on the idea of human rights, *every* inhabitant enjoys the protection of

¹⁰³It is surely also no accident that Rousseau himself had strong ties to Switzerland, and to Geneva in particular.

the constitution" (p.13-4). We might add that in the United States, the Foreign Relations Laws apply basic constitutional liberties to the foreign actions of the U.S. government, and the Supreme Court has held that certain constitutional liberties apply to all human beings (and therefore to foreigners abroad, aliens standing trial in the United States, etc.).¹⁰⁴ Hence the "concept of citizenship" in democracy has been "disassociated from that of national identity" (p.14), and because of their basis in universal rights with a communicative meaning, membership rights cannot be judged on instrumentalist grounds. "The instrumental ethnocentrism of utilitarianism" (p.15) with its economic preferences and quotas determined solely for the advantage of current citizens is completely immoral and in tension with the normative foundation of republican citizenship.

For Habermas, this argument justifies Carens' view that we must consider the question of immigration or membership from the morally impartial perspective. As a result,

The criteria of ethnic origin, language, and education -- or an 'acknowledgment of belonging to the cultural community' of the land of migration...could not establish privileges in the process of immigration and naturalization (p.16).

Habermas's main concern, however, is to respond to typical communitarian counterarguments that, even if exclusion based on ethnic or *racial* criteria are unjust,¹⁰⁵ countries must have the right to restrict membership to preserve a specific *cultural* form of life. He agrees with the communitarian point that "the social borders of a political community do not just have a *functional* meaning."

¹⁰⁴See Richard Downing, "The Domestic and International Legal Implications of the Abduction of Criminals from Foreign Soil," in the *Stanford Journal of International Law*, Vol. XXVI, No.2, Spring 1990. Specifically, he notes that from the Restatement of the Third Foreign Relations Law, "it seems clear...that the Constitution applies to the actions of the federal government when the government acts outside U.S. territory" (p.578). In addition, although the Supreme Court (in *Verdugo-Urquidez*) limited aliens' protection from unlawful search and seizure in the United States, (!), on the ground that the "people" mentioned in the fourth amendment means "persons who are part of a national community," its decision "reserves the protections of the fifth amendment to *all* people" on the ground that they are "fundamental and therefore irrevocable" rights (pp.580, 582).

¹⁰⁵In his chapter on "Membership" in *Spheres of Justice*, Walzer seems to admit that "establishing ethnic quotas (like country-of-origin quotas in immigration policy)" would be unjust because on the immigrant-descendent analogy, it would be like forced birth control for less favored races (p.69). But later, he nevertheless defends "the principle of nationality" by which states gives priority to ethnic kinfolk of current citizens (p.77). And shockingly, he even suggests that if a country has "taken shape as a homogenous community," then the realities of that society might justify ethnic restrictions on immigration to preserve that homogeneity (p.76)! He says "Decisions of this sort are subject to constraint, but what constraints I am not yet ready to say."

Rather, communitarians such as Michael Walzer and H. R. van Gunsteren argue that such social border establish the group identity of citizens in terms of "a distinct historical community united by a common fate and a political life form" (p.16).

In accordance with his analysis of democratic constitutions, Habermas agrees that

The modern state also presents a political way of life which cannot be exhausted through the abstract form of an institutionalization of legal principles. The way of life builds a political-cultural context in which basic universalistic constitutional principles must be implemented (p.16).

But this political context does not have to be defined in terms of particular ethos or "life form." The communitarian argument to allow for restrictions securing "the ethnic-cultural substance of a way of life" errs on precisely this misunderstanding, in Habermas's view:

With this the *particularistic meaning* of the argument triumphs, wherein citizenship is limited not according to national identity but according to a historically defined cultural identity (p.17)

Against this, Habermas argues that the identity of a *democratic* "political community" *must* be understood in "the *universalistic* sense:" because such political communities have implemented "universalistic basic laws" their identity "depends primarily upon the constitutional principles rooted in a political culture and not upon an ethical-cultural form of life as a whole" (p.17).

As a result, the "common political culture" which an immigrant joins is defined by universal rights, and therefore its preservation requires no particularistic cultural requirements at all. Therefore Walzer is simply wrong in thinking that the historical community integrated by a democratic state must have a specific ethos to be a "culture" in any sense or establish any identity:

The democratic right of self-determination includes, of course, the right to preserve one's own *political* culture, which includes the concrete context of citizen's rights, though it does not include the self-assertion of a privileged *cultural* life form. Only within the constitutional framework of a democratic legal system can different ways of life coexist equally. These must, however, overlap within a common political culture.. (p.17).

