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**Constitutional Patriotism in Jürgen Habermas`s Political
Thought**

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DPhil in Social and Political Thought

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I have not submitted this thesis to any other university, nor have I collaborated with anyone.



“What’s the point of a book, thought Alice, without pictures or conversations?”
Lewis Carroll

Abstract:

Constitutional patriotism is a term introduced but not developed by Jürgen Habermas. Muller's approach to Constitutional Patriotism has brought more substance into it. This thesis is a journey through Habermasian scholarship, primarily, for finding pieces of constitutional patriotism. The scope of this is not limited to jurisprudence or sociology alone but it is interdisciplinary in nature. Constitutional patriotism was an idea put forward by Jürgen Habermas in the aftermath of the Second World War. I have a reconstructive approach to the emergence of CP in the first few chapters of my thesis. I lay down the intellectual and political context which gave rise to it. I will maintain that it is not only the immediacy of the German political context which gave rise to the emergence of the term Constitutional Patriotism. Constitutional Patriotism also stands on different aspects of his political philosophy. Philosophical and sociological aspects of Habermas's work have different dimensions which could be interpreted into CP. His direct references to the term CP are very rare. This thesis aims to bring together the different meanings underlying his philosophy. I maintain that seemingly different concepts of his philosophy can, and ought to be read constructively with a view to a holistic umbrella term which I bring under CP. In this thesis, these concepts are identity, Europe, human rights, cosmopolitanism, the self and democracy. Constitutional patriotism, which I seek to construct here, is a new idea of attachment. It is based on existing forms of political and social attachment. In this respect, it is 'post'-national. Identity, in Constitutional Patriotism, is a form of attachment. It's a relationship with your own self and with others. It accepts that the individual and the collective are closely linked while investigating the political and social dimension of these relationships. It seeks to increase the critical thinking capacity. This process paves the way for the realisation of abstract political and legal ideals such as human rights and democracy. Each chapter of this thesis follows the former and opens up the space for discussion for the latter. I hope that each reader will find a small piece of herself in it.

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“In his own person and as though at split-second speed, he lives through the partition process and comes to believe that he has to make a decision, one he had previously been spared by birth and socialization.” (Schneider, p.22)

Introduction and Background

Habermas's approach to the political and historical period surrounding the emergence of the term Constitutional Patriotism and identity can be preceded by a discussion of the report titled 'Habermas and The Fall of The Berlin Wall' by Laurent Fleury. Various social developments of the post-World War II period have shaped the environment within which the idea in this thesis was born. The German unification has taken place in an environment of intense social struggles and international ideological conflicts.

The Historians' Debate, the debate the very first time the term Constitutional Patriotism has been used by Habermas, is a debate, which spanned over a period of three years. The social atmosphere of the period has been conducive to Habermas's call for a new form of identity based on Constitutional Patriotism. The German History has made it difficult to focus on a constitution as a source of political affect due to the authoritarianism, which preceded the debate. In the initial chapters of this research thesis, I seek to focus on the period, which starts off with the first use of the term CP. I will present a reading of this period from the lens of identity and Constitutional Patriotism, mainly.

The German unification was proclaimed one year after the fall of the Berlin Wall. The period leading to it has included a number of social transformations; most of which are difficult to get hold of. Neither is it a simple task to categorise these social events in such a way, which facilitates the background for a research on identity. The event of the fall of the Berlin Wall has provoked a triple interrogation about the forms of identity, democracy and history. A questioning of the history of Germany was linked with an understanding of modernity (Fleury, p.83). The unification was rendered possible by the participation of both East European and West German political leaders. The 'unification' or 're-unification' as a choice of terms has been, also, a matter of discussion in history writing. From the perspective of today, in my opinion, the German identity creation and statecraft may be argued to have an angle, which constitutes an unfinished business.

Habermas stated that the catastrophe of the Third Reich and the construction of a new Germany -the Federal Republic of Germany- have been the reason for being of his philosophical engagement which was, at the same time critical, social and political, and never cut off with his theoretical products and his practical interventions (Fleury, p.91). For Habermas, philosophy has had to do everything in order to face the situation of the after-war period, the aftermath of the Holocaust, the responsibility and the German guilt, for the German future. Also, he was worried that the revolutionary background and the forced reunification could have created an uncontrollable wave of German nationalism affecting

Europe (Fleury, p.92).¹ In this sense, Habermas has had the idea of reassuring European integration at this early period of the aftermath of the Cold War.

The idea of a revolution is closely linked with the notion of progress, for Habermas. The Remedial Revolution' is Habermas's way of reading the 'Peaceful Revolution' or the 'Aborted Revolution', 'The Stolen Revolution' (as used in German and French academic writing) or 'Die Nacholende Revolution' in German. Fleury uses the same term in French as 'La révolution de rattrapage'. This article titled as such belongs to Habermas's political writings. Fleury's work, which I will cite here, focuses on Habermas's own reading of the fall of the Berlin Wall.

The unification of Germany, as every political and social event, manifests both positive and negative aspects. The contribution of this unification would be the removal of a repressive regime, while at the same time the regime -as every country does- includes civilians and fellow countrymen who associate with that piece of land. Fleury argues that the German unification has had a democratic gap: "At the same time, one has to note that the GDR has not been consulted in its entry to the FRG, nor on the creation of a constitutional state." (Fleury, p.108).

"The future architecture of Germany must fit into the future architecture of Europe as a whole. In this regard, the West has served as a pacesetter with its conception of lasting and just conception European peace" (Kohl, 1989). The German unification was closely linked with the place of Germany in Europe. Germany, as a united nation-state, placed one of its constitutive legal pillars on Europe. This meant that Germany played a foundational role in the establishment of a more political European Union. The treaties of Rome (dated 1958) and Maastricht (dated 1992) paved the way for a Europe which was evolving. It is, in my understanding, to this momentum that the German unity has added.

The Basic Law of Germany brings Germany in close ties with Europe. The Article 23 of the German Basic Law provides this background. The Basic Law, as I understand it, functions in the place of a constitution and since the unification of Germany, The Basic Law occupies the place of a Constitution.

Article 23 [European Union- Protection of basic rights- Principle of subsidiarity]: [1] With a view to establishing a united Europe, the Federal Republic of Germany shall participate in the development of the European Union that is committed to democratic, social and federal principles, to the rule of law, and to the principle of subsidiarity, and that guarantees a level of protection of basic rights essentially comparable to that afforded by this Basic Law. To this end the Federation may transfer sovereign powers by a law with the consent of the Bundestag. The establishment of the European Union, as well as

¹ Both the translation and the adaptation of Habermas's ideas into Fleury's book have benefited from Christian Bouchindhomme's work.

changes in its treaty foundations and comparable regulations that amend or supplement this Basic Law, or make such amendments or supplements possible shall be subject to paragraphs (2) and (3) of Article 79.²

While the Article 23 states that the German Federation may transfer sovereign rights to the European Union, Article 79 of the German Basic Law regulates a peace settlement and amendments to the Basic Law. The constitutional situation in Germany is complicated.³ The legal background set and maintained during the period of the unification may be argued to have implications until 2017. The last article of the Basic Law renders that document as a provisional one, making a future constitution conditional upon a 'free decision by the German people' (White, p.85). The Article 146, which is the Duration of the Basic Law reads as such:

Article 146 [Duration of the Basic Law]: "The Basic Law, which since the achievement of the unity and freedom of Germany applies to the entire German people, shall cease to apply on the day on which a constitution freely adopted by the German people takes effect". (Basic Law for the Federal Republic of Germany, Deutscher Bundestag, XI. Transitional and Concluding Provisions).

The end of the Cold War paved the way for a Germany seeking allegiances. The world wars, which marked the collective memory of humanity, were followed by a period of seemingly quite tensions. The legal and political context of the GDR (German Democratic Republic or shortly DDR in German) manifested rights violations. The Cold War period has witnessed Eastern Germany remaining under a repressive regime.⁴ The life circumstances of the individuals under the GDR regime are symptomatic of a social background pushing for change. The writer Peter Schneider's character narrates the period in the novel *The Wall Jumper Syndrome* in the following terms:

"The German question has put on weight in thirty years, and you can't claim that Germans west of the Elbe fret over it much. There are people delegated to deal with the question, but they find it increasingly hard to keep their audience alert. It is true that the Constitution mandates resolution of the German question, but the furious parliamentary debates, the struggle over concepts like 're-unification- and 'unification' and 'nation' seem artificial. It's like watching the 1,011th performance of a repertory play in which actors and audience both stifle their yawns" (Schneider, p.29).

It is this emotional accumulation and social circumstances which created the social conditions leading to the transformative moment of a unification in Germany. I believe that good pieces of writing have impact across different time periods and contexts. The Schneider novel is one example to this. It is also part of the background of CP. The social pathologies of every divided context have different inherent reasons (of their own). A

² Basic Law for the Federal Republic of Germany by Deutscher Bundestag.

³ <http://www.spiegel.de/international/germany/germany-no-government-in-sight-for-merkel-a-1183531.html>

⁴ Stasi: East Germany's Secret Police, a documentary film by Christian Gierke, 2017, Journeymen Pictures. On the same point, see the film *The Lives of Others* by von Donnermack: https://youtu.be/n3_iLOp6lhM

(conflict) resolution approach requires an individual, and an almost individually tailored study and response to each context for the social and political theoretical level.

A republic, understood in the context of the French Revolution, is the state structure, which corresponds to the needs and wishes of the 'people'. As every context has a different structure, each social context requires an interpretation of the theoretical to the practical. The notion of 'people' varies in almost every different context in the world. While in France it has significantly overlapped with the idea of a nation constituting a nation-state, in the process of the German unification the social conditions were different. Citizens living in a country who confer rights onto the state structure, as in the social contract tradition, provide a structure in which the state can ensure the rights of the people in fairness. Matters of rights are multifaceted and not merely legal. A government embracing a free-market policy or a more socialist approach to the economic conditions constitute ideological divergences. The time period of the unification of Germany has witnessed two separate political economic ideologies getting into dialogue.

This fairness of the state, I argue, can be understood to mean completely different things depending on the nation-state (or the government) seeking 'fairness'. In contexts of conflict, such as the pre-unification German context or the Cyprus problem of our day, every actor in international relations is likely to interpret this fairness in its own way. The population of a country, constituting the 'people' who render a Republic a fair state, seek, quite naturally, to have their rights served by this state. This 'fairness' is generally justified by a system of elections. For example; in the Cyprus problem, if we can focus only on the northern part of the island, we see that the 'people' or 'the population' is not the same as in other conflict-ridden contexts. The citizenry of the northern part of the island largely come from Turkey. This population, constituted of 'settlers' have been endowed rights of 'citizenship' by several governments. These citizenship rights have been granted in hundreds by the parliament of north Cyprus. As it stands, the ethnic population does not have representation of its own. A theoretical understanding of unification situated in a given context is different in practice: it's different both because the ideal and the real differ from one another at varying degrees, and it is different because different contexts manifest different problems in themselves.

"Habermas has been the single most consistent, energetic and imaginative intellectual defender of Germany's fragile and paradox-ridden tropism toward a democratic way of life in which commitments to postnationalistic, postconventional institutions and values are firmly rooted within the lifeworlds of political agents (White, p.68)". In these contexts, Habermas has argued for taking the position of the other. This, I argue, allows for the development of a multiple perspective and enables the construction of a (solid) truth – the objectivity of which can be understood (or accepted) by different parties to a dissensus. A 'placeless place' is a term used to depict what an identity based on political and social theoretical requirements can signify. A democratically institutionalised will-formation and culturally mobilised public spheres provide a basis upon which a popular sovereignty can be built.

The republican form of state organisation was, at the time of the unification, in contradiction with the strongly irrationalist currents that see the nation as a prepolitical magnitude rooted in the 'imponderables of the soul of the people' (White, p.73). The political culture of the Federal Republic was generated from these tensions as well as the political and moral catastrophes preceding it. In this thesis, CP is conceptualised as a project, which pays close attention to the affective and psychological component of identity formation. The challenge before it is not only the difficulties of jurisgenerative critique, but also the possible implications of normativity stemming from the historical political context of the German context.

Identification with the principles of a republican constitution was the only form of patriotism that is morally permissible for German citizens (White, p.75). In this sense, Habermas's reading of the repressive events and the rights violations as well as the genocide forming the German history are events which have, in some sense, derived from the German national context. In a reading, which is outside of German language, what has been common for most parties to the conflict at the time has been the land. "Our patriotism cannot deny the fact that it was only after Auschwitz- and in a certain sense only after the shock of this moral catastrophe- that democracy was able to sink roots into the motivations and the hearts of German citizens, at least those in the younger generations" Pensky quotes Habermas (White, p.77).

The experience of repression has made it more important for Germany that the democracy in the country would be liberal democracy. Some, in most spheres of life, felt repression and authoritarianism. Even in cultural products, there was state intervention. This includes jeans, long hair and Western music (Mushaben, p.64). The political party SED imposed this ban in 1965. Regulations about private matters, or issues regarding self-expression are, in the eye of modern legal theory, political instances where a government (and not by definition a state) slides into authoritarianism. Slogans of 'We want out' and 'we want in' were both heard at protests during this period (ibid.) Conflict ridden contexts maintain these different political structures within different societal groups. A regionalism, which hinders social mobility and external sanctions imposed on limiting individual freedoms, endanger personal development. Republicanism, for the context of German unification, meant a federal state structure without rights violations.

“For the way we continue the traditions in which we find ourselves is up to us”
Jurgen Habermas, The Historians Debate, 1989

Chapter One: Nationalism and The Emergence of Constitutional Patriotism

Section 1. The History of the Term ‘Constitutional Patriotism’ In The Context of Nationalism

The term ‘Constitutional Patriotism’ was first used in Habermas’s writings during a debate among scholars mainly composed of historians. These historians were discussing the right approach to deal with the past events in Germany. Some of these have provided some of the best textbook cases of Human Rights violations. The Holocaust, an event that caused the death of so many people from predominantly one ethnic origin, has caused not only the victims but also the descendants of the perpetrators of these acts to keep thinking, for generations to come, about how to face the reasons and the consequences of it. The Holocaust has marked the history of humanity as well as Germany in a remarkable way: “The history of post-war Germany was off limits, as it was closely associated with the Holocaust. Where other nation states found a sound basis for integration and identity, post-war Germany faced a vacuum” (Grimm, p.202). Nation-state as a model requires this integrative identity. This is an important starting point for this thesis. Constitutional patriotism, as a term when it was first used, was addressing this gap between historical facts and sociological functions. The time gap between the reference of Dieter Grimm’s interpretation of CP and Habermas’s first use of the term is long. That time period has witnessed several shifts in history of political thought, I reckon. It did not, however, add a new and full theory of CP to the field of Social and Political Thought. Muller’s construction of CP is a solid one; but it still lacks a global and legal dimension. It is this dimension I would like to add in my thesis.

A divided nation between the East and the West Germany, combined with the shameful past event of the Holocaust, left German intellectuals pondering upon how to relate to one another and to their country. While historians had a leading role in interpreting the past events, Habermas portrayed himself as a public intellectual and engaged in the dialogues about the ways in which a collective self can relate to the past. This discussion, which is ‘The Historians Debate’ constituted a contingent part of Habermas’s political theory that was to come in the following years of his career. It did, however, mark the interpretation he had about the concept of a political identity. The first reference to the concept of Constitutional Patriotism emerged in this context. Habermas, and the beginnings of the theory of CP thus took its originating power from Germany. Its theoretical dimension was added in the Between Facts and Norms.

Scholars referring to the genesis of CP mostly argue that CP is an idea that can have legitimacy only in Germany (Grimm, Abraham, Soltan). A large part of the literature on CP is critical of it. This expresses itself in this particular point about the criticism that CP is a concept bound to remain within the bounds of Germany. In this thesis, I argue that being born in a particular historical and sociology-political context endows CP with an origination power. The originating power of a historically specific context and the Holocaust as a triggering factor cannot (and hopefully will not) present themselves as the reasons for any other country and the scholars working on the same issue to ponder upon similar concerns. The scholars, historians, sociologists as well as the philosophers vary on the stances they take on the issue of the genesis of the term CP.

In this chapter of this thesis, I would like to spell out how CP as a political idea took its roots from Germany. In order to do so, I will dwell on specific circumstances belonging to the German context at a particular moment in time. Despite referring to a time period which is precise at a given moment, I would like to discuss this as an event in its own right and give as little space as possible to some of the factors. This would help me to focus on identity as a concept and help to construct a reading of CP in my thesis. The shameful past event of the Holocaust and a divided nation-giving rise to the notion of CP in Germany is a historically accurate argument. The boundaries of the idea of CP, however, can be stretched to include a wealth of other concepts, which enrich CP as well as the ideas attached to it. Being the most successful advocate of CP, Jan-Werner Mueller brought human rights and democracy underneath the term CP. In his book on Constitutional Patriotism, he has also defined the philosophical opponents of CP as cosmopolitanism and nationalism (Muller, 2010). This conceptual environment is useful for understanding the meaning of CP. In this thesis, I seek to establish CP in relation to nationalism, cosmopolitanism, human rights and democracy. CP therefore is a notion with a spectrum including a number of ideas in contemporary political and social theory; thus open to be interpreted in different ways for different identities or normative integration.

I will demonstrate in this thesis how the very first conceptualisation of the term did not have any direct references to democracy and human rights. Muller's contribution to the field had already theorised a seemingly geographically specific idea. Throughout this thesis, I will seek to argue that CP can be a theoretically coherent idea. The political context surrounding the genesis of the term CP, situates the birth of the theory of CP and this thesis writ large.

Constitutional Patriotism emerging in Germany as a term signifies the historical contingency of the rise of this political idea. It became 'an expression of the fact that, in a society deprived of its other bases for national identification, the constitution was the document that represented the achievements and cherished values of the West German society' (Grimm, p. 203). In this way, an intellectual solution was offered to a factual problem arising from within a specific place and time in the world. As is the case in any problem, the Holocaust did not come into existence on the spur of a moment. It is the

result of a given ideology and a historical process culminating at the Holocaust. It was instantaneous neither in nature nor in the ideology that the mass crimes at Auschwitz took place. The conditions leading to it, the ideology and the sentiments shared by the perpetrators of acts, or perhaps those who were not immediately involved but kept quiet in the meantime, would be the material, which Habermas placed under scrutiny in his writings about CP.

The Holocaust as an event exemplifies the breaking point of a repressive ideology. While having a back and forth between the ideal and the real, Habermas's work is marked by holistic approach to sociology and philosophy. His insistence on bringing down 'the normative Ought' and adopting an interdisciplinary attitude reveals itself in his interventions in the Historians' Debate regarding the right approach to relate to the German past: for him, a change of perspective in the way Germans related to one another and to their country was necessary. This sentiment, most of which he develops in a scattered manner in his political theory, requires to read through the patterns between the main milestones of his work in order to fill the gaps. CP being born in the German context provides Habermas, and the scholars working on the theory of CP, the possibility of reading CP between the problems arising in the real world and the solutions or at least reformulations philosophy may offer.

This first reference to the concept of CP in Habermas's writings meant a post-conventional, post-national identity "based on CP". He has provided this very first description of CP in the Historians' Debate. While emphasising the importance of CP for arriving at this post-conventional future point he envisages, this very first encapsulation was not a definition of CP itself but it took a certain understanding of CP for granted: 'A basis' which could provide a ground for a newly imagined concept. This concept, a post-conventional and post-national identity, I argue, could be the very definition of CP rather than 'derive' from CP. Despite that very first reference to CP refers to it as a framework in which a post-conventional identity can be 'based'; in this thesis I seek to envisage CP as this post-conventional identification itself rather than a mere framework on which identity can be built.

The remainder of the analysis of Habermas's work in this thesis helps the readers to construe a fuller theory, which attempts to build up this theory which Habermas had originally suggested but had not developed to a fuller extent. None of the Habermasian concepts, I argue, can be construed in isolation from one another. The discourse theory, democracy, communicative action and his references to sociology and law all complement one another. It is a perspective, which can bring all these disciplines together, into one lens, in his work. While this chapter seeks to clarify the historical and conceptual beginnings of CP, I wish to remind the readers that the interconnected nature of the various terms will become clear not at this initial stage but when all the chapters are read in unity.

In this context, CP was the basis for most of Habermas's arguments on the reunification of East and West Germany as well as the right attitude to relate to the German past on the whole, including, and in particular addressing, the Holocaust. The first time the term Constitutional Patriotism ("Verfassungspatriotismus" in German language) was used by Habermas is the year 1989. The word '*Verfassungspatriotismus*' (Constitutional Patriotism), however, made its first appearance in academic literature in 1970 in Dolf Sternberger's work prior to that of Habermas: this meant a civic reason and a passionate rationality. Combining patriotic passion understood in the conventional sense with the notion of reason, Sternberger had already established a perhaps narrow but a commencing notion of CP. (Dolf Sternberger introduced the concept of '*Verfassungspatriotismus*' on the occasion of an anniversary of the Federal Republic of Germany.) As early as 1959, however, he had thought about a 'patriotic sentiment in the constitutional state', and in the early 1960's developed the notion of 'friendship towards the state', understood as 'a passionate rationality' which would make citizens identify with the state and defend it against its enemies. Therefore, first concept developed by Sternberger was 'a patriotic sentiment in constitutional state' and the second one was 'a friendship towards the state' (Muller, 2000, p.93). While the notion of 'friendship towards something', 'a passionate rationality' and 'a patriotic sentiment in something' all vary, the discussions revolving around the collective self, political identification and the ways in which the collective self could and should relate to the state have circled around the birth of the first references to CP. The references of the terms together with the historical contingencies render it easier to situate this genesis in a specific context: that is Germany.

Sternberger argued that at least until the end of the 18th century, all forms of patriotism had been 'Constitutional Patriotism' understood as the love of the laws and common liberties (Muller, 2000). This is one way of defining CP. As much as Sternberger was trying to transcend the nation-state, he was much less sceptical about the nation-state than Habermas. Sternberger's concept was substantially indebted to German étatisme. This sense of 'statism' plays an important role in understanding both the German Cold War context as well as CP. Sternberger thought of civic friendship as an invitation to call for the friends of the Constitution to defend the state. In late-modern societies, this sense of defence should be read in a different way, which questions the ties, which tie people to one another as well as to their state. A critical reading to national attachment requires an evaluation of this 'friendship' so that the adherence to a Constitution, or another form of governance, would not turn into a despotic regime. Despite these differences between Habermas's construction of CP and that of Sternberger's, Sternberger did initially establish a core meaning of the term. CP as Sternberger construed it would relate to abstract values and according to Muller, this conceptualisation of Sternberger was capable of transcending the 19th century nation-state. For Sternberger, the initial conception of CP was to exist alongside German national feelings; it was not meant to substitute them.

Habermas had been influenced by Sternberger's initial conceptualisation of CP but did not borrow it in its own right: Habermas encouraged patriotism to become more abstract than what was imagined by Sternberger and associated rights and democratic procedures with it. This is an important turn as both rights and democratic procedures have an important role in broader Habermasian thinking. In 'Another Country', Muller draws this particular distinction between CP at its point of emergence for Habermas and what Sternberger had formulated (Muller, 2000). Muller adds rights and procedures to this original conceptualisation of CP in 'Another Country', only to leave it at this conceptually elementary stage. The theory of CP to be developed in Muller's writings in a period of ten years following this lineage to Sternberger, both in the broader social theory as well as in this thesis, encompasses a much richer palate of political, philosophical and sociological concepts tying into CP. At the original stage, however, while rendering Sternberger's 'friendship towards the state' more abstract, Habermas also subtracted the *étatisme* present in the first conception of CP. The idea of state being above and beyond society was to melt into the rule of law and the welfare state (Muller, 2000, p.94). Habermas envisaged civic friendship (which is akin to CP) as the result of an unconstrained discourse leading to civic recognition (Muller, 2000).

The opponents of Habermas argued that the emotional abstinence and the academic nature of CP could lead the nation towards even more sinister directions than what the Germans previously witnessed. This negative experience is shared among different parties. Other thinkers argued that the Habermasian version of CP would fail as it was lacking *étatisme*; according to them, without the state, social cohesion could not be sustained based on the Universalist values of the constitution. By appropriating Sternberger's conception of CP, Habermas both made it more popular and shifted its meaning. Sternberger and Habermas both insisted on a conscious affirmation of political principles, and in both notions, the relationship constitutional patriots were meant to have to the Federal Republic was one of friendship, rather than love. Habermas digressed from Sternberger in that Habermas went further and did not only advocate a conscious affirmation of political principles and a friendship towards the state but also insisted that constitutional patriots should develop 'post-conventional identities' (Muller, 2000, p. 94). Therefore, the term 'identity' was surrounding the notion of CP at the very initial stage already. This post-conventional identity as it was first proposed by Habermas in The Historians' Debate meant that citizens had to engage in critical thinking in order to free themselves from conventional social (and political) expectations and transcend their particular traditions and group identities (Habermas, 1989). It was most likely that these reflexive post-conventional identities emerge where national traditions were already questioned, due to varying reasons. Historical discontinuities in national identity formation and ambivalences, which were acutely felt, were likely to prepare the social climate in which CP could flourish. These circumstances, which made an impact on the emergence of CP in Germany, are felt elsewhere around the world, I argue, in different forms. The call for universalistic human rights, for example, or for democratic values, violations of human rights, immigration and the dispute about multiculturalism all help the social and political conditions necessary for CP to mature. In this sense, I aim to demonstrate that, CP can

be interpreted to be Western or German at its point of emergence, but not that of scope. In Habermas's view, other countries were also forced in the direction of universalism by socio-economic forces, supra-national institutions, and changes in international communication` (Muller, 2000, p.96). In this sense, some of the conceptual constituents of CP were already identified by Muller's perspective toward CP.

Another idea, which had influenced Dolf Sternberger's conceptualisation of CP, was 'metaphysical guilt' (Muller, 2000). Metaphysical guilt in this literary context derives from the German guilt after the Holocaust . The Holocaust plays a turning point for the theory of CP by providing the conditions, the intellectual environment, the catastrophe of the Holocaust and the critical thinking, which followed from it. This was intellectual atmosphere during the first references to the term CP by Habermas.

There are different kinds of guilt associated with the Holocaust, which are political and metaphysical. These have connotations for a contemporary conceptualisation of CP. The contemporary conceptualisation, which I have in mind, categorises CP in three levels. The notion of guilt which was present at its emergence and the different approaches to the same notion are particularly relevant in light of a three-level typology of CP which differentiates between national, supranational and cosmopolitan CP's. The three level typology of CP, which I develop for the purposes of this particular thesis, serve productively for situating the notion of 'guilt', which had inspired initially Sternberger and following him Habermas.

The notion of guilt that came up at the emergence of CP took its roots from the work of Karl Jaspers (Muller, 2000). The distinction, which Jaspers drew between a 'political' and 'metaphysical' guilt, paves the way for situating the theory of CP between the world as it is at the age of nation-states and the world as it is imagined to become by the cosmopolitans. According to Jaspers' theory, while individuals living in unjust regimes shared political guilt, the metaphysical guilt was shared among all human beings. A metaphysical approach broadens a political one: the political guilt involving the citizens of a given nation state. In case of the Holocaust, this nation-state is Germany. Metaphysical guilt addresses people around the world, the citizens of humanity who relate to one another and the experience of 'the other' irrespective of the political circumstances within which they may be facing this Other.

The global public sphere, the channels of communication which kept increasing connectivity with the development of the internet and the international media provide the means with which people of our age can get the chance to ponder upon the experiences of other nations or communities more so than before. Muller did not draw such a generalization. This distinction between different types of guilt relativizes the

consequences of the Holocaust as well as any historical event related to violations of human rights, and the ways of dealing with it, with a society bound together by ties of nationalism and humankind across the world as members of common humanity. Nationalism is the ideology which surrounded the genesis of the term CP while the need for relating to others expressed by the notion of 'metaphysical guilt' already presented a pulling factor for the concept toward the philosophical terrain. On this journey, CP would drift apart from politics.

In the Historians' Debate, while formulating the term CP, Habermas was arguing that the moral catastrophe of Auschwitz was a lesson for humankind all together. This approach to a past event and the guilt attached to it relates to humankind by the very nature of humanity and by the nature of this crime against 'humanity'. Acts against humanity, discrimination and various violations of Human Rights, by definition, refer to a notion of common humanity shared by all human beings. This is a very broad category-addressing people across different creeds, races, genders and nationalities. CP when it was first mentioned took a position against a nationalistic sentiment. The aftermath of the Holocaust, and the Historians Debate, did have remnants of this nationalistic sentiment in history writing. Habermas's original opposition to nationalism takes its roots from this uncritical German nationalistic sentiment, which was present even among the scholars suggesting a selective omission of the problematic past event of the Holocaust as they lacked the means of dealing with it. The group of Historians whom Habermas was opposing argued that the only way to strengthen German identity was arguing for a more moderate or accepting view of the Holocaust: "According to the one side, the identity of the Germans, which is allegedly in jeopardy, has to be strengthened through a historical presentation of 'pasts that one can approve of' (Habermas, 1989, p. 250). In this debate, Habermas discusses the Federal Republic's self-understanding (ibid). Not acknowledging the historical facts as they are and not dedicating enough space to the Holocaust in German history writing is interpreted as the extension of a nationalistic sentiment for Habermas. It is in a similar way that nationalism has been a conceptual rival for Constitutional Patriotism since the earliest stages of its formulation. The contexts in which nationalism had proven productive, the ways in which nationalism can provide an obstacle for relating to cosmopolitans and the lack of citizenship status -as this was the case of the Jews during the Holocaust- are notions relating to and weaving their way into the theory of CP which is now broader than it was first mentioned in the German context.

The change in the way of thinking about the collective self, the quest for meaningfulness carried out by an individual alone, by a collectivity in solidarity with other individuals, by the citizens of a nation-state or members of common humanity, facing the future together as Germans or as 'comrades', as cosmopolitans or cosmopolitan constitutional patriots belong to the present as well as the future generations - not only to the scholars participating at the Historians' Debate in 1989. In this way, CP turns its back to a conventional sense of nationalism and faces cosmopolitanism. Muller's situating CP on a philosophical spectrum defines nationalism and cosmopolitanism as 'the

philosophical opponents of CP'. My argument in this thesis adds the twist of *directionality* to the notion of CP. For demonstrating the cosmopolitan aspiration of CP as originally articulated by Habermas, we could use a quote he had used in the very debate I have mentioned:

"I would hardly trouble a Danish audience with what is almost an intimate German problem if I did not believe that we could find more general issues in it as well. Of course, I do not want to make any hasty generalizations. In Denmark 'only' one per cent of the Jewish population fell into the hands of the SS. This is not grounds for celebration – for every single one who was deported leaves behind traces of a history of suffering for which amends can never be made. Nevertheless, you can be proud of what many of your compatriots did at a time the great mass of our population at least allowed something monstrous to happen of which they at least had some suspicion. Some of us are the heirs of the victims and of those who helped the intended victims or offered resistance. Others are the heirs of the perpetrators or of those who kept quiet. For those born later, this divided legacy establishes neither personal merit nor personal guilt. Beyond guilt that can be ascribed to individuals, however, contexts can mean different historical burdens. With the life forms into which we were born and which have stamped our identity we take on very different sorts of historical liability. For the way we continue the traditions in which we find ourselves is up to us". (Habermas, 1989, p.251)

This quote represents two predominantly Habermasian attitudes: optimism and cosmopolitanism. The cosmopolitan ambition reveals itself in his insistence on relating a seemingly intimate German problem with an audience present at a conference paper he gave in another country than his own (Denmark). Recognising the past as it is, the problems of our day and the faith in a better future which is to be constructed by shaping, refusing or reformulating the traditions 'in which we find ourselves' places Habermas within the Marxist tradition seeking not only to interpret the world but to change it.

Section Two: Nationalism in Habermas's Thought in the German Context

The emergence of the term CP is related to nationalism, too, beginning from the very first reference to the term CP in Habermas's work. In the debate of the Historians, which encapsulated the right attitude to the German past for facing the German political and social future, there were two pillars: firstly, how the Holocaust ridden guilt was to be dealt with. The world, by the time of German Unification, was a place predominantly populated by nation-states. For Habermas, nationalism was to be avoided due to the crimes against humanity that resulted from a reading of the (German) collective self in nationalist terms. Another integrative dimension which CP would be pertinent at the time regards not only history reading but the divisions within Germany: bringing Western Germans closer to a common document as a source of identification for east as well as West German citizens. Dieter Grimm is one of the various social theorists who contributed to the critical literature

on the theory of CP: He advocates that Germany found a vacuum where most nation states have found a basis for identification. While Grimm's account of CP is supportive and critical of the concept of CP in alternating angles, I argue that his point about situating CP in a German context refers to the political guilt attached to the Holocaust. The idea of East and West German citizens coming closer to each other would, however, emerge in the work of Matthew Specter who wrote about the intellectual biography of Habermas in light of the political events and the country in which Habermas's work has matured.

The circumstances, which gave rise to the emergence of the theory of CP, are read differently by Muller and by Specter. Matthew Specter situates the entire intellectual heritage by Habermas in a strictly German context. For Specter, Habermas's entire intellectual work has been marked by the German context. This distinction between Muller's account of CP in Habermas's work and Specter's account of CP in Habermas's work places Specter's work closer to a historical account of the life circumstances in which Habermas had found himself, rather than giving a detailed account of the ideas which had influenced him. Specter thinks of the self as inextricably linked and best explained by immediate political phenomena surrounding it. Instead of focusing on the Holocaust as a pushing factor due to the need for a new kind of identification in a historical and geopolitical context, Specter dwells on the constitution as an object of identification both for East Germans and West Germans. This emphasis he places on the constitution as a document bringing different Germans together deprives the theory of CP from having a historical turning point. CP seeks a pivotal point on which it turns. Pointing at the mass crimes of the Nazi regime equips Habermas, and the contemporary CP theorists, with one example from history demonstrating the problems arising from within a conventional national political identity. CP as a theory seeking to bridge the gap between the ideal and the real and between cosmopolitanism and nationalism has more to offer than being a territorially defined tool for two specific communities, which are the East and West Germans only. A notion of a historical turning point, as has been exemplified by the aftermath of the Holocaust, is a recurrent theme in Habermas's mature political theory: in the *Between Facts and Norms*, he ties the concept of sovereignty to the notion of citizenship (Appendix). He argues that the historical example of the French Revolution had rendered the conception of national citizenship, as we know it today to emerge. This example, demonstrating the transformative power of momentary historical shifts, possesses a power that Habermasian understanding of identity and citizenship thoroughly relies on. It is why the conceptualisation of CP in a German context would benefit more from a global theory of CP that is not limited to bringing Germans of different sides of the Iron Curtain together. Specter, by addressing CP in Habermas's country of origin only, rids the theory of CP of this global transformative power by situating CP in a strictly German context. Muller, however, endows this notion with a broader breath: he includes a discussion of European Union about identity as well as a cosmopolitan dimension to the notion of CP.

For Specter, the notion of collective memory is closely linked with the emergence of the term CP. Public memory, a West German identity and establishing museums to strike the balance in thinking 'in the right way' about the Nazi past were all parts of this collective memory tying into political identity making. Specter defines The Historians' Debate not only as a discussion about the Holocaust but as such: "The Historikerstreit (The Historians' Debate) that unfolded...in public symposia from 1985-7 centred on whether the Holocaust could be viewed as a singular event given the scale of mass murder that occurred under Soviet Communism. Was not 'totalitarianism' the major foe of the twentieth century?" (Specter, p.147). This reference of Specter to totalitarianism as a competing ideology to nationalism as the cause of the mass crimes renders CP uncertain about what to detach itself from. Conceptualising CP as a form of political identification moving away from nationalism, and pulling closer to cosmopolitanism facilitates it both for the reader of CP to understand what it is, as well as for a theorist writing on the subject to have a clearer view of it. Nationalism, understood in the conventional sense, binds the individuals together with ties of language, tradition and history. Totalitarianism, however, is a repressive ideology, which does not give a large space to political identification: "Nationalism made the shared cultural heritage of language, literature, and history congruent with the organisational form of the state" (Habermas, 1989, p.253). Totalitarianism accepts the social unity as an organic whole and steers it without any polycentric conceptualisation of the society. Neither the individual, nor the collective self -be it ethnic, national or multicultural- has any place under the conditions of totalitarianism. The reference of Specter to totalitarianism is not clear as to what he makes of it: how is a totalitarian approach conceptually distinct from a nationalistic ideology repressive of ethnic minorities? This nationalistic ideology, I argue, led to the moral political and legal catastrophe of the Holocaust. Specter's presentation of the German historical phenomena does not leave space neither for understanding his considered view of the *reason* behind the Holocaust; nor does he situate CP in any philosophically distinct manner. I seek to draw no distinctions between Totalitarianism and nationalism in the German context. For Habermas as well as for the purposes of this research, an uncritical attitude is the worst enemy of the dynamic reflexive process of on-going post conventional identity making.

A form of governance, that is a totalitarian government, is more difficult to lead to a political identity rather than an ideology like nationalism, which at its point of emergence, that is the French Revolution, already served as a basis on which people related to one another. Nationalism is an ideology which encompasses both the form of governance and the feelings of the citizenry leading to either being silent or perpetrating the crimes against humanity in the nationalistic context of a totalitarian form of governance. Neither Muller's nor any other social theorists conception of CP refer to totalitarianism as the true 'foe' of the twentieth century. Therefore, Specter is alone in not singling out nationalism as an opposing concept to CP. CP construed in this research as well as in the broader literature on the topic builds itself on nationalism, not totalitarianism. This is due to two reasons: Muller's positioning of the term CP in a philosophical spectrum between nationalism and cosmopolitanism, and the references to conventional identifications, a post conventional

identity and citizenship point towards nationalism as the major foe of twentieth century. Nationalism has provided the basis on which CP seeks to reach a cosmopolitan level.