This radical conclusion is again clearly premised on the idea that there really be "political cultures" that are `trans-cultural' i.e. not defined by any nationalistic ethos or particular form of life as a basis for identity.

XI. Concluding Thoughts

In conclusion, I would like just to indicate some further considerations that could strengthen the argument for the possibility of democracy beyond nationalism. The foregoing analysis suggests that the argument depends primarily on the two premises of Habermas's social evolutionary account of republican popular sovereignty and democracy, and the further claim that a 'trans-cultural political culture' (despite its seemingly paradoxical status) really can really define "a community of character," despite its universalistic openness.¹⁰⁶ Habermas quotes Carens's conclusion to that effect: "Open immigration would change the character of a community, but it would not leave it without any character" (p.17). But Habermas does not really offer any sustained defense of this claim in the article.

First, if we accept the main premises of Habermas's evolutionary analysis, then I believe it may be possible to mount a strong counterargument to Walzer's arguments that no political community of character is possible without the right to decide criteria of "admission and exclusion" and a "closure" that defines group-identity by contrast to exclude 'others.' On this basis, one could then demonstrate the structural *possibility* of democracy in a federal state covering more than one nation with different ethnic and cultural forms of life.

However, to be complete, the argument would have to address at least two other issues. First, Habermas must be able to explain, given the logic of social integration, how a kind of integrative group identity might be based on the universalistic grounds of voluntary legal association. It is worth exploring how Habermas theory of a post-conventional ego-identity might serve this purpose.

Second, even though common political culture is structurally possible at the transnational level, the question still arises whether there might be additional necessary structural conditions

¹⁰⁶And clearly here Switzerland provides empirical confirmation: "Switzerland is an example of how a common politico-cultural self-image stands out against the cultural orientations of the different nationalities" (p.12).

for identification with a *federal civil society* to come about. In this regard, one consider how formal education might function in this process, and even more importantly, whether some shared *historical* point of reference might not be required *even for a multicultural society*. Although Habermas does not make this point, it is possible for *historical events* to have an integrative significance which is nevertheless based on the expression of *universalistic* normative meanings rather than ethical values particular to any cultural tradition.¹⁰⁷ If so, it is possible that not all the *dynamic* forces at work in social evolution are the kind that could be captured in functional-process terms. The very initiatives which bring about a paradigm-shift in the level of social integration may themselves form process of actions that have a communicative meaning and irreducible moral significance.

¹⁰⁷I have in mind here, for example, the kind of significance we might attribute the Northern victory in America's Civil War, which became a foundational experience and point of departure for the establishment of a truly federal civil society: "these United States" became "the United States," as people finally came to identify first with the federal republic and only secondarily with their states.

Appendix A

Theory of Social Evolution

Developmental Logic of the Social Integration Component

Consensual Basic Values	Action Systems	Collectives Acting in Systems
Levels of Legitimation (Normative Cores)	Typical Forms of State Organization (i.e. Forms of Institutionalization)	Stages of Social Integration (Social "Forms of Life"-- i.e. Ethos)
<hr/>		
<i>I. Mythological Stage</i>		
Cosmogonic common ancestry (narrative without legitimation) identification)	Tribal ruling family organization	Neolithic Societies-- (tribal group)
Syncretistic pantheons with 'natio,' (transitional) tribes	Archaic kingship based on racial order	Identification racial collection of
<i>II. Metaphysical Stage</i>		
Cosmological philosophy, identification higher religion, legal shared cultural codes and systematization	State territorial organizations: Ancient & kingdoms based on law City-state or Polis	Ethnic/cultural Citizenship with and religious traditions
Differing interpretations identification of same cultural universal sovereign and order	Imperial states organizing traditions	Totalized citizenship, territorial empires with
<i>III. Modern Stage</i>		
Modern liberal natural law citizen of national state independent of metaphysical ethnic and cultural grounds (contract theory)	Emerging 16th century territorial state in system of sovereign states (growth of capitalism) hereditary nationalism	Free/equal with remaining homogeneity:
Republican popular sovereignty politically free persons; and procedural conditions of cultural homogeneity as a justification (Rousseau, Kant) national patriotism:	Modern democratic nation-states emerging in 18th-19th centuries (transitional)	Morally and Ethnic and basis for "acquired" national identity.
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Discourse-ethical procedure; democratic citizen; Universal human rights for integration of all forms of democracy multicultural society	21st century regional federations; Democratic constitutional state in context of shared <i>political culture</i> ;	Transnational Post-conventional multiethnic and "Constitutional Patriotism"

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