Muller wrote about CP initially in the book titled *Another Country*. In that book, particularly in the chapter 'Jurgen Habermas and the Debate on the Constitution: 'DM Nationalism' versus *Verfassungspatriotismus*' he cited Dolf Sternberger directly. "Habermas was generally credited with having won the Historians' dispute, not least because of his defense of a 'post-conventional', post-national identity based on Constitutional Patriotism. He had not formulated the concept of *Verfassungspatriotismus*, but, partly through the *Historikerstreit*, became its most prominent proponent. Since constitutional patriotism served as the basis for most of Habermas's arguments in the debates on unification, I shall first reconstruct a brief history of the concept. (Muller, 2000, p.92)

In the chapter 'A Short History of *Verfassungspatriotismus*: Towards a Post-National Republican Germany', Muller wrote the following:

"The political scientist Dolf Sternberger, the close associate of Karl Jaspers and doyen of democratic political theory in West Germany after the War had introduced the concept of *Verfassungspatriotismus* on the occasion of the thirtieth birthday of the Federal Republic. As early as 1959, however, he had thought about a 'patriotic sentiment in the constitutional state', and in the early 1960s had developed the notion of *Staatsfreundschaft* [friendship towards the state], understood as 'passionate rationality' which would make citizens identify with the state and defend it against its enemies. In such early versions of constitutional patriotism, the state was understood less in terms of the written Constitution, than as a Hegelian code of *Sittlichkeit* [public ethical life], its life and its spirit conceived in the sense of Montesquieu's 'spirit of the laws', rather than any institutions as such. To lend such arguments theoretical coherence, Sternberger drew on Aristotelianism, Hannah Arendt's republicanism and an emphatic notion of civic conduct, or *Burgerlichkeit*. To lend them historical legitimacy, Sternberger excavated a tradition of patriotism stretching back to Aristotle which was not linked to the nation. He argued that at least until the end of the eighteenth century, all forms of patriotism had been 'constitutional patriotism' understood as the love of the laws and common liberties.

As much as Sternberger was trying to transcend the nation-state, however, he was much less skeptical about the nation-state. In fact, while he was highly critical of Max Weber and his category of 'legal domination', his concept was still substantially indebted to traditions of German *étatisme*. Sternberger, who was born in 1907, had been marked by the experience of Weimar's failure. It was not surprising that he primarily focused on loyalty to the state and to the rule of law, rather than on civil liberties or the social rights which a constitution might guarantee. Sternberger had explicitly called upon friends of the Constitution (as opposed to the *Verfassungsfeinde* [enemies of the constitution]- a highly contested concept used in the 1970s for terrorists) to defend the state, thereby linking constitutional patriotism to the concept of militant democracy (Muller, 2000, p.93).

(...) Where Sternberger's patriotism had centered on democratic institutions worth defending, Habermas focused on the public sphere as providing a space for

'domination-free discourse' and public reasoning among citizens (Muller, 2000, p.95).

"Territory, organization and the monopoly of legitimate violence (including the violence against constitutional enemies), the traditional Weberian reference points for the state, were displaced by an open-ended process of communication, which was formally underpinned by the rights guaranteed through the Rechtsstaat and materially by the welfare provided through the Sozialstaat. Citizenship this consisted of effective access to this communication process among free and equal citizens, rather than passive, inherited nationality. Where Sternberger's civic friendship had centered on the state, Habermas envisaged civic friendship as an outcome of unconstrained discourse leading to mutual civic recognition. On such a scenario, nationalism and other forms of particularism could only be perceived as a kind of political-cum-moral regression" (Muller, 2000, pp.94-95).

In this sense, communication has been part of constitutional patriotism since the first introduction of CP in German political context. Muller's comparison of Sternberger and Habermas rests upon the presence and absence of the state in constitutional patriotism.

"Sternberger's and Habermas's concepts were both ingenious attempts to find a form of liberal loyalty and to deal with the problem of patriotism and identity in a divided nation haunted by a past of nationalist excesses. Only such a form of patriotism, Habermas thought, would not alienate Germany from the West, even if, paradoxically, the West itself remained wedded to largely 'pre-political' notions of nationality, or, in the French case, a republicanism not nearly or, at any rate, no longer, as ambitious in its universalist aspirations as Habermas's. In fact, the West could never be Western enough, or, as one acerbic observer put it, 'Habermas, it seemed, refused to let Germany join any club that would have it as a member.'(...) Was constitutional patriotism simply a form of 'negative nationalism', an inversion of traditional nationalist doctrines, or, above all, just an artificial intellectual construct, as critics often claimed? It certainly was a patriotism based on reason and reflection, an identification with the 'civic state-nation' and pride in democratic institutions instead of supposedly 'pre-political' values such as territory, culture or Volk. But in that sense, it was close to the Rousseauian idea that 'the one of one's country is the love of justice'(Muller, 2000, pp.96-97)."

CP has been against nationalism ever since: Constitutional Patriotism emerged as a critique of any other ideology to define Germany coloured by nationalism (Specter, 2010, p.150). "Whoever wishes to exorcise the shame surrounding this fact with such phrases as the obsession with guilt, whoever wishes to pull Germans back to a conventional form of national identification, is destroying the only reliable basis for our link to the West" (Habermas in Apologietische Tendenzen, p.133, in Specter, 2010, p. 150). Therefore, nationalism was the foe for Habermas, which would stop East Germany from linking to West Germany as well as the unified German society from facing the crimes of the Holocaust. This reading of Habermas, which Specter refers, does situate Habermas's reference to CP and his broader writings to a German context in line with the main argument Specter carried out in his autobiographical approach of Habermas. His attitude, however, does not clarify the conceptual demarcation lines between nationalism and

totalitarianism; nor does bring clarity to the notion of a constitution as a document capable of social unity. In this way, Specter has an informative approach in the sense of linking the ideas of a philosopher who is a human being to his immediate surrounding. Specter's theoretical references, however, only clutter a distinct conceptualisation of the CP, which in my opinion may as well be informed by the German context but is not at any rate limited to it. It is at this point that Specter and Muller are different from one another: Muller goes beyond a country specific context and reads constitutional patriotism to be a concept in its own right. Reading CP from Muller is helpful for using this concept in different contexts, as well as an idea distinct from Germany. Muller infuses more ideas into constitutional patriotism while introducing the origins of the idea as well as enriching it.

CP at its emergence had the roots of reflexivity already ingrained in it. Thinking about the form of attachment prior to the Holocaust required a certain capacity to think about the social existence in critical terms. The gravity of the acts against humanity triggered this social psychological attitude of questioning why the Holocaust came to be. This exercise called the mental faculties into play, to quote the Mill in matters regarding; thinking about the self and its relation to the political environment alludes to a quest for meaningfulness, the reverberations of which, in some instances, practiced in the empirical domain. This quest is not sought only in individual terms, as one seeks to choose the right career, or whether to become a 'mother' or not, but it relates to the way in which an individual chooses to relate to his or her own political identity in collective terms. Habermas had addressed this link of reflexive attitude of seeking meaningfulness and identity with CP at the emergence of the term: "Whomever allows himself to be guided by functional imperatives of calculability, consensus formation and social integration by means of provision of meaning, must shun the enlightening effect of historiography" (Specter, 2010, p. 151). Therefore, the correct reading of history is a reading, which should aim at a specific reading of the self that is 'enlightened'. "A citizen could never be autonomous if meaning and identity are provided for him" (ibid.). Possessing autonomy in terms of identity means possessing the reflexive attitude of thinking for oneself. Identity, in this reading, goes hand in hand with search of meaningfulness. An approach to history, which combines universal ideals with the political self, sets its root from this earliest stage. Specter concludes the section he dedicated to CP in Habermas's intellectual biography on this note of enlightenment oriented history writing. Combining this with the 'dynamic' notion of CP introduced by Muller defines the constitution and a combination of factors around it in a fresh light: A constitution as a document which invites the citizens to take part in the public sphere, ponder upon the political decisions to be taken and is open to adjustments responding to the developments in intellectual thought is a constitution which provides the dynamic reading of CP in the account I would like to develop in this research. Therefore, Specter's references to an autonomous identity and a critical approach to history in the German context complement Muller's defining CP as a dynamic and on-going process.

Specter situates the entire Habermasian theory together with the theory of CP within the German context. For him, the *Between Facts and Norms* is an account of Habermas's

approach to the German history, whereas there are almost no references to the German historical events in the BFN. In fact, the references to political and historical contexts that can be named in the BFN revolve more around the French Revolution and the notion of citizenship and sovereignty it brought with it rather than the unity of East and West Germany. “BFN is a resume of the achievements and the limits of West German Constitutionalism - and a manifesto for the Berlin Republic” (Specter, 2010, p. 171). He opposes the critics who argue that the BFN provides a ‘liberal’ or a ‘legal’ turn. The legal turn of the BFN refers to a combination of a number of Habermasian ideas emerging in Habermas’s work prior to the BFN: for Specter, arguing that Habermas is bringing all these different spheres of his work together under the Discourse Theory of Law and Democracy as an idea is ill-founded. Specter does not explain in any greater detail how and which specific concepts belonging to the BFN are derivative of the previous works of Habermas. While most of the ideas of the BFN do in fact connect with the former notions he had introduced, ideas ranging from nationalism to sovereignty as well as justice are all linked to a legally informed notion of democracy within the BFN. While refuting a ‘legal turn’ with the BFN, Specter oddly situates the BFN within a constitutional framework solely. How, one might wonder, can a German Constitutionalism which informed the BFN thoroughly resists to be named a ‘legal turn’ remains unanswered in this ‘intellectual biography’ Specter has written.

While seeking to situate Habermas’s work in the grand scheme of events surrounding the life of the philosopher, Specter carries out discussions about a number of themes arising in Habermas’s work: Specter singles out the most important weakness of the BFN as its reliance on ‘good citizens’ (Specter, 2010, p.174). He also refers to two different kinds of categorisations that come up in the BFN: ‘thick’ and ‘thin’ models of democracy:

“Habermas claimed that the procedural model steered a middle course between what we may call ‘thicker’ and ‘thinner’ models of democracy... The Republican concept of the state as ‘an ethical community’ was too thick, whereas the liberal concept of the state as ‘the guardian of a market society’ was too thin. Habermas’s procedural turn was prompted by his belief that only theoretical reconstruction could rescue the insights of republicanism and liberalism from theory to concrete embodiments” (Specter, 2010, p. 174).

The distinction Specter draws between thick and thin models of democracy is the same categorisation, which can be applied to certain interpretations of CP arising in the criticism of CP. This duality is a common theme arising in the broader literature on Habermas’s work (and it is not a distinction he draws himself). While Josh Cohen in *Two Track Models of Democracy* develops a dual attitude to Habermasian concept of democracy, the theory of CP borrows this sense of duality prominent in the second literature in the field on Muller’s writing on CP. Muller develops the terms of ‘thick’ and

'thin' models of CP: these two, for him, differ from one another with respect to the way in which individuals relate more or less to the constitution. In Specter's interpretation of 'thick' and 'thin' models (of Democracy, not of CP), an ethical political community and a liberal political community oppose one another. While these two interpretations of 'thick and thin' CP and democracy do not immediately relate to one another, it is striking that both Specter and Muller have chosen to use the same approach for drawing a distinction between muddled concepts within the broader Habermasian theory.

A distinction between a republican concept of the state and a liberal concept of the state leads to different interpretations of the notion of a state. A republican approach to statecraft creates an ethical community, which is too thick; and a liberal concept of the state creates an image of the state as a guardian of the market. I argue that Specter talks about the different approaches to the state; not to the society. These two approaches, liberal and republican, can be likened to the approaches to political affect defended by Maurizio Viroli: Viroli distinguishes between a republican affect and a broader conception of the affect belonging to the national public sphere:

"In scholarly literature and common language, 'love of country' and 'loyalty to the nation', patriotism and nationalism, are used as synonyms... For the patriots, the primary value is the republic and the free way of life that the republic permits; for the nationalists, the primary values are the spiritual and cultural unity of the people" (Viroli, 2003, p.1-2).

This distinction between two types of patriotic feelings in the society is similar to the distinction of a state as such or a state, which is construed as a liberal, and/or a republican state. Republicanism, in Viroli's approach, leads to different feelings towards the state than another conception of the state may produce - such as 'an ethical community' combined with a political liberal connotation emerging in Specter's approach to the notion of a community. I argue that this approach embraced by Specter is flawed as it overlooks the role of society in politics and law-making in Habermas's broader theory. Specter's preference of focusing on the state overlooks the affective component of any successful political theory. CP, by seeking the transformation of political affect, places itself at this transformative place between Is and Ought, between the 'better state' which Specter discusses and with the feelings of the citizenry. This in between place is meant to lead to improvements as well as degradations in the name of human rights and democracy. CP is the political psychological hinge linking the republicanism of people argued by Viroli to the universal moral norms sought after by HR and cosmopolitan theorists. Both Specter and Viroli need to include CP as a political, social and legal result lining various problems to each other. Therefore, contrary to the argument of Specter about not reading the BFN in a legal theoretical manner, the BFN, I argue, is indeed a work of political as well as legal theory.

Chapter Two: Identity, Europe and Constitutional Patriotism

“After laying down the principles of political right and attempting to establish the state on its foundations, it would remain to strengthen it in its external relations; which would comprise the law of nations, commerce, the right of war and conquests, public rights, alliances, negotiations, treaties, etc. But all this forms a new subject too vast for my limited scope. I ought always to have confined myself to a narrower sphere”.

Jean-Jacques Rousseau

Habermas’s interventions in German political affairs gave rise to the concept of constitutional Patriotism. His earlier theoretical work did not revisit the idea in any distinct manner. The concepts of political identity and a legal orientation come up, more recently and in a clearly observable manner, in Habermas’s writings on Europe. His writings and addresses delivered on the idea of Europe before the Eurozone crises as well as those published and delivered after the crises refer to a strong sense of Constitutional Patriotism understood in the European sense⁵. It is this idea that I would like to dwell on in this chapter.

Philosophers and social scientist have been pondering upon the ideal world and the world as it is for a long time. Kantianism, the social contract tradition, cosmopolitanism as well as critical theory is marked by the same quest. “Power can be transmitted; but not will” Rousseau wrote in the Social Contract (Rousseau, p.25). While a governmental form can change, the desire of the collectivity is more difficult to transform. Power, once it manifests itself in the governmental institutional structure of a state, constitutes a different phenomenon, which is interrelated to this structure. Rousseau’s work dates back to 1762. The social, as another phenomenon related to the power, is more closely linked with the lifeworlds of the individuals. The link in between is rendered possible through the representation of the people, which constitute the society. In this sense, the individual people who constitute the society writ-large carry importance in the political sense. A social contract, which confers power onto the state, relies on this notion of citizenry. The alternatives to democracy, at the theoretical level, are other forms of governance, which rely on the citizenry at varying levels. Post-capitalistic societies; for instance, have given rise to large monopolistic economic powers which render the link between the social and the political blurry.

Rousseau sets up a rational approach to the social. He refuses a political legal attitude, which derives its source of legitimacy from a naturalistic source. He points out to the norms of a society and the established forms of conduct as the source of the right to a social order: “But the social order is a sacred right, which serves as a foundation for all others. This right, however, does not come from nature. It is therefore based on conventions” (Rousseau, p.5). Conventions together do not constitute conventionalism directly. The social order that Rousseau is mentioning may translate into different levels of conventionalism when regarded from a post-conventional perspective positioned at the modern age.

⁵ The very first reference to CP was also at a conference in Denmark in the form of a conference paper- later published in the New Conservatism.

“Now, as men cannot create any new forces, but only combine and direct those that exist, they have no other means of self-preservation than to form by aggregation a sum of forces which may overcome the resistance, to put them in action by a single motive power, and to make them work in concert” (Rousseau, p.14). The state or the governmental apparatus –as the latter belongs to the state at permanence- is a pre-requisite of a socially transformative procedure. According to this statement of Rousseau, which came up in his essay on ‘The Social Pact’ both the counter-governmental and governmental procedures are regulated at the Universalist level.

Section One: Emmanuel Joseph Sièyes

Sièyes is one of the persons whose writing has influenced a process of social transformation. His constitutional theory has been highly influential for the French Revolution. Sièyes uses the term of ‘third estate’ to refer to a particular social formation. ‘What is the Third Estate?’ was a contribution to the debate that was raging in 1788 and 1789 about what form the newly convoked Estates-General should take (Sewell, p.43). Le Tiers Etat [The Third Estate] is a broad term. On the one side, it is a term including three different classes within the French society before the French Revolution. The three classes, which Sièyes points out as the parts of the ‘tiers état’, are: the clergy, the nobility, and the nation (Pasquino, P.69). This analysis of Sièyes during the period leading to the French Revolution of 1789 is about a sense of entitlement. The classes within the French society were contemplating about the conditions under which they lived. The historical turn of the events have erased the religious group.

Sièyes argues that the constituted power [le pouvoir constitué] and the constituent power [le pouvoir constituant] ought not be confounded. These two notions have a different and broad place in his writing. He encourages the layman that is the broad population to be in touch with the constitution. “It is evident that all the right belongs to the nation” he argues in a report of his own writing (Pasquino, p.168). One can consider the constituted power and the constituent power as the political and the social aspects of the state- respectively. The conceptual hinge between the two is democracy. Under the historical circumstances pertaining to the French Revolution, *le pouvoir constituant* has been the French nation. A global reading of this power makes it difficult to maintain the nationalistic base of *le pouvoir constituant* in the same way. In a democratic system, a society elects who should represent the individual citizens. Le pouvoir constituant is similar to the ‘volonté general’ [the general will] in Rousseau’s use of the term. Le pouvoir constitué, however, may take different forms depending on the societal structure and the conflict -if any- assisting the political transformation and the creation of the state structure.

Contemplating about ‘le pouvoir constituant’ is the duty of a philosopher. This requires rising above the political and social affairs of the lifetime of a philosopher. “The philosopher walking on the path of truth has not got an excuse if he leaves it for a single moment, it is not like him to negotiate with the different present interests” (Pasquino, p.169). Sièyes also argues that the tiers état should be thought not in its position of natural and social law, but in its vicinity to the circumstances. His understanding of the human spirit is one, which is able to exercise freedom and think freely. This approach has paved its way into the notion of freedom as ‘liberté’ in France. It meant throwing off the shackles of subjugation.

Sièyes argues that it is the government, which is constituted, and not the nation. In this sense, his understanding of a constitution is based on an already existing sense of a nation. The circumstances leading to a new state and a revolution to bring it are different in every context. Context is very important for determining the meaning. In the context of the French Revolution, the lack of understanding between different social classes played a part in the bloody revolutionary process. Sièyes has a critical approach to a mass of men with respect to their critical thinking skills. Arguing that the good ideas belong to the theoretical domain only is a discourse embraced by large groups of men (in the masculine sense of the word). In truth, they would not understand what is theory and what is practice anyway, he adds (Pasquino, p.168). In this respect, the role of the philosopher is very important for a social transformative process.

The cosmopolitan level of a transformative process has been discussed by authors who are contemporary to the twenty first century: "How, it will be asked, can a normative perspective recommending a cosmopolitan form of solidarity, with institutions to match, be reconciled with the existence of national communities in such a way as to achieve stability and justice?" writes Fine (Fine and Smith, 2003, p.469). The demands of universal moral norms and the discrepancy between them and the factual political existence shaped by the nation-states is the topic of more discussions on the issue than one: "As mankind, since the French Revolution, was conceived in the image of a family of nations, it gradually became evident that the people, and not the individual, was the image of man" (Arendt, 2000, p.32). Any individual who found herself thrown out of those communities, such as the Jews during the Holocaust, would find herself thrown out of the 'family of nations altogether' (Arendt, 2000, p.65). The idea of human rights derives its moral legitimacy from the concept of human dignity. It is this dignity, which is lost at the loss of national citizenship, according to Arendt. Habermas's discussion of the link between citizenship and human dignity has the same message: "Human dignity still retains...the connotation of depending on the social recognition of status-in this case, the status of democratic citizenship" (Habermas, 2010). In this article (which has originally been published in the journal *Metaphilosophy* and has been revised for his last book on Europe) he challenges the core notion of citizenship as the conceptual link between human rights and human dignity. I will use this specific article for a further discussion in the chapter of this thesis on human rights. For this particular argument at hand, I prefer to limit myself to the notion of citizenship and the role it plays in a European CP. 'Status of democratic citizenship' and 'membership in a national community' as Arendt puts it point toward the need for a cosmopolitan form of citizenship. In Nussbaum's account, cosmopolitanism is discussed in the form of 'Cosmopolitan Patriotism' as opposed to the theory of Constitutional Patriotism developed by Muller. The universal right content of human rights and human dignity bring it into juxtaposition with cultural norms, and it is in some cases contradictory with human rights, and in some other cases would be entangled with the national patriotic feelings of the citizens. While seeking to establish a cosmopolitan moral ideal, Habermas considers nation-states as the foremost obstacle before this. The theory of constitutional patriotism, as put forward in this thesis, however, takes this one step further and establishes national attachments as the most distinct obstacle before a cosmopolitan moral ideal.

Apart from the quest that sociology and philosophy have witnessed over the last century, there is one more quest which derives from the personal life of everyone and not only limited to scholars pondering upon (seemingly solely) academic problems: that quest is the quest the human spirit is 'condemned to'. This is the quest for meaningfulness. Identity is the quest for meaningfulness for Charles Taylor who brought the idea of identity into a more conceptual domain than it was before the introduction of his work (Taylor, 1989, p.183). We always stand in a relationship to others. "The very way we walk, move, gesture, speak is shaped from the earliest moments by our awareness that we appear before others, that we stand in public space, and that this space is potentially one of respect or contempt, of pride or shame" (Taylor, 1989, p.15). The world looks different when seen from the standpoint of different social identities. Human beings and social relations appear in different shapes, assume different degrees of significance, and are classified and understood differently (Parekh, 2008, p.24). The public space provides the 'significant others' in the Freudian sense, and attributes meaning to movements, facial expressions which stand in communication with others to interpret, linguistic accent which in certain context mark educational and economic background are all constituents of this public space.

Taylor argues that the self and the moral are in a close relationship (Taylor, 1989). The quest is always a quest for meaningfulness; and identity has a lot to do with this. Searching for meaning, we find ourselves attaching value to different components of our lives: be it work, family, taste in literature, or, as in the study of CP, love of country. Parekh captures the multiplicity of identities as such: "The world looks different when seen from the standpoint of different social identities. Human beings and social relations appear in different shapes, assume different degrees of significance, and are classified and understood differently" (Parekh, p.23). Deconstructing the self and defining which identity to hold on to, in which context, is not a self-evident fact. The modern era makes one a mother, a writer, a fashion-addict, a political analyst and a number of different persons all at the same time. An individual might have a number of different identities, according to Parekh (Parekh, 2008, p.24). Given the different context, one chooses which 'hat' to put on. It is a very general condition of social life, and of modern social life in particular, that nearly everybody should find themselves wearing at different times a number of different hats-very often at one and at the same time with varying degrees of comfort or discomfort (Montefiore, 2011, p.9). Among all these constituents of the self, as difficult as it may be to draw clear demarcation lines within the self, the theory of CP singles out 'national identity'. The multiplicity of identities, in Parekh's conception, has a positive side that is one identity can correct the contours of another. While addressing national identity, CP seeks to bridge the gap between a cosmopolitan identity and particularistic identities. The sixth and the last stage of moral development, which will be discussed in a separate chapter, seek to redefine the boundaries of the national self. The national and the universal coexisting together exemplifies the sought after way of dealing with the tensions between the particular and the universal as well as a number of different sources of meaning in one's life. Taylor criticises the Habermasian idea of understanding identity in terms of a 'proceduralist morality' and invites us to think of identity in completely new terms (Taylor, 1989, p.98). Taylor's interpretation of Habermas, I argue, is correct but misleading as it

overlooks the role national attachments play in CP. CP is a dynamic project, which seeks to transform, improve and adjust national identities in light of universal ideals.

The multiplicity and juxtaposition of national identities reveals itself in the European project. At the time of writing of this chapter, there are European leaders delivering public statements about the Russian annexation of (now formerly) Ukrainian peninsula of Crimea. The European leaders try to reach a conclusion together in responding to the Russian President's decision. Seeking accord between the member states of the European Union, expressing themselves with one voice and taking decisions, which are binding for all member states, require a form of identity, which is collective. The European nation-states expressing the European opinion in international relations do not, by its very definition, abandon their national identities. Neither do they give up any specific moral values embraced by their populations while making declarations about Crimea. They do, however, pull themselves closer to universal moral ideals such as Democracy, Human Rights and in this specific case, those of International Law. Most of the social, religious or linguistic values together constitute identity. Identity is a challenging concept. How one defines oneself, based on which characteristic or background is a complex issue made simpler in the theory of CP by addressing national identities only, as much as these identities can be in juxtaposition to a number of other identities.

The European example of acting collectively, be it in the case of Crimea or Eurozone crises, which come up often in Habermas's writings on Europe, demonstrates that state sovereignty has been breached long ago. Just like the national identity and distinctive national characteristics of these nation states, which need not be abandoned, the national state-sovereignty need not be abandoned either. Sovereignty is the capability of a state taking decisions within its borders. In international relations, however, it is not clear who the main actor is in cases of collective decision-making mechanisms. The G7, NATO as well as the EU demonstrate this collective expression in the international domain. International relations and transnational institutions indirectly refer to the cosmopolitan and supranational types of CP. Placed within a national context; however, one can argue that the British Government taking decisions at the European level is already verbalising the wishes of the democratic citizenry of its multicultural population. Therefore, CP understood, as a process and a relation between different forms of identities exist both inside and outside the national public sphere. In 'The Crises of The European Union,' Habermas argues that the sovereignty of the nation-states are 'partially preserved' (Habermas, 2012, p. 40). This derives from the right to exit that every state is given. By ensuring, in the legal form, that every nation-state can quit the union just like they joined it, the European Law preserves, the notion of national sovereignty. The end of March 2014 has witnessed two British political parties making statements about a possible referendum about the European membership of the British government. This possibility of holding a referendum on the right to exit reminds the citizens of Europe as well as the UK that countries still maintain a level of independence and national sovereignty. Therefore, many seemingly different notions of Habermasian political theory tie together in the theory of CP taking its shape in the European context.

After having introduced ‘the partially inscribed reason’ in *Between Facts and Norms*, Habermas talks about two different paths of legitimation in Europe: one leading from national citizens to the negotiation mechanisms of the transnational entity among nation-states (regarding the global domestic affairs), the second one being the cosmopolitan citizenry relating to the peace and human rights policy of the world organisation (Habermas, 2009, p.118). Europe as a project, according to him, needs to be visualised as having been cooriginally created by the peoples as well as the citizens of Europe. Construing citizenship and the peoples separately, Habermas is arguing that one will be able to consider Europe as a more democratically legitimated project. It is not only the different peoples of the nation-states of Europe, which created the supranational project of Europe, but the citizens of those nation-states as the bearers of rights. The constitution of Europe symbolises a common document on which citizens of different nation-states express their political will, albeit in an indirect manner: “From the perspective of a rationally reconstructed constitution-building process, the subordination under European law can be understood as a result of the fact that, from the very beginning, two different subjects were involved who cooperated in bringing about a supranational political community” (Habermas, 2012, p.28). The two different subjects involved in the European project, which Habermas mentions, are the national citizenry, and the cosmopolitan citizenry. A triple typology of CP I develop here offers a third component to this in contradistinction: that is the European citizenry. The national citizens, the European citizens and cosmopolitans (without possessing a status of citizenship for the time being) constitute a three level conceptualisation of the ‘citizenry’ deriving from Habermas’s writings on Europe.

I argue that a typology of constitutional patriotism that distinguishes between the national, the transnational (or the supranational) and the cosmopolitan would bring more analytic clarity to the concept of constitutional patriotism. In the way Habermas understands two different kinds of citizenry, both would be engaged in peace and human rights policy of the world organisation. In this sense, moral agents use their ties to the national citizenry as well as their commitment to the universal human rights to ponder upon the implications of a cosmopolitan politics and engage with principles, which from Kohlberg’s perspective, would emerge at the last stage of moral development he develops. In Europe, Habermas argues for a concept of juridification, which takes individuals and states, as it’s starting point. In this sense, he places the attachments of individuals to states and of states to transnational entities in the heart of his conception of legitimacy. While his recent work on Europe offers two paths of legitimation in Europe, his political theory offers a two-track model of democracy:

“Starting with the assumption that the normative validity claims of politics and law lack a cognitive meaning, such a theory attempts to explain how the individual interests of elites and citizens could nevertheless provide them with good reasons for making their contribution to the normatively demanded legitimation game of liberal mass democracies. If such a model of democracy could be justified,

then our question concerning the external relation between the facticity and validity would, quite elegantly, become pointless.” (Habermas, 1998, p.291).

Therefore, the cognitive meaning that normative validity claims of politics and law are missing is inherent in the different sections of the society. The citizenry as the holder of these interests and opinions comes to participate in the legitimization of mass democracies. In this sense, the cognitive attitudes the citizens have in deliberative politics is a core, but yet underemphasised component, of a two track models of democracy advocated by Habermas. The national citizenry as the source of legitimacy obscures the formation of transnational or cosmopolitan identities. By addressing the nationalistic feelings of citizens and subjecting them to yet another normative process of increasing level by level on the stages of moral consciousness, which will be developed in this thesis, CP brings duplicity in deliberative politics and legitimacy together. Habermas’s writings on Europe call for two different conceptualisations of the relationship citizens have to the sovereign: one from citizenry to the supranational (or cosmopolitan) entity, the other from citizenry to the national entity. The point about two track models of democracy will be discussed in greater detail in the chapter on democracy. Here I limit this argument to the two-fold conceptualisation of citizenry in the European case.

The duplicity in conceptualising citizenry (the one which already exists) and an alternative way of looking at the world politics from a philosophical point of view, according to Habermas, entails lowering the threshold between international and national law (Habermas, 2012, p.67). The European Law, as it stands above the national law in certain policy areas, exemplifies the international law. Rendering the national and the international law more similar and responsive to each other fits into the purposes of CP regarding multiple identities; that is one identity correcting the contours of another. Martha Nussbaum’s approach to Cosmopolitan Patriotism (which is not, in my opinion, part of the theory of CP) demanding the bringing the most external circle of the self closer to the innermost one is discussed in the section on moral self. The national law embracing the principles of international law corresponds to the idea of loving the world citizens on the merit of them being human despite being from different ‘circles of the self’. Two strands of legitimization proposed by Habermas for Europe are the national and the transnational citizenry and three different models of law are the European, the national and the international law. A third level of governance he proposes in *The Crises of The European Union* is a world government, which is above the nation states and unions of states. Each level of government, in this design, requires different strands of legitimization (Habermas, 2012, p.68). His earlier works on Europe as well as his recent writings refer to the concept of a world government directly: a legal embodiment of universalistic standards of justice needs to assume the character of a state for the constitution to function effectively (Habermas, 2009, p.117).

Section Two: The Transformation of European Public Sphere and CP

For a better functioning and more democratic European Union, there need to be more participation in European politics and more exchange between different European national public spheres. This call for developing informed opinions in the European as well as the cosmopolitan functional public spheres necessitate a framework of constitutional patriotism. Habermas does not place the argument about a dual citizenry in the framework of constitutional patriotism and political affect. The patriotic feelings of citizens and the meaningfulness their particular attachments address this integral component of a legitimation for world society does not initially come forth in this approach. Therefore, Habermas introduces a fine balance between particularism of attachment and universality of normative moral principles at the global level in such a way that the particular (national and cultural attachments) of citizens that constitute their different world views would be delimited with fair boundaries between national and cosmopolitan solidarity. In *The Crises of the European Union*, Habermas refers to the question about the moment, which the particular duties of national governments toward their own citizens based on shared national identities must take a back seat to the universal legal obligations, which all the states incur towards cosmopolitan citizens of international community. He presents this as an unresolved tension, and it is the tension on which constitutional patriotism is built. Constitutional patriotism, defined by Jan Werner Muller as a dynamic and on-going project, derives from this tension (Muller, 2007). This characteristic of CP, being dynamic and on-going, makes it difficult to draw demarcation lines between identities of different kinds: where does national identity stop and is diluted into the cosmopolitan identity? This is a question, which will be left to various contextual political interpretations of CP due to the space concerns of this work. CP as I define it is a dynamic process of identity creation.

After having written BFN with references to the partially inscribed reason and referring to the existing practices in his political writings, Habermas then argues in Europe that the cosmopolitan citizenry needs to go through a 'learning process'. I argue that the moral development of the cosmopolitan citizenry in CP equates to this learning process, which he brings up in his more recent work. In Europe, he brings into light that the cosmopolitan citizens take their orientation from universalistic standards, which address international peace and human rights. Juxtaposition of his arguments in Europe with respect to the universal moral standards by which the cosmopolitan citizenry abide emphasise the issue of the directionality of Kohlberg's moral development in his political theory. The abstract object of universal ethical principle orientation, I argue, derives from the constitution as an embodiment of universal moral principles. The constitution stands in the place of the object of attachment at the last stage of moral development in CP. The last stage of moral development as Habermas developed it in the Moral Consciousness did not refer to this abstract object as the constitution itself. The element Habermas introduces at the sixth stage of moral development, that is the social contract, is transformed into a universal constitution in the theory of constitutional patriotism. In this sense, reading Kohlberg's and Habermas's account of the moral self into constitutional patriotism points to a cosmopolitan citizenry. This analysis will bring more clarity with it after I present a discussion of Kohlberg's work in the coming chapters.

Section Three: The Role of Reason in the European Public Sphere

Constitutional Patriotism as understood by Muller, Cronin, Soltan, Abraham and Ingram is a theory in its own right. Nowhere in Habermas's writing we find the terms 'constitutional patriotism' and 'theory' together (in the English translation of his works). He does, however, have an argument about how theories should be built: When it comes to theory building, we must take historical developments into account, Habermas is arguing. Clinging on to a state-centred tradition of modern political thought deprives us of the tool of focusing on the citizenry, which, in Habermas's writings on Europe, emerges as the source of legitimation. Construing a cosmopolitan ideal at the 'right level of abstraction' as he puts it, allows the political theorists to make use of patriotism understood in the national sense. A high level of abstraction and pure reason at the global level, which derives from the 'partially inscribed reason', implied in the social facticity construes a legitimation of universal ideals with a sense of applicability in the political domain.

The Crises of The European Union, the book as well as the recent crises, holds much more than expected for the theorisation of CP. It spans over a number of concepts, which the theory of CP understood by the currently existing literature addresses; ranging from reason, legitimacy to democracy. The role of partially inscribed reason in the theory of CP takes an alternative shape in light of The Crises of The European Union. Habermas refers to reason and enlightenment in the Kantian sense and seek to place this within the domain of the European public sphere: "Liberation from self-incurred tutelage meant Enlightenment. With regard to the individual, this denoted a subjective maxim, namely, to think for oneself. With regard to humanity as a whole, it denoted an objective tendency, progress towards a perfectly just order" (Habermas, 2012, p.104). A transformation towards a new understanding of the self, to be able to think for oneself as an individual or as a collectivity is understood as a process. This process, understood as progress towards that which is accepted to be a better position, is a movement aiming at a perfectly just order. Moral Consciousness and Kohlberg's interpretation by Habermas holds that this progress, I argue, aims at a legal orientation. By referring to humanity as a whole in his writings on Europe, Habermas hints at his cosmopolitan tendency. Robert Fine interprets Habermasian cosmopolitanism as a quest of breaching Kantian theory of cosmopolitan right with our time (Fine and Smith, 2003). The rational content of a nationally constituted political community has the advantage of rendering legitimation and political deliberation easier in the public sphere. The idea of cosmopolitanism and advocating world governance for the humanity on the whole has another reason behind it: that is the well-being of everyone, not just the members of a given nation state. Building itself on the normative pillars of Human Rights as well as of that of Democracy, the theory of CP restricts its scope of feasibility. Letting go of Democracy, for example, would have made it much easier to defend universal moral ideals of (or and) human rights. Nowhere in the literature has CP been detached from Democracy so far. And doing so would lead to a totalitarian regime in the form of world governance. The identity of world citizens would encompass and maintain the particular(istic) national ties of the nation-state level only if

the rationality of nation-states can overlap with the rational content of the cosmopolitan project (Fine, 2003, p.470). To attain this, I argue, we need to read the theory of CP not only with democracy, citizenship and human rights but also in the European context. The reason that any single individual may attain freedom and free herself from tutelage is difficult. It is, however, easier to aim at a transformation at a broader level, Habermas is arguing: "That the public should enlighten itself is more possible; indeed, if only freedom is granted Enlightenment is sure to follow" (Habermas, 2012, p.104). Habermas challenges Kantian reason and Enlightenment. As always, he has an optimistic reading of history and believes that Enlightenment does not need to result from freedom but it can also lead to freedom. Not every single individual may attain Enlightenment if she tries it by herself, perhaps. The society as a whole becoming free, on the other hand, can lead to using freedom in a positive sense and attaining Enlightenment collectively. Habermas's approach to the national public sphere as well as his approach to a supranational public sphere bears the same connotations.

The dual nature of two different paths of legitimation in Europe means that national politics does and probably will continue to recede behind the European decision making mechanisms. The much-debated superiority of European institutions over national parliaments in international decisions means a superiority of the right over the 'good,' the subsumption of politics under morality (Habermas, 2012, p.164). A collective decision making mechanism is, by definition, fairer than an individual and possibly selfish attitude bearing the well-being of the self, or that of the nation, above others. Europeanization is a step, following the steps of Kohlberg, towards a cosmopolitan order of world governance. The subsumption of the national governments under European institutions means the subsumption of politics under morality (Habermas, 2012, p.164). Legality, on the other hand, would follow from morality. Therefore, CP defends a transformation of the national public spheres in the name of moral principles and an embodiment of these in a legal document. This, however, is in contradiction with a point I have developed before: presuming that Enlightenment does not need to result from freedom but may also give rise to it does not demonstrate clearly where law fits in this schema of freedom and enlightenment. Understood in the conventional sense, freedom would lead to enlightenment and not vice versa. By reversing this equation, Habermas reflects his normative tendency. The European constitution is fit for this purpose as it has been created by the elites and not by the peoples themselves (Habermas, 2012, p.30). As much as it may lack democratic backing if democracy is understood in the conventional sense, the European constitution is an example to a legal orientation placing the rationale of the supranational institution above the national ones almost in an imposing and normative manner. An individual or a society may find Enlightenment even if freedom is initially imposed upon them. He does not think of freedom as a dress which needs to fit well on the social self for it to look good: freedom, for Habermas, is a joker which fits every context and leads to good results by definition. I would like to ponder upon the function of law in his questioning of reason and CP later on in this thesis. For Kohlberg and CP, law needs to be the last stage, which the universal sense of morality leads to. Without a legal document as the object of attachment, it is unclear how CP might reform a new form of attachment based on the constitution of a country. Conceiving the main object of

attachment as the political liberal culture, which then leads to legalisation, may facilitate the predominantly psychological discussion about the object of attachment in CP and the affective lack.

The double nature of the tracks of legitimation and of conceptualising the citizenry is supported by a mutual trust among the European peoples that with increased interest in the affairs of each other, there will be a stronger collective European identity. Habermas wishes a form of 'civic solidarity' to arise in this supranational sphere (Habermas, 2012, p. 29). Developing a justice perspective broader than the national one is a burden falling onto the European citizens. The Europeans would have to decide which part of their now more permanently multiple identities to hold on to in different cases: the perspective of a European citizen or that of a member of a particular nation (Habermas, 2012, p.37). This division of identities is not meant to render the identity construction on the individual level more difficult. Rather, as I interpret Habermas from the perspective of CP, it is meant to facilitate the juggling of different roles and perspectives one might find herself possessing (or wishing to possess). Nussbaum's conceptualisation of the self in the form of concentric circles suggests that one should make the effort to get to know the unknown and unfamiliar in order to become a better person. This philosophical attitude, however, does not illuminate questions from a governance perspective: national identities make people feel like they are the members of one nation and not another. If we are to accept that embracing the values of others as well as that of the self and caring for the originally unfamiliar, the most external circle of the self, is a positive thing; how is this to be implemented in international relations?

The democratic deficit of the European union can best be addressed by a change of perspective which can take place now: The dual approach to the citizenry invites the observers and scholars to conceptualise the European citizenry in an analytic light which looks at the entirety of the European population, including all of the member states, and distinguish between the different roles the same citizenry has. Citizens ought to develop the skills to think of the benefit of their nation-states as well as that of the EU. Being EU citizens and members of different nation-states can, in this conceptualisation, coexist in the selfhood of political consociates (Habermas, 2012, p. 37). Habermas proposes a scenario in which the national attachments will be 'extended' (Habermas, 2012, p.46) without being annihilated or abandoned in any way. This extension of the name of conceptualising European identity is an integral part of dealing with national identities in the theory of CP. This extended particularistic self is more abstract and less resilient. It is a civic solidarity shared by all member-states. This definition of the European citizenry sharing an abstract and civic form of solidarity is akin to the definition of CP defined in broad terms. Without referring to the concept of CP per se, Habermas's invitation to reconsider the European solidarity has a large space of overlap with Muller's theory of CP. Only in the case of a dual conceptualisation of the citizenry with emotional ties of the citizenry to two different levels of governance, Habermas is arguing, the parliament in Strasbourg can develop the ability to participate in a joint process of will-formation reaching across national borders. Therefore, this extension of the national self and

imagining the citizenry in a dual way, which allows for different levels and forms of identification, take part of the theory of CP I seek to develop in this thesis.

Expanding the networks of communication, which exist within the national sphere, has a political dimension which points at liberalism. While seeking to relate to other national spheres, Habermas advocates the preservation and betterment of liberal 'values and attitudes' and an inclusion of the strangers. Including immigrants into the societies is not any different from improving the social cultural skills about relating to different societies and communities: expanding the national public sphere so as to address the inner political and social issues of other European member states requires the same expansion of the innermost circle of the self as the collective external national self, expanding and reaching out to another national sphere. Therefore, Habermasian CP defines how to bring Nussbaum's conceptualisation of the self-taking its cue from the Stoics into the much debated concept of the national self from cosmopolitan and multicultural perspectives. Understanding that which is different, and speaking in another language, is the best way to relate to other societies and to the Other (after l'Autrui de Jean-François Lyotard). Anthony Giddens argues that speaking in another language is the best sociological tool for the broadening the social scientist's perspective (find reference). Habermas refers to perspective taking and identity in his work on Europe more than anywhere else in his work. National identities, which are 'strong identities', pose an obstacle before this self-enrichment for him (Habermas, 2012). The strong identities, which in some contexts are more prevalent than others, need to be stimulated through legal institutional means.

An observation of Habermasian theory as a whole gives different insight to multiple aspects of CP; to that of law in particular. The fact that the theory of CP seeks to re-establish political identity in light of law and universal moral norms is not a coincidence: a broad study of Habermas's work justifies the reason behind this. Political identity in the age of nation-states being part of shared political and cultural attitudes and convictions, on the one hand, and the universal ideals sought by CP, on the other, mutually reinforce one another. Just like politics and law interact with one another, they in turn react with the shared political and cultural attitudes. The legal and social interaction, according to Habermas's writings on Europe, is not solely about a legalistic process of law-making but about the norms and values embedded in a legal format; that is the constitution itself (Habermas, 2012, p.46). A European constitution, therefore, is the centre point of a European CP.

Legality as a significant component of CP derives from (or relates to) Habermas's interpretation of law: law has the tension between facticity and validity built in itself (Habermas, 1998, p.390). The way to solve this tension inherently built into law is possible by justifying the legal authority by all the participants. The 'cognitive meaning', which a normative theory of politics and law lack, adds the emotions and decisions of the citizenry into the political and legal procedures. In BFN, in the chapter on Deliberative Politics (Habermas, 1998, p. 291) and A Reconstructive approach to law, he argues that the

tension between facticity and validity can be solved by justifying the 'normatively demanded legitimation game of liberal mass democracies' (Habermas, 1998, p.290). These two chapters will be discussed in greater detail in the chapter of this thesis on democracy. The Crises of The European Union and CP fit into this as it seeks to establish the role of the citizenry in the legitimation process from a point of view addressing 'identity'. Politicians in Europe and in the world are seeking ways to establish mechanisms capable of 'transforming mentalities' (Habermas, 2012). The need of transforming mentalities at the European level has been discussed in Habermas's earlier work on Europe as well as his more recent one: regarding a reform treaty, he wrote that despite a reform treaty and a constitution are productive steps towards a stronger collective identity (which he views in a positive light), it leaves the mentality of European citizens and their participation in the European public sphere completely unaffected. CP as I seek to interpret based on Habermas's works on Europe proposes this mechanism of mental transformation about the feelings of the citizenry (Habermas, 2009, p.79). By addressing the mentalities and utilising the tool of participation in the public sphere, it relates to seemingly different aspects of Habermasian theory on the whole. Participation of the European national public spheres in the affairs of one another and becoming more responsive to issues which human beings, irrespective of their national status, can relate to have not only the post nationalism and cosmopolitanism of Habermasian theory involved in it; but also is reminder of the Theory of Communicative Action and The Structural Transformation of the Public Sphere (Habermas, 1989b). The latter two works of Habermas will be revisited in the following chapters of this thesis in light of CP. For now, I would like to restrict myself to highlighting his call for Europeans as a means to situate the theory of CP in an empirical setting: "For, until the usual spectrum of opinions and relevant issues within the national public spheres is broadened and until the public spheres become responsive to one another, the citizens derive no benefit from a formally strengthened status of the parliament" (Habermas, 2009, pp.81, 87). Broadening the spectrum of opinions from within a national perspective to address those who belong to different nationalities is part of the theory of CP. Habermas singles out multilingualism as the most significant obstacle before this post-national communicative action. While not referring to CP in the chapter of 'The Plea for A Graduated Integration' in Europe in 2009, Habermas does, however, refer to a notion of CP in the same work, in another context:

"The development of a European 'identity' can be understood as the continuation of a process which is already taking place within some of the member-states. In response to challenging historical experiences, and as immigrant groups who maintain ties to their countries of origin become culturally and politically integrated, there are already initial signs of a properly understood constitutional patriotism as a basis for civic integration within these states" (Habermas, 2009, p.129).

Constitutional patriotism as a basis for civic integration, therefore, is an umbrella term for a number of institutional, legal and bureaucratic changes taking place in modern Europe. In contemporary politics European Commission provides a good case in point example for the transformations regarding civic solidarity as Habermas understands it: The

different sections of the European Commission, such as the section responsible of enlargement, seeks to 'transpose' the national law into the European law and implement the European law in the countries which are still to join European Union and which recently have joined it. This shows how in practice abstract universal ideals are intertwined with law and find their place in implementation. Habermas claims that there already is a sense of CP in Europe not because of the implementation and enforcement of European Law at the national level but because within the nation states there are groups which maintain ties to their countries of origin while participating in the liberal political culture of the host country (ibid). Therefore, the CP, which already exists exemplified by Habermas in 2009, was construed at the national level while his later work on Europe (*The Crises of the European Union*) have evolved in a way to place European Union in light of CP. The immigrant groups Habermas had referred to in 2009 would be negotiation between two kinds of identities, which are both national: their home country and their host country. The negotiation process between different forms of identities within the boundaries of the same political and moral self would be addressing two national identities only. This bargain between two similar types of identities, albeit the possibly different levels of acquaintance with participation in liberal forms of thinking, I argue, is different from what a full account of CP holds: CP is best understood as a process between nationalism and cosmopolitanism. A back and forth between different national identities in the case of the integration of immigrant communities does not give space to supranational and cosmopolitan levels of CP. Muller has successfully placed it in this philosophical spectrum in the most distinct way. CP as an in between concept between nationalism and cosmopolitanism, between particularism and Universalism, therefore, does not fully overlap with one of the very few direct references Habermas makes to it. Habermas revisits the themes of universalism and particularism often in his political theory. A thorough analysis of this aspect of his work will be discussed in the further chapters of this thesis in order to demonstrate what he means by these two concepts in the BFN in particular. A close examination of his work on Europe demonstrates a contradiction between different constitutional patriotisms he has in mind or point to a possible transformation in his thinking (either about the concept of CP itself or his broader account of the possibility of implementing universal moral ideals in particular concepts).

The Crises of the European Union holds that there isn't only need for strengthening the European solidarity but that 'the international community of states must develop into a cosmopolitan community of states and world citizens' (Habermas, 2012, p.X). Therefore, the internationalism aspect of the CP, that is the second type of CP, needs to expand one more time to reach the cosmopolitan level. Habermas expresses this need for legalised world governance and a world citizenry to support it in *The Crises of the European Union* in the most distinct way. The European Union has enjoyed a 'civilising role' which managed to bring post-war societies to a diplomatic path which facilitates economic relations. This role that Europe enjoys will become more prominent when it is considered in light of a 'more far-reaching cosmopolitanism'. Europe can be more active as a collective entity in international relations, rather than solely seeking the political integration and the economic benefit of its citizens, but act and represent itself in international

relations and via its foreign policy. A stronger Europe will be a better example for the second, that is the supranational type of CP.

Critics of CP argue that it is too abstract an idea to take hold in the emotional lives of the citizens. Communitarians as well as liberals thus misconceive national identity: national identity came to exist in the nineteenth century of Europe and has a floating character. There is nothing inherent in the quality of being human in the biological sense turning us into French or Zimbabwean persons. The abstraction of national identity can and should be coupled with other, even more abstract universal ideals for the betterment of society. The boundaries between nations and citizens of those nations are not given: political community is a concept created by human beings and as their history changes, so do their needs and solutions they find for the problems in which they find themselves. “Loyalties evolve and traditions change. Nations, too, just like all other comparable referents, are not natural facts, even if they are generally not merely fictions either (Habermas, 2012, p.47)”. While the constitutional definitions of nation-states and their subpopulations evolve and change (as the case of Crimea in our time demonstrate), their need for democratic legitimacy unmistakably results from having a horizontally integrated association of legal consociates. Belonging and emotional ties to the notion of nationality are perhaps seemingly less abstract than universal moral ideals sought by cosmopolitans. It is hard, after all, to find people who are willing to kill and die in the name of abstract notions. But the French Revolution proves that these ideological constructs take historical form and shape throughout time while the conditions need to be mature. Habermas, by referring to the French Revolution as an exemplar in changing and transforming identities, brings Marxist resonances into the theory of CP. Just as in the French Revolution conditions were mature for social forces and that there was a popular need to push legislation and politics into a different direction, so is the case of in the Marxist understanding or the need for another form of political attachment in our time. Therefore, CP is part of critical theory in a distinct manner. Historical moments with social conditions push towards sudden moments of transformation. The French Revolution provides an example of this. It also provides an example of a transformation in the name of identity creation.⁶

The changes in the social and political world call for an increase in communication. This points at a broad sense of morality and the desire to understand. Most of the issues that there is no transcultural consensus about the right value judgment are diluted into the social domain. This gives a seemingly de-politicised view of the cultural conflicts and conflicts in international relations. The different cultural practices are judged exclusively from a moral point of view. “We are inherently familiar with everyday situations in which we feel obliged to show solidarity with strangers, with everything that has human face, without any hint of self-assertion. Only in this moral universe of all persons acting responsibly no one is excluded” (Habermas, 2012, p.64). The universalistic morality, in which individuals

⁶ <https://youtu.be/PBn7iWzrKoI>

and cultures seek to reach value judgements, is the only medium which social values are translated into law (Habermas, 2012, p.65). Human Rights, in this sense, is different from Democracy as one of the normative pillars of CP because it seeks to address every human being by the virtue of being human; irrespective of the form of governance one may prefer or find oneself obliged to live under. (The idea of human rights will be discussed in greater detail in the following chapters.) While Muller defines and limits the pillars of CP to Human Rights and Democracy, Human Rights play a much more vital role in facilitating ease of reaching the inner lives and attachments of individuals living in different cultures and regimes, be it democratic or not. Universal morality is implied in Habermas' conception of world governance in the sense of military intervention too: nation-states need to lend their military forces at the supranational level for enforcing the peacekeeping and human rights policies which they would be involved in designing. Having responsibility and a right to participate in the writing of universal law to apply in every corner of the globe, nation-states enjoy the right as well as carry the burden of taking part in cosmopolitan world governance. It is only the Human Rights policies, according to Habermas, that legitimately requires national participation in extraterritorial jurisdiction. The D principle Habermas clearly defines in the BFN finds its place in this definition of a cosmopolitan community deriving from Habermas's writings on Europe: "Just those action norms are valid to which all possibly affected persons agree as participants in rational discourse," the D principle holds (Habermas, 1998, p.107). The implementation and enforcement of Human Rights at the global level deserves and requires the participation of all the nation states as participants in building these laws before being responsible with their implementation. Rational discourse which can take place at the diplomatic level in the process of law-making (if the currently existing Human Rights law and International Law are to be amended at all) among all the participants lead to the 'action norms' in international relations to rightfully intervene and implement peacekeeping. The Crises of the European Union, in this sense, exemplifies some of the most abstract principles of Habermasian theory bringing a utopia one step closer to the real world. The participants in rational discourse defined in the D principle of the Between Facts and Norms can be supported, I argue, with an interpretation of the nation-states as participants in rational discourse in the European sphere.

Bridging the gap between facts and norms is thus facilitated by the existence and preservation (and perhaps a possible betterment) of the EU. This role Europe plays in Habermas's thinking is not only an important step-stone for bringing utopia closer to the world and vice versa but is also an important argument about how to make the cosmopolitan dream real: The EU can be understood as an 'important stage along the route to a politically constituted world society,' Habermas states clearly (Habermas, 2012, p.5). It is, in this sense, not an end in itself but a stage for a long-term goal that either a revolution or a teleological interpretation of history holds. Global governance, beyond being tied by moral ideals in a legal format, needs to be 'politically constituted' for Habermas. "The rhetoric of human rights have in fact exercised global effect over the past couple of decades" already (ibid). Conceptualising a world society which is politically constituted loses something of its semblance of utopianism when we remember that not only human rights have enjoyed global scope in international relations and legal

implementation of universal values, but also that the French Revolution has caused the distinction between civil and human rights to evaporate. Equal rights for all the 'citizens' of the Republic have been acquired via the French Revolution. The political constitution of a world society (in addition to a moral one), from the perspective of CP, shows us the place we can find for the nation-states and national attachments of our age. In this reading, there isn't a clear demarcation line between civil and human rights. Despite the utopian nature of globally implemented Human Rights, the experiences of violated human dignity foster a militant outrage which lends repeated impetus to the hope for a worldwide institutionalisation of human rights. Critics who argue that CP is unlikely to take hold in any society, is too abstract in nature would hardly contest the equally, if not more, abstract nature of the concept of human dignity-the violation of which finds legal therefore concrete reverberations within specific contexts. Law, in that sense, and Human Rights in particular, promise a domain in which the political and the philosophical can be expressed as well as protected together.

The D Principle applied at the global level requires that the transnational negotiations would be conducted with reference to the notion of justice, which the world parliament continually adopts itself to the duties laid down by Human Rights. In this sense, Habermas's reference to a world parliament has resonances of cosmopolitanism in it. Pushing itself away from nationalism and closer to cosmopolitanism, CP makes use of Human Rights and democracy as the most helpful tools along the way. A better understanding of how one needs to interpret democracy in the Habermasian sense, however, is beyond the purpose of this chapter. For now, I will limit myself to arguing that this democratic understanding as a normative pillar on which CP is built has discourse-theoretic connotations making Habermas's understanding of democracy all the more interdisciplinary and rich. Habermas trusts the 'power of good arguments' winning in the international as well as within the national domain. This, I believe, is symbolic of the optimistic attitude of Habermas. CP holds that the D Principle implemented at the cosmopolitan level is optimistic (or one might say wishful thinking) about the values embedded in the Human Rights relating to all the participants as representatives of different nation-states. The subsumption of national law to European Law, in some sense, facilitates the conflict resolution in writing Human Rights by all the participants-albeit in a normative manner. Europe in this way demonstrates how one form of law can be rendered superior to another while the contents of the former is subject to continuous scrutiny and interpretation.

Section Four: Popular Sovereignty as Procedure and CP

Habermas demonstrates his preference for intermingling many seemingly different political, social, legal and philosophical concepts one more time in the chapter of BFN dedicated to a conceptualisation of sovereignty as procedure. Thinking about the role the French Revolution played in a legal as well as a sociological terrain about identity creation comes to the front in this chapter of the BFN. The French Revolution ties together

eloquently the question about transformation of mentalities and citizens as right bearers in a common (national) sphere. French Revolution occupies large space in the minds of French citizens and in their 'collective memory'. Habermas criticises the criticism of the two French intellectuals who have written about their 'own' historiography claiming that 'the clocks of collective memory keep different time in France and Germany' (BFN, p.464). Habermas puts the French Revolution under scrutiny as a tool for the transformation of 'mentalities': the mentalities which were the subjects of a kingdom, who came to understand themselves as fellow members of a nation, need to be transformed one more time for another collective self-understanding, CP would hold. 'The needs for orientation' of the present time can be satisfied with the study of 1789 as a historical turning point. His work on The Crises of European Union and insistence on maintaining the political bonds in Europe despite much economic problems, which have been faced, exemplify the collective mental transformation he seeks. His references to the French Revolution in BFN as well as in Europe (subtitled 'The Faltering Project' published in 2009 has place within the broader conceptualisation of CP I seek to construct in this thesis. The French Revolution, in this reading, is an example to a historical moment in time with significant transformative power). The second typology of CP, that is CP as supranational identity, thus finds a distinct face of its own when placed between the Political Theory and Political Writings of Habermas; between his theoretical ideals and examples from the real world. One of the real world examples was the creation of a European identity.

The needs for orientation and history gaining momentum through spinning itself over a moment in time acquire an almost positive scientific terminology in Habermas's approach to sovereignty and national identity: the French Revolution 'accelerated trends that were already under way', he writes (Habermas, 1998, p.465). The projection of a stronger European solidarity is also underway, for him. In this sense, the political and social circumstances of our day are in many ways similar to those of 1789: it had resulted in a legal expression and a new form of collective identity that came to be associated with the core of nationalism. In CP, the 'abstraction' of the ideas before 1789 and their inextricably intertwined nature to the political selves in the age of nation-states needs to be implemented at the right balance between facts and norms, between real and ideal and between universal and the particular.

The interdependence of world political affairs today, a popular sovereignty 'as a procedure' and national 'consciousness' come together in the example of Europe in BFN: 'The contemporary heirs of the European system of states, having taken nationalism beyond its limits, find themselves on the path to a post national society' (Habermas, 1998, p. 465). The chapter on moral consciousness and the political self provides a grounding on which a social consciousness can be understood in the theory of CP. Habermas did not read Kohlberg or moral consciousness from the perspective of nationalism, despite that he argued for embracing universal principles in the form of law at the last stage of moral development. In BFN, he adds the term 'national' to his understanding of 'consciousness' and its empirical example in the real world, here in our time, in Europe. The social integration in the form of a national identity which came to be true with the French

Revolution is that which we need, for a European solidarity, through a social integration using different historical moments in time but similar conceptual tools: such as the collective memory, law, citizenship and national (or European) consciousness. The universalism of human rights and democracy has 'explosive power and vitality...in European nations, where constitutional patriotism acquires new significance in the course of an identity transformation' (ibid, p. 465). In the European sphere, there is not only identity transformation but also 'transposition' in the legal domain. This transposition between national and European law (or national and international law), I argue, needs to be read together with Habermas's conception of sovereignty as procedure and his more recent work on Europe. CP, here, becomes a framework structuring this transposition and juxtaposition of different levels of law all exemplified through the case of Europe.

CHAPTER THREE: COSMOPOLITANISM and CP

Section One: The Place of Europe

Habermas's cosmopolitanism is marked by a transition to the cosmopolitan level through the supranational institutions. While the UN has emerged as a cosmopolitan example in this chapter, it derives from the example of the EU as the second type of CP. Habermas writes "Therefore I would like to test the conditions for a democratic politics beyond the nation-state through the exemplary case of the European Union" (ibid, p.88). Here he singled out the importance Europe in his post-national thinking. Cosmopolitanism emerges in light of the case of European Union repeatedly in the essay titled 'The Postnational Constellation'. Habermas refers to the abstraction capacity of the nation-state one more time: "This unprecedented increase in abstraction is merely the continuation of a process the first major example of which is the integration achieved by the nation-state" (Habermas, 2000, p.107). The structural transformation and the evolution of the society continue at a global scope in a way which uses the abstracting capacities of the peoples from within: "The human population has long since coalesced into an unwilling community of shared risk. Under this pressure, it is thus quite plausible that the great, historically momentous dynamic of abstraction from local to dynastic, from national to democratic consciousness would take one more step forward (Habermas, 2001, p.56). Therefore, Habermas encapsulates a democratic consciousness as a universal consciousness at which national societies have arrived at gradually. It is this power of abstraction inherent in societies upon which he relies in his conception of transition to a supranational and cosmopolitan society. I seek to discuss the role of human rights and democracy in this quest of identity creation in the remaining two chapters.

Section 2: The Achievements of the Nation-State System

CP begins in the context of nationalism and extends itself into a form of supranational identity in the chapter on Europe. This chapter leaves behind the notion of nationalism, which pushes CP and the European identity. These two stabilise CP and focuses on the one, which pulls it in a given direction: This pulling factor is Cosmopolitanism. While nationalism and the nation-state provide the ground on which CP depends, it also lends CP with the positive characteristics, which the nation-state has. The nation-state remains prevalent within the theory of CP as it is the transformation of the nation-state and not its abandonment, which is sought after. The nation-state has proven its unifying capacity and society building power since the French Revolution. It is the most defining feature of the agents in the international relations system. The nation-state has not only demarcated national borders, caused exclusion of the immigrants, and wars between states of economic and physical forms. It is a concept, which continues to prove its power on a daily basis by keeping individuals together. It is worth paying more attention to in this here simply because it has never stopped to provide meaning for individuals for centuries. In

this section, I would like to dwell on these positive achievements of the nation-state system and nationalism in light of cosmopolitanism. Focusing on cosmopolitanism renders nationalism this new angle. A CP, which seeks to demolish nationalism without taking parts of nationalism with it, is a weak form of CP. Thinking through the aspects of the nation-state and nationalism, which is to be preserved at the cosmopolitan level of CP, is necessary.

“Every nation contains its own central point of felicity, just as every sphere has its centre of gravity” Habermas is quoting Herder (Habermas, 2001, p.3). Habermas talks about a group of scholars who gathered with the objective of increased communication among academic disciplines and the unification of the politically fragmented German ‘Fatherland’. This group, called the Germanists believed that they could play the role of ‘natural interpreters of the spirit of the people in the political public sphere’ (Habermas, 2001, p.3). Achieving German national unification through the acquisition of a liberal constitution had ended in failure at the time. The Germanists as a group of scholars had preferred to embrace a position which unselfconsciously fabricated political relationships based on shared descent (*jus sanguinis*). In the theory of CP, I argue that this shared descent can be likened to the conventional ties of kinship, such as common language and history. Although their main aim was increased contact among academic disciplines, the attitude of the Germanists on the German unification and social history rendered a lens which perpetuated conventional ties of kinship characterised by nationalism. This preference of treating the nation as an organic whole was intended to give the German nation the appearance of a natural phenomenon. Habermas believes that the idea of an organic nation as a whole and a natural phenomenon, advocated by the Germanists, poses insurmountable difficulties for the future. Thus, while the notion of a ‘spirit of the people’ comes to the front in the way The Germanists articulate their arguments, it is a negative notion for Habermas. Assuming the notion of a given spirit of people is not any different from assuming that every nation has an unchangeable core that cannot be altered through historical social events, he is arguing. Herder’s approach to the centre of felicity of a nation, which is similar to the interpretation of the Germanists, is too static and overlooks the capacity of social change, for Habermas.

In his writing in the Postnational Constellation and The Germanists Debate, Habermas gives space to authors who defend nationalism. Despite aiming to argue against nationalism, he is quoting scholars from within the Germanists group and beyond who would like to further the cause of nationalism. One of these scholars from within the Germanists group is arguing that the nation triumphs over all that is foreign (Habermas, 2001, p.5). By arguing that the organicity of the nation is superior to the feeling of foreignness, this author emphasises a given and a singular notion of the spirit of a people. This worldview had formed the perspective of early humanities against which Habermas situates himself. This group of scholars to whom Habermas is opposing advocate that we understand what is closer to us better than what is foreign. There is a certain notion of relying on that which is familiar in this argument. To further this argument about the spirit of a people into broader elements of Habermasian theory, we find that the constitution comes into play: The (then initially failed) German unification required patriotic feelings

revolving around a constitution. The spirit of the people, for the Germanists, could not be attached to a (liberal) constitution. For the Germanists, a constitution is not a document which can inspire feelings of love of country. I am arguing that the German constitution inspiring feelings of love of country understood in cosmopolitan terms have commonalities with the attitude towards the social sciences around the debate with the Germanists. If individual academic disciplines can relate to one another as The Germanists wished to demonstrate, and understand one another, so can different nations and ethnicities living together or in different countries. This point about increased contact among nations and among academic disciplines being similar to one another is one aspect of intercultural and interdisciplinary communication that did not come up in Habermas's criticism of the Germanists.

The social sciences of the time following the Historian's Debate and the controversy Habermas is having with the Germanists demonstrate an attitude which seeks to imitate the natural sciences' 'cool universalism'. While doing so, a cosmopolitan scope for the social sciences deprive Habermas and other opponents of the notion of a spirit of the people of the capacity of seizing the heart, the Germanists claim (Habermas, 2001, p.6). This criticism, originally levelled against a cosmopolitan approach to social sciences is one of the most common criticisms facing the theory of CP: Critics argue that CP is a dry and legalistic notion which fails to seize the heart together with the mind (Abraham, Grimm, Soltan). The debate Habermas had had with the Germanists show us that the seeds of this argument about lack of affect within the theory of CP towards a cosmopolitan constitution date back to this controversy. This supposed failure of expressing and gripping emotions is a commonality with the attitude that social sciences with a cosmopolitan scope could have within the German national context. Both CP and a German constitution are charged with not having the capacity of inciting feelings of love and likeness among human beings in the political sphere.

Habermas is arguing that the nation-state had not developed into maturity along with a cultural nation; a cultural nation is something which derives from the nation-state in due time (Habermas, 2001, p.9). The Germanists assembly, by focusing on the spirit of the people, had assumed the unity of the two. Habermas emphasises the dialectic motion between the poetry, language and the spirit of a people and a political power centralised around these notions (ibid). A cultural nation is something which develops over time based on mutual dependence of social and cultural commonalities. As much as Habermas dissects a cultural nation and political power, he does not, however, presume that the notion of a people is unimportant: he is arguing that the unified nation capable of decision-taking for its own future is particularly important from the perspective of law: "As long as law is able to generate its own legitimacy from the legally formative power of the people, no need arises for a legitimation of positive law which would have to be met by the democratic procedures of a parliamentary legislature" (Habermas, 2001, p.13). In this sense, I argue that the Habermasian approach to law relies on the legally formative power of the people who first relate to one another in the political and social public sphere as

members of a 'cultural nation' do before the legislative process takes its power from the legally formative source of a people who communicate and keep thinking about the political and social problems at hand reflexively and collectively. Rather than a single spirit of the people who is capable of making laws and which keeps the society together based on the principles of conventional and fanatical nationalism, Habermas advocates "the spirits of the people" which are multiple and enable learning among societies. This is an interaction between the spirits of different peoples who can communicate with and learn from one another (ibid). He is against the idea of grafting the universal form of democratic constitutional state onto the particularistic doctrine of the spirit of the people which the Germanists group support. In this sense, particularism equates to the ideology of nationalism embraced by the Germanists. Therefore, Habermas avoids particularism understood in the sense of nationalism. By promoting learning among societies, Habermas seeks to realise a universal doctrine of political ideals and communication: in my interpretation, his discourse ethics pave the way for the ideals of democracy and human rights to take hold at the cosmopolitan level. Charles Larmore interprets Habermasian discourse ethics as such: "The attempt to find the source of morality in a general principle of universalisation which any agent must assume just by virtue of being a competent speaker with an understanding of the concept of reasons for action". It is the reasons for action which urge the competent speakers to create and re-create the source of morality in a general principle of universalisation. A cosmopolitan approach to the Habermasian theory I seek to develop in this chapter takes hold of these principles of universalisation as democracy and human rights. These two are the normative pillars upon which CP stands.

Despite all the negative connotations which a general approach to Habermasian theory attribute to it, the nation-state has in our age rendered possible an abstract solidarity with the cultural nation: "Clearly, the nation-state fulfils important preconditions for societies constituted within determinate borders to exert a democratic form of self-control (Habermas, 2001, p.62). A consciousness of collective belonging, that is the cultural nation, emerged during the 19th century as a response to the need of organising states collectively. Habermas points at a culturalistic approach to the nation-state claiming that a mode of solidarity between people who were strangers to one another until then had emerged with the nation-state. The nation-state had in fact already introduced the notion of legality and political ideals such as democracy into the idea of a national identity: "By expanding the parameters for the implementation of human rights and democracy, the nation-state made possible a new, more abstract form of social integration beyond the borders of ancestry and dialect" (ibid, p.18). Therefore, the notion of law and democracy are tied into the nation-state from early on: I argue that the abandonment of these notions which are so inherent within the contemporary social and national existence will make another transformation in the name of the same abstract principles more difficult. If a cosmopolitan approach to law and democracy is to develop and follow from the nation-state, it needs to take its roots from the already existing practices of the Westphalian world order. The two normative pillars on which CP stand are no different from these two points Habermas points out at in *The Postnational Constellation*: human rights and democracy are coexistential parts of the nation-state since its emergence. The transformation of the nation-state in light of CP and cosmopolitanism has the exact same normative pillars that

Habermas refers to in this article 'What is A People?': Human Rights and Democracy (Habermas, 2001). Therefore, there is one more link between the broader connotations of CP as a theory and Habermas' conceptualisation of a people conceived within the bounds of a nation-state. In 'The Postnational Constellation' and in it in particular in the article 'What is A People?', Habermas clearly invites his readers to take one more further 'abstractive step'. This step, I argue, is the step that is taken in a cosmopolitan direction. Just like a cultural nation has developed alongside the nation-state with law and democracy inherent in it, Habermas in my interpretation seeks to achieve Cosmopolitan moral universal principles gradually. These principles appear as different elements in different parts of his work; in *The Communicative Action* he seeks to place speech in place of a tool for transformation in light of moral principles, whereas in most of his political writings such as the article I have been referring to in *The Postnational Constellation*, he refers to legality of Human Rights and Democracy as transformative ideals. The common point across these broad parts of his work remains the quest for transformation in light of universal moral principles.

Section 3: World Economy as Interdependence

A Cosmopolitan transformation in the world is already underway, according to Habermas. A unity of many factors, ranging from economy to the impact of international law and the futility of taking domestic internal decisions at the (nation-)state level while so many of the problems which the nation-states are facing are multifaceted. They push the policy-makers to rethink the causes of the problems in a cosmopolitan light. The increased interdependence of world economy is one of the most important factors arising in Habermas's work as a pull factor towards cosmopolitanism:

“Capitalism's new, apparently irrevocable globalising dynamic drastically reduces the G7 states' freedom of action, which had enabled them, unlike the economically dependent states of the Third World, to hang on to a relative degree of independence. Economic globalisation forms the central challenge for the political and social orders that grew out of post-war Europe. One way to meet this challenge would consist in strengthening the regulatory power of politics, to allow politics to catch up with global markets that are beyond the reach of nation-states” (Habermas, 2001, p.49).

This is how Habermas depicts the weaknesses of the nation-state system in face of increased economic interdependence. By placing the emphasis on the economic factors behind globalisation, Habermas is giving a large space to financial reasons and to capitalism as the pull factors in a cosmopolitan world order. He gives more space to the economy by pointing out to the income disparities, the question of unemployment, economic poverty, and social disintegration (Habermas, 2001). His reference to the G7 hints at his interest in the global income inequalities which transgress the boundaries of domestic national politics. A loss of solidarity caused by these factors, according to him, is bound to destroy a liberal political culture which is a must for every nation-state as well as for a cosmopolitan society (Habermas, 2001, p.50).

“First, the economic problems besetting affluent societies can be explained by a structural transformation of the world economic system, a transformation characterised by the term ‘globalization’. Second, this transformation so radically reduces nation-states’ capacity for action that the options remaining open to them are not sufficient to shield their populations from the undesired social and political consequences of a transnational economy.” (Habermas, 2001, p.51).

Therefore, the nation-states have already become vulnerable to the threats of an increasingly globalised world economic system. In order to protect their populations from the undesired consequences of a transnational economy and ward off disparities, income inequalities, poverty and social disintegration, the nation-states are now, even more so than before, forced to come up with measures which have the same scope as the causes of the problems- that is cosmopolitan. Global economy is pushing the states to transfer more functions to supranational authorities such as the European Union (Habermas, 2001, p.54). Yiannis Varoufakis’s book “And The Weak Suffer What They Must? Europe, Austerity and the Threat to Global Stability” discusses this shift of power from a critical angle. This transference of power implies a utopian attitude towards the supranational and cosmopolitan decision-making mechanisms: “Nobody wants to spin out utopian fantasies; certainly not these days when all utopian energies seem to be exhausted” (Habermas, 2001, p.54). Cosmopolitanism in this account is responsible of the charges of utopianism. Would it be equally utopian to entertain the possibility of a constitutional patriotism? Is CP guilty of the same charges facing utopianism and cosmopolitanism? I will dwell on these questions in the concluding section of this chapter.

The article ‘Learning from Catastrophe’ highlights monetarist view of Habermas’s understanding of cosmopolitanism (Habermas, 2001, p.49). While discussing the economic factors pushing in a cosmopolitan direction, he is explicating the difficulties lying ahead in such a direction: if the states prioritize their own national arenas, ‘a cosmopolitan community of states would have to be perceived as a part of states’ own domestic policies’ (ibid). In this sense, there is a sense of utopianism inherent in a cosmopolitan solidarity that is to take hold before the doorsteps of the nation-states. This statement of Habermas also endows nation-states with the capacity to manage their own domestic policies- it has an introverted as well as an introverted dimension. A cosmopolitan solidarity, in this article, emerges as a form of post-national consciousness which arises at the end of a learning process: “Only the *transformed consciousness* of citizens, as it imposes itself in areas of domestic policy, can pressure global actors to change their own self-understanding sufficiently to begin to see themselves as members of an international community who are compelled to cooperate with one another, and hence to take one another’s interests into account” (Habermas, 2001) [my italics]. This is an idealist and partially unusual form of thinking within which states would become more responsive to the needs of one another. A cosmopolitan consciousness, in this account of Habermas, is a consciousness within which increased transnational communication takes place over the boundaries of nation-states. A consciousness is more than unexamined belief: it is a cognitive capacity belonging to individuals and collectivities in different ways. This transformed

consciousness can be interpreted as a learning process, which leads to the creation of supranational institutions like the European Union and the United Nations.

Cosmopolitanism according to Habermas is envisaged as a form of global solidarity deriving from economic factors. A cosmopolitan solidarity is that which is required in order to redistribute the responsibilities arising from economic globalization. This cosmopolitan solidarity which can regulate the economic burdens in a more equal way needs to keep the (some) national commitments at place while establishing a transnational but weaker sense of belonging: ‘...a cosmopolitan solidarity that is still lacking; a solidarity that would certainly be weaker and less binding than the civil solidarity that developed within nation-states.’ (Habermas, 2001, p.56). This reference to a ‘weak’ or according to some ‘thin’ form of identity is not a way of undermining cosmopolitan allegiances, but a way of restructuring national and global allegiances together. Therefore, a cosmopolitan solidarity is a something which derives from, surpasses but does not annihilate particularistic attachments conceived at the national level. Instead of replacing these nationalistic commitments, Habermas envisages a global form of solidarity that derives not from the nation-states themselves but from the ‘already transformed basic value orientations of their populations’ (ibid). This is a post-conventional culture, which, to varying degrees, can be found in most societies. In this way, not only the governments of nation-states but social movements and non-governmental organisations are among the addressees of a project, which has a cosmopolitan transformation in mind. All these clusters of a society form a whole together. Solidarity among societies and social movements, and not necessarily among the governing bodies of the nation states, is the solution to the need for catching up with the pace of economic globalisation.

‘The Postnational Constellation and The Future of Democracy’ discusses economic globalisation in light of cosmopolitanism. In this chapter, poverty in Germany is documented in figures. Habermas alludes to the economic and social difficulties in Germany as well as to the widening gap between the prosperous North and the chaotic South (Habermas, 2001, p.59). The German Basic Law addresses economic disparities as well: it states that after the unification in Germany, the East would be brought closer to the prosperity level of the South. Both economy and politics determine the global theatre of performances: the democratic process as well as the nation-states is parts of a process, which is already underway. In the broader Habermasian theory, democratic process has transformative power and it does so in light of universal moral principles. While democracy is a process, it also is an end-point at which ideal societies should arrive through discursive participation in the public sphere: “The phenomena of the territorial state, the nation, and a popular economy constituted within national borders formed a historical constellation in which the democratic process assumed a more or less convincing institutional form” (Habermas, 2001, p.60). In this way, democracy, discursive processes and economic factors behind increased global integration are all interrelated. The nation-state, on the other hand, provides the platform within which democratic process finds an institutional form. In this sense, the practice of democracy is facilitated through the borders of the nation-states. Whether this advantage provided by the nation-state system can be carried out to the cosmopolitan arena belongs to the actors determining the global agenda.

Financial institutions and the monetary form pose a challenge to the nation-state system. Habermas revisits this idea of increased market power in the same article: “At the same time, multinational corporations have emerged as powerful competitors to nation-states...Power can be democratized, money cannot” (Habermas, 2001, p.78). In this sense, global companies impact the political decisions in international relations. Democratization is a process related to the social as well as to the economic domain. Therefore, a distinctive approach to politics and economy develop.

“As markets drive out politics, the nation-state increasingly loses its capacities to raise taxes and stimulate growth, and with them the ability to secure the essential foundations of its own legitimacy” (ibid). The legitimacy of the nation-state is put into question through its dependence on global economics. The power of the monetary form over social matters paves the way for this critical thinking. Being sovereign in an area territorially determined brings with it the obligation to try to render the currency stronger which is associated with that area. All in all, economic power is so important that “politics has to catch up with globalised markets” (ibid).

A currency as a form of exchange means a lot more than a mere economic transaction. As an interaction between two separate human agents; a financial transaction has a different nature than it does when the form of currency is evaluated from a social and political perspective. This interchange has several forms and it is regulated at different levels. The national economies enter this interaction through the financial exchange. Trade agreements are economic forms of contract, which regulate this interchange which has human and non-human dimensions. The discussion about the role of Britain in the UK is witnessing, at 2018, detailed references to these exchanges categorised as goods or services (or both at the same time). Profit, as a category in its own right, is a concept, which has lost its origins a long time ago -sometime around the high time of industrialisation without human development. For the purpose of this particular section, I will mention the economic dimension of this development. This evolution of society read through an economic lens adds a significant twist to contemporary social and political theory. Wolfgang Streeck discusses this issue from a critical angle.

./ **Wolfgang Streeck on Political Economy:**

Streeck approaches national economy from a political perspective. He links it through the form of governance: “Growing public indebtedness is put down to electoral majorities living beyond their means by exploiting their societies” “common pool”, and to opportunistic politicians buying the support of myopic voters with money they do not have” (Streeck, p.53). His reading of wealth questions the ownership of the resources and paves its way into the public and private distinction. He highlights the sharing of public debt among different European countries. Public debt was amounting to a small share of overall debt, he argues (Streeck, p. 117). He supports his argument with charts including nonfinancial corporations, households and general government of the OECD countries. He specifies the groups by whom the different categories of debt are owned. While doing so,

he does not refer to the relationship of governments with banks. His argument is that public and private debt can be separated and in some instances, private debt is higher than the public debt. It is only the public debt, which is shared by all the common citizens within a given nation-state. Streeck does not refer to this. Under circumstances which private debt is higher than the public one, the responsibility of that particular amount of debt ought to, following a legal rationale, fall onto the private individuals. The democratic form of governance, however, does not allow for the wealthy individuals to make the decisions for all of the citizens. Therefore, debt ownership demonstrates a blurry line between privacy and publicity. The degree by which private actors engaging in financial exchange and when or how the government (the public) can balance these is an important line to draw. This is mostly a question of liberalism in economic terms. Both Streeck and Habermas use the alternative term 'ordoliberalism' to refer to a sense of liberalism, which is orderly. For the German context, this balance is particularly important, as the years of the divide were marked by this distinction in economic ideology.

Streeck refers to Colin Crouch's approach to political economy. Crouch has stated that neoliberalism in its actually existing form is a politically and deeply entrenched oligarchy of giant multinational firms. Streeck refers to Crouch's work titled 'The Strange Non-Death of Neoliberalism'. Crouch has later developed his position in 'Can Neoliberalism be Saved From Itself?'. In the latter, Crouch argues that the neoliberal system has the pure market at the heart of its vision. This pure market is a place where everyone expresses their preferences, those goods and services are produced for which there is popular demand; and no one dominates. The values of all the goods and services one might want to acquire can be compared through the market's prices. Every individual, firm and national economy freely and amicably trades and competes with each other, all doing what they do best and benefiting from each other's contributions (Crouch, p.6). this view of the human beings limits the humanity to *homo economicus* and overlooks different spheres of life which one might need in order to have a balanced life. Focusing merely on the economic output of a nation-state or an individual citizen is symptomatic of post-capitalistic human relations.

Streeck maintains that the on-going shift towards a consolidation state involves a deep rebuilding of the political institutions of post-war democratic capitalism and its international order, in particular in Europe where consolidation coincides with an unprecedented increase in the scale of political rule under European Monetary Union (EMU) and the transformation of the latter into an asymmetric fiscal stabilization regime (Streeck, p.113). Streeck brings a lot of clarity to the issue of power in politics by pointing out to the European Monetary Union. It is the monetary union per se, and not the political dimension of the European Union, which renders the member-states very connected to one another. In this sense, the currency as a form of exchange determines the level of interconnectivity within European relations.

ii. David Held: Global Covenant:

“Immanuel Kant wrote over two hundred years ago that we are ‘unavoidably side by side’. A violent challenge to law and justice in one place has consequences for many other places and can be experienced everywhere.” (Held, p.X) Held opens the preface of the Global Covenant with these words. In his book, he addresses economic issues as well as legal ones. Held discusses two opposing camps about globalization. In Held’s approach, law and economy are interlinked. Held favours ‘human development, equitable economic change, democracy and justice’ (p.XV) but he does not turn any of these ideas into a new ideology or a new umbrella term including all these ideologies. In that sense, his stance and his book stand within the field of ‘globalization’ with the two camps he -somewhat kindly- criticizes.

“Globalization, at its simplest, refers to a shift or transformation in the scale of human organization that links distant communities and expands the reach of power relations across the world’s regions” (Held, p.1). Transcontinental flows of migration cause increased contact. Held’s book addresses ‘growing aspirations for international law and justice’ (p.X). It does not address the details of identity while it deals with these aspirations. What identity means, and how identities interact with these aspirations are not discussed in the book. He seeks to address a ‘narrative, which seeks to reframe human activity and entrench it in law, rights and responsibilities,’ (p.XI).

Some scholars interpret the EU as a Kantian haven of peace and economic exchange. Held’s reading of liberal political economy is one. I would like to add that the political dimension of this economic union is missing and has a great deal of progress to make especially in matters relating to political and social matters. Peace within its member states is one of these problems. Peace, as a concept, is more complex and multifaceted than a mere material exchange which has, historically, provided the foundations of liberal economy.

Held argues that by recognizing the legal status of conscientious objection, many states have acknowledged that there are clear occasions when an individual has a moral obligation beyond that of his or her obligation as a citizen of a state (Held, p.122). The refusal to serve in national armies triggers a claim to a ‘higher moral court’ of rights and duties. Morality is a difficult subject to interpret in legal terms. The issue of obligatory conscription as a practice maintained in some states is one example.

Held refers to the link between society and justifiable acts in a fair society: he claims that just following the rules of a political leader does not clear the legal guilt of an individual, before the International Law (Held, p.122). “A turning point in this regard was the decisions taken by the international tribunals at Nuremberg and in Tokyo. It was laid down, for the first time in history, that when international rules that protect basic humanitarian values are in conflict with state laws, every individual must transgress the state laws (except where there is no room for a ‘moral choice’ that is when a gun is being held to someone’s head) (Held, p.122). Nuremberg principles have led to the

establishment of the war crimes tribunals of former Yugoslavia and Rwanda. According to Held, there is a 'credibility gap' between the promises of law of war crimes and the weakness of its application. This weakness is the 'enforceability'. If one focuses on the word enforceability only, it takes us to a management and governance perspective. It is more about implementing a set of norms and procedures, the rightfulness of which is, ideally, accepted at a universal level consensually. When we focus on the credibility gap, we are facing the high level of ideals and norms, which may, especially in cases of rights violations, not have practical value. Values, mostly, require a conceptual perspective while practicality is not always embedded in the same set of conceptuality. For a functioning and careful social and political theory, the gap between facts and norms and the gap of credibility of law need to diminish. Matters relating to identity and affect bring the two sides of this gap closer. This can be a discursive process, which does not aim for a teleological endpoint requiring a static position in social and political terms. A dialogue, in this respect, shares the lack of stagnancy of an ongoing conflict in that both are in flux. For Held, the Rwandan and Yugoslavian war tribunals demonstrate the possibility of an enforceable form of law emerging. In that sense, they bring optimism into a problem emerging between politics and law.

Held argues that most rights violations happen against individuals, today. Reducing the idea of rights violations only to an individualistic level overlooks the identity component of the rights violations. Patterns emerging in violations can be useful for criminology. When used to uncover a smaller rated crime, patterns manifest different formations. When used at a global level, such as in the case of the war crime tribunals that Held refers to, the patterns are different. Interpreting these patterns merely in an expressionistic way, I argue, leaves the gap of enforceability open. It is by re-interpreting an international understanding of law to a global one that we can attain a new legal form: one, which has validity, enforceability as well as the wealth of multiple perspectives.

The pattern(s) of rights violations emerge differently in different environments. For instance, when it comes to discrimination within one country, the pattern emerging is different from another one under circumstances of war. The right, which is violated, helps to determine the pattern as well as the context. The violation of the first right, in particular, needs to be interpreted in a different way. The violation of the right to life -committed collectively against a collectivity in particular- is, under most circumstances, a symptom of a long-standing lack of a peaceful attitude toward other human beings living within the borders of a given nation-state. Thinking of 'peace' as a perfect state may hinder achieving it.

Held refers to the forfeiture of sovereignty. In his reading of international law, states may forfeit sovereignty if states violate international law (Held, p.130). He also argues that a bridge is created between morality and law (Held, p.131). He argues that this bridge has been established where there were stepping-stones only beforehand. He views this as 'a new framework of good governance' (ibid). He makes this new international order conditional upon liberalism. The transformative changes, which took place, alter the content of politics, nationally, regionally and globally. They signify the enlarging normative reach, extending rules and practices – the beginnings of a 'universal constitutional order' in

which the state is no longer the only later of legal competence to which people have transferred public powers (Held, p.131).⁷

According to Held, changes in human rights law have placed individuals, governments and non-governmental organizations under new systems of legal regulation – regulation which in principle, is indifferent to the distance that has been travelled from the classic, state- centric conception of sovereignty to what amounts to a new formulation for the delimitation of political power on a global basis. The regime of liberal international sovereignty entrenches powers and constraints, and rights and duties, in international law which -albeit ultimately formulated by states- go beyond the traditional conception of the proper scope and boundaries of states, and can come into conflict, and sometimes contradiction, with national laws (Held, p.131). It is these changes, which pave the way for a new approach to legality. These circumstances also call, in Held's reading of Habermas, to challenge these breaches.⁸ Regarding the moving away from a state-centric view, one can think of Muller's reading of Habermas's borrowing of CP from Sternberger. In this interpretation, Habermas had 'subtracted the étatism present'. Another reference to a notion of a 'bridge' between morality and law is in the form of citizenship.

Held alleviates the fears against a pervasive cosmopolitan government, which may take away national expressions of will-formation. For Held, it is not envisaged, nor is it thought desirable or feasible, that a supranational authority could provide the sole means to both articulate and enforce the new international law (Held, p.132). Held uses the term 'the classic regime of sovereignty'. Within the broader terminology of my thesis I use the term 'conventionalism' to refer to a similar idea. Habermas uses the term 'conventional level' in his approach to moral development.

Held maintains that a legitimate state should be understood through the language of democracy and human rights. Democracy initially has had the aim of diminishing the power of aristocrats. Liberal political order has had the same purpose: against princes and princesses. Despite bringing the language of liberalism into the discussion on a global covenant, Held is not clear as to the exact meaning of liberalism. Held is not clear as to the meaning of a 'liberal order' in socio-economic terms. The following questions remain unanswered in his use of a liberal order in his approach to a global covenant: How are the details of private and public spheres of life translated into a 'liberal order', which he advocates? Does the liberalism read in political economic terms include a 'liberal' reading of trade, ownership and free exchange? The social relations, forming the background of the international and national balances of power (in an at least supposedly democratic system) include both the private and the public spheres of the society. Ownership of large companies by private individuals, for instance, is one of the possible influences, which a liberal political economic system may disregard.

⁷ Here Held is citing Crawford and Marks, 1998; Welles, 1997.

⁸ This comment of David Held is based on an article of Jurgen Habermas published in *Die Zeit*.

Held refers to 'overlapping communities of fate' in different areas. In his conception of social justice, he maintains that overlapping communities of fate shape the needs and the welfare of the individuals (Held, p.175). He maintains that the problem of border spill overs or externalities is compounded by a world increasingly marked by 'overlapping communities of fate' – where the trajectories of each and every country are more tightly entwined than before (Held, p.141). These communities must be the starting point of a social democratic multilateralism. His readers are invited to recognize the rising interconnectedness of the world with its complexity (Held, p.108). Overlapping communities of fate is a term he relies on to a large extent. What he is referring to has connotations regarding identity formations. It is unclear how, in his conception, the communities are formed and where reflexive thought fits into this. While 'fate' is a religious notion, based on belief, Held is constructing and defending a global system of justice, which requires careful consideration. Despite his attention to detail in this interdisciplinary picture, he takes some identity formations for granted- such as those individuals who constitute the groups within these overlapping communities of "fate". It is his internationalism more so than the national approach which bears the traces of this determinism; taking the form of 'overlapping communities of fate'. These communities, and accompanying identities, I would like to add, have been formed within given social conditions.

Held refers to three international allegiances shaping the face of global politics today. These are the NAFTA, EU and Japan.⁹ Following the publication of Held's book (in 2004), another triad has occupied a large space in international thinking: this is the Troika, which is constituted of the European Commission, European Central Bank and the International Monetary Fund. The Troika is the subject matter of several contemporary discussions on global economy. Yiannis Varoufakis's 'And The Weak Suffer What They Must: Europe, Austerity and the Threat to Global Stability' is a book which has this political economic actor within its scope. Varoufakis's book focuses more in the political reverberations of the supranational institution of the EU within a global economic system; while Held shies away from the implications of sovereignty (and the loss of it) within 'a liberal order'. A liberal order, one, which has higher jurisdiction in particular -with, the support of a supranational institution- brings a different interpretation of sovereignty than the one, which Held focuses on. The perspective, which Yiannis Varoufakis is criticizing about Europe, is mainly about a political integration based on a common currency. This situation can be experienced from another perspective: the issues regarding integration can be used for peace between different identity groups. Varoufakis' argument does not have a universalist approach to the problems arising within a political economic system. Despite pointing out to factual realities; his argument remains limited to a national experience at a particular moment in time. The challenges posed by a global economic system remain beyond the boundaries of nation-state.

⁹ NAFTA: North American Free Trade Agreement

The triad -NAFTA, EU and Japan- accounts for the two thirds to three-quarters of world economic activity, with shifting patterns of resources across each region. However, one further element of inequality is particularly apparent: a significant proportion of the world's population remains marginal to these networks, with little, if any, opportunity to enjoy in practice the liberties promised by human rights agenda (Held, p.142).¹⁰ The patterns of resources are important in the way the relationships determine the social activities. The economic relationships, including the way the resources are allocated and exchanged shape power relations. The impact of politics on economy is of a bureaucratic kind; requiring a good state (a morally desirable and legally fair one). This can impact the way the economic patterns are distributed within the nation-state and across nation-states. The international economic interactions are subtler than the intra-national ones. The other way around of the same channel is different: this is the way economy impacts politics. This also has inter-state and intra-state dimensions. Held invites his readers to help to form a global solidarity: 'what is needed is momentum towards global, not American or Russian or Chinese or British or French, justice. We must act together to sustain and strengthen a world based on common rules' (Held, p.145).

Held adds that the challenge today, as Kofi Annan has written in 1991, is to devise a similar bargain or project to underpin the new global economy. The project of global social democracy addresses this call (Held, p.163). A coalition of political groupings could develop to push the agenda of global social democracy further (Held, p.166). The North American Free Trade Agreement, for instance, is one agreement among many from the perspective of the social contract. The conditions within which different treaties acquire enforcement as well as importance are different in economic and social circumstances. Held moves on to set out the priorities of a cosmopolitan treaty: the international humanitarian law ought to reconnect security and human rights. He urges an international convention to begin the process for doing so. The 'humanitarianism' of the intervention ought to abstain from inducing new violations of different kinds.

Held calls for the expansion of the jurisdiction of the International Criminal Court and International Court of Justice. These two courts can help increase the enforcement capacity of a new global covenant. The International Criminal Court (established in 2004) focuses on crimes against humanity and international crimes; while the International Court of Justice is the judicial branch of the UN (established in 1945). While Held maintains global social democracy, he is not clear as to the stance of these international courts' stance on economic liberalism. The international courts he is referring to carry out the implementation of justice at a global level. The scope within which the violations happen is, on the other hand, national.

Held focuses on superstate governance. Held defines the cosmopolitan values as the principles as such:

¹⁰ Held is citing Pogge, UNDP, Held and Mc.Grew.

- 1) Equal worth and dignity;
- 2) Active agency;
- 3) Personal responsibility and accountability;
- 4) Consent;
- 5) Collective decision making about public matters through voting procedures;
- 6) Inclusiveness and subsidiarity;
- 7) Avoidance of serious harm;
- 8) Sustainability

These principles Held set out are more complex than the two normative pillars, which Muller had defined for CP -democracy and human rights. Held's account of cosmopolitan values is more inclusive vis-à-vis the economic layer of the society (Held, p.171). While politics and economy are interlinked, morality, or 'principles' can be ideas belonging to a jurisprudential area or a political and social philosophical one. Economy, as a form of exchange, is an area, which already rests upon certain principles of its own.¹¹

Held's approach to morality is individual based. He argues that the ultimate units of moral concern are individual people, not states or other particular forms (Held, p.172). This raises a question about international moral standards: if international courts are to expand their jurisdiction and a global covenant is to be acquired, how can the right form of behaviour that is meaningful for all the relevant parties be agreed upon? He also maintains that neither states nor other human associations can be considered as 'units of moral concern'. His approach leaves a gap for a metaphysical source of legitimation for a global system. A covenant also is a form of document the legitimation of which is derived from the people. Held leaves the source of legitimation, as a constitutive pillar of a global covenant, underdeveloped. He concludes by defending social democracy guided by cosmopolitan principles (Held, p.178).

Section Five: The Responsibility to Protect in Cosmopolitanism

The article 'From Power Politics to Cosmopolitan Society' reveals military intervention as an exemplar at the cross roads of different elements in Habermasian theory: "But even we semi-participants, with our nightly helpings of the Kosovo conflict on television, know that the Yugoslav population racing for cover from aerial bombardments is experiencing nothing other than war" (Habermas, 2006, p.19). This is how the individual citizens living in different countries do feel responsible and in touch with what is going on elsewhere. Military intervention and the suffering of another ethnic community is brought closer to home via media and increased global communication. The question about pondering upon specific examples relating to what can be done about the suffering of the Other in another

¹¹ For further reading, see Glattfelder in <http://www.ips-journal.eu/regions/global/article/show/no-company-is-an-island-2463/>

context is a question which regards the transformation of international law into cosmopolitan law. International law provides a set of regulations which are clearly defined in a legal context. Cosmopolitan law, on the other hand, has more sociological content and derives from the moral aspect of Human Rights as opposed to deriving from its legal aspect as other legal fields do. Habermas is arguing that this transformation of international law into cosmopolitan law comes into play at the instance which there are two German ministers talking about ending the state of nature between states through human rights (Habermas, 2006, p.20). He revisits the idea of a transformation of international law into cosmopolitan law in the Author's Foreword of the *Time of Transitions*: "Equally unsettling are the risks of the transition from classical international law to a cosmopolitan society; for we are still very far removed from the goal of a global domestic politics without a world government" (Habermas, 2001,). I argue that mixing the notion of human rights law with international law gives this conceptual result of having a tamed international relations system. International law starts running out of answers to questions relating to the capacity of human agency in the domain of international relations in a Westphalian system and the human suffering in territorially defined nation-states which are not our own. It is at that point that we find Philosophy interjecting and supplying conceptual answers to problems arising in the real world. Habermas's argument about transforming international law into cosmopolitan law exemplifies, in this chapter in *Time of Transitions*, his attitude towards law as well as towards Cosmopolitanism. They are interlinked in such a way that comprehension of one without comprehending the other is almost unattainable. This is how Constitutional Patriotism is linked to cosmopolitanism: the two are interlinked like international law and cosmopolitan law, the latter deriving from the social sciences' terminology only.

Habermas is combining his cosmopolitan attitude with pacifism in legal and international relations domains: "Legal pacifism does not merely aim at containing the latent state of war between sovereign states through international law; it wants to overcome it entirely through a cosmopolitan order based on law." (Habermas, 2001, p.20). Therefore, he seeks to establish a sense of cosmopolitanism, which is backed by a legal framework; especially one provided by the international law as well as human rights law. What Habermas advocates in the legal domain as I understand is International Human Rights Law. He combines the different domains of international law and human rights law into one legalistic attitude, which in return supports his cosmopolitanism. Cosmopolitanism, for Habermas, is not an entire theory in its own right but is an attitude, which is there to stay and to motivate the on-going learning, processes among and within societies. Examples to this learning process can be two German ministers back in time invoking a cosmopolitan domestication among states. Domestication of international relations in a pacifist manner has consequences for the public sphere within the nation-states as well: law which is above state sovereignty not only regulates the behaviours of nation-states towards one another but also protects individuals from arbitrary acts of states within the nation-states. (Habermas, 2001, p.20). An example to the quest of implementing this ideal may be the arbitrary detention branch of Human Rights Law that the Office of the High Commissioner for Human Rights of the United Nations. The lawyers and sociologists of the arbitrary detention branch of the OHCHR work on a daily basis to protect the civilians from crimes committed against civilians by their very own

governments. Political dissidents constitute a large part of this group. At the moment, the OHCHR functions within a basis of UNDHR, International law and human rights law. The difficulties that the OHCHR is facing at the practical level with regards the implementation of legal universal principles derives from the UN not being a world government. It is this lack of the quality of a world governance in practice that Habermas brings up in his references of lack of a cosmopolitan government. In this way, Habermasian sense of law, pacifism and cosmopolitanism unite.

An end to the ethnic cleansing in Kosovo practiced by the Serbs meant that there would be a military intervention to Kosovo organised by a group of allied states to Kosovo. This was intended to result in increased autonomy of Kosovo within Serbia (Habermas, 2001, p.21). The different spheres of law that Habermas seeks to combine dictate different principles: classical international law for instance stands against the notion of intervening in the affairs of other states. This leaves us pondering upon the practical and moral implications of injustice committed within the borders of a nation-state. While classical international law backs the principle of non-intervention, Habermas has a position which seeks to transform it in light of cosmopolitanism: "Within the framework of classical international law, this would have counted as an interference in the internal affairs of a sovereign state, that is, a violation of the principle of non-intervention" (Habermas, 2001). He is referring to the airstrikes against Yugoslavia in order to promote a liberal solution with increased Kosovar autonomy within Yugoslavia. The date of publication of this book and the discussion Habermas is carrying at the time does not allow for a reference to the Syrian conflict which again exemplifies civilian killings by state authorities. The latter conflict had also resulted in long discussions in international relations environments about a possible military intervention on Syria. While many people in the Western countries shared the suffering of the Syrians, a military intervention in Syria has been a much debated topic in diplomatic circles including Western countries for a period of time. This back and forth between a possible intervention and the lack of it can be discussed under the terms of Constitutional Patriotism and Cosmopolitanism within the Habermasian theory. While the most common international relations principle about military intervention prohibits the presence of the army of one country in another (based on the conditions of extraterritorial jurisdiction) UNDHR renders it possible to bring human rights violations before international courts and to the Security Council of the UN. For reasons that are beyond the scope of this work, the UN security council often condemns acts against human rights but lacks the capacity to actively send armed forces to the conflict regions around the world. While it is possible to carry out a long discussion about the challenges within the bureaucratic structure of the UN regarding its democratic constitution I would like to limit the role of UN in this chapter to an exemplar along the way to a better suited world government which in my reading combines Habermasian references to IL, HR and cosmopolitanism. The war in Kosovo which lacked a UN backed military intervention "could mark a significant advance on the road from classical international law between states to the cosmopolitan law of a society of world citizens" (Habermas, 2001, p.21).

Habermas refers to the idea of holding on the principle of non-intervention as it has been provided by international law as a certain stubbornness: he names it "clinging on to

the principle of non-intervention” (ibid). Habermas refers to this in a section titled ‘The Contradictions of Realpolitik’ in which he is discussing the challenges faced by utopianism in the sphere of cosmopolitanism via the example of the conflict in Kosovo:

“The war in Kosovo touches upon a fundamental question that is hotly disputed in political science and philosophy. The constitutional state accomplished the tremendous civilising task of legally taming political power on the basis of the recognition of the sovereignty of the collective subjects of international law, whereas a ‘cosmopolitan condition’ would place the independence of nation-states in question. Does the universalism of the Enlightenment here collide with a stubborn form of political power that is indelibly inscribed with the drive for collective self-assertion of a particular community? This is the realist thorn in the flesh of human rights politics” (Habermas, 2001, p. 24).

This is how Habermas opposes realism of the international relations based conflicts with the utopianism of a cosmopolitan law. Political science and philosophy also come together in this section and in this article in Habermas’s *Time of Transitions*. The type of state, which exemplifies his thinking, is one more time the democratic constitutional state. A ‘cosmopolitan condition’ which derives from a cosmopolitan ideology and brings with it a cosmopolitan legal tradition requires a world government which transforms the requirements of the nation-states. Having a superior authority to abide by would mean, for the nation-states, a sense of loss of independence. It is the job of cosmopolitanism yet to be envisaged, I argue, to respect this demand of the nation-state to maintain a certain degree of its level of independence and autonomy. The cosmopolitan law, I argue, needs to recognise the natural desire of the nation-state to hold on to power while demonstrating the weaknesses of the currently existing state of affairs in international relations based on the primacy of the nation-state system. The weaknesses of international law and human rights law, justified by the force of example of the Kosovo war, the de-facto state of Turkish Republic of Northern Cyprus with its stateless citizens and the every-day increasing number of civilian deaths everyday in Syria are only some examples to what human beings are capable of doing but fail to do by holding on to the ideal of Human Rights as it is envisaged within the sphere of classical international law at the moment. Human Rights, I argue, is a system of thought which requires the legal backing for its better implementation by a majority of states to represent the voice of the international community. Human rights politics in this article is marked by a tension between the particularism of the nation-state and the universalistic scope of the Human Rights and International Law. While cosmopolitanism stands at the universalistic far end of this spectrum, CP as I envisage it in this thesis derives from this tension between the universalism of cosmopolitanism and the particularism created by the nation-state system. Human rights and international law, through the question of military intervention, brought CP to an analysis as a dynamic process between the two.

Habermas interprets the lack of faith in the possibility of a cosmopolitan world government and cosmopolitan law which can emerge in the future as the result of a pessimistic human nature. It is this pessimism which convinces the social theorists arguing for realism that no better than the state of nature in international relations can be done. This negativistic interpretation of human nature forms the background of a doctrine that 'clings on' to the principle of non-intervention as the only pacifist way of dealing with political, moral and physical tensions arising in the real world. I claim that the realists who argue that a cosmopolitan world order have to respond to the challenges that face the Westphalian world order today are forgetting the following: the increased interdependence of individual nation-states, 'the growing authority and density of supranational institutions,...the economisation of foreign policy' are all obstacles to be faced collectively by individual nation-states who are reluctant to be transformed further. These nation-states stand as concrete examples of a possible transformation in light of the developments following the 1648 Peace of Westphalia. These nation-states can still transform into something else, something perhaps yet to be envisaged. Most scholars writing in the field of sociology have interpreted this age to come as cosmopolitanism and those in the departments of law have looked for the solutions in international law. My contribution to this debate between the particularism of the nation state and the universalism implied by HR, IL and cosmopolitanism is the constitutionally patriotic reading of an amalgamation of these bits and pieces of different academic fields which all weave their ways into a broad and yet particularistically tinted theory of CP. Cosmopolitanism, I argue, is a stepstone in the way to establish the theory of CP as a dynamic process between is and ought, and between the different academic notions tying together under the umbrella term of CP. Broad Habermasian theory and political writings give space to a wealth of notions which provide the framework for an interdisciplinary study.

Habermas emphasises that it is a certain reading of human nature which leads to the belief that a utopian ideal cannot be realised. He likens the behaviour of states in international relations to that of people. The self-assertion of one state in the global domain, he is arguing, is something that one must not predict by definition of being a state to be performed by every state at all times, but an action which can be left to future considerations of response irrespective of the nature of this response. What comes to the fore in his formulation by Habermas is a Marxist faith in the good in human beings and nation-states as actors in the sphere of international relations as agents of good deeds rather than potential criminals the punishment of whom by law is possible. By avoiding a negativistic view of nation states and an expression of trust in the capacity of nation-states of not asserting themselves too much against one another, Habermas is depicting an optimistic image of nation-states as agents capable of establishing an order through law beyond the state of nature. Through the role that Habermas is allocating to law understood in the sense of an international and cosmopolitan humanitarian framework, Habermas is situating himself on the side of Contractarians in our day. It is up to the rule of law and a certain understanding of legality that the excessive self-assertion of nation-states can be avoided without a sense of mistrust in the capacity of nation-states transforming themselves in light of cosmopolitan humanitarian principles. Law, for Habermas,

surpasses the individual gains of states and provides the means with which another kind of world order can be established.

“The principal fact which speaks against ‘realism,’ however, is that the subjects of international law, by drawing a bloody trail of destruction across the catastrophic history of the twentieth century, have made a mockery of the presumption of moral indifference accorded them by classical international law. The foundation of the United Nations and the UN Declaration of Human Rights, as well as the threat to punish wars of aggression and crimes against humanity (resulting in at least a half-hearted restriction of the principle of non-intervention) - these were necessary and proper responses to the morally significant experiences of the twentieth century, that is, to political totalitarianism and the Holocaust. (Habermas, 2001, p.26).”

Therefore, realism here opposes the sense of cosmopolitanism inherent in international and human rights law. The principle of non-intervention, on the other hand, marks the weaknesses of a classical approach to international law as it is understood in our day. While Habermas invites his readers not to have a pessimistic view of nation-states’ tendency towards aggressive behaviour, he also calls for establishing a set of legal norms and procedures for penalising the possible instances of crimes against humanity and wars of aggression which may happen under the conditions of cosmopolitanism. Cosmopolitanism, therefore, for him is an ideal position which ought to be supported by a notion of legality. This legality has a global level. The major catastrophes of the past century point out not to the abandonment of utopian ideals, but to a re-establishment of these ideals in unity of law and politics. The previous chapter which has discussed the historical context within which CP has initially come into existence discussed nationalism and totalitarianism as the major foes of 20th century in Habermasian terminology. It also gave space to the Holocaust as a historical moment in time causing the Historians’ Debate within which CP was articulated the first time. This last reference of Habermas to totalitarianism and the Holocaust defines these two independently of nationalism while my definition of nationalism goes hand in hand with the two. The totalitarian ideology and the Holocaust derive from, I argue, a sense of national superiority as opposed to a humanitarian and egalitarian approach respectful of the Other within the domestic sphere as well as in the international arena. Nationalism, for CP and a cosmopolitan interpretation of Habermas, is co-original with the conditions of CP to arise in the German context. It is the German context specifically which has rendered the unity of these three seemingly different elements to combine.

CP as Muller conceptualizes it establishes democracy and HR as the two normative pillars on which the entire theory of CP stands (Muller, 2007.) Habermas’s approach to Cosmopolitanism conceives of HR as an integral part of cosmopolitanism. In the argument

that I would like to carry out in this chapter Cosmopolitanism of Habermas comes together with a 'politics of human rights' (Habermas, 2001). The chapter called 'From Power Politics to Cosmopolitan Society' is marked by numerous examples to human rights and embraces the terminology of 'human rights politics'. Law, in this sense, is international law and human rights law which back a cosmopolitan world governance that will be established in the future. Habermas is arguing that 'morality' is the basis on which HR stand at the moment due to the lack of the capacity of enforcement:

"Achieving such a cosmopolitan condition does not require a world-state that enjoys a monopoly on the means of violence or a global government. The minimum requirements, however, are a functioning Security Council, the binding jurisdiction of an international criminal court and the complementing of the General Assembly of government representatives by a 'second chamber' made up of representatives of world citizens.(...) For as long as human rights are comparatively weakly institutionalised at the global level; the boundary between law and morality can easily become blurred, as we see in the present case" (Habermas, 2001, p.26).

Here we see that Habermas is making distinct references to a 'cosmopolitan condition'; one which he envisages in accompaniment of a world-state. He continues to envisage the bureaucratic structure of this world state in a similar way to the functioning of the EU with respect to the distinction between the European Parliament and the European Commission I would like to add. The people of the world, in this formulation, are called 'world citizens' who all relate to one another. The lack of enforcement of HR, however, means that HR rely on a sense of morality more so than a legal structure enabling the HR to function proficiently at the global local level: "But given the under-institutionalisation of cosmopolitan law, such a politics is in many respects compelled to become a mere anticipation of the future cosmopolitan condition which it simultaneously seeks to realise." (Habermas, 2001, p.27). In this formulation, cosmopolitanism is a goal towards which contemporary societies move. Cosmopolitanism thus envisaged is 'weakly institutionalised' or 'under-institutionalised' (ibid). It is this characteristic of HR and cosmopolitanism which decrease its applicability in the practical domain. In addition to its utopian nature, cosmopolitanism is also legally informed by the rules and procedures of HR and international law.

Section Six: Habermas's Cosmopolitanism

Charles Larmore writes about the cosmopolitan scope of Habermas's work and his CP. Larmore points out to Habermasian notion of procedural justice as the only working solution to the presence of differing world-views in multicultural societies. While this reference to multiculturalism recognises a notion of otherness only within the domestic nation-state realm, cosmopolitanism and CP as I approach them address issues of

national differentiation across borders. The three level typology of CP allows for this multiple interpretation of the Other. In the multicultural conception of exposition of different cultural values, Larmore is arguing that Habermas is advocating a common legal system as the only common good among different communities. Cultural heterogeneity in societies, in this reading render it possible to seek justice in procedural terms. This understanding, Larmore argues, presupposes that Habermas takes a positivistic notion of patriotism for granted: "If patriotism is the virtue of loyalty to the common values constituting political life, then Habermas' position, succinctly put, is that only a 'constitutional patriotism' (Verfassungspatriotismus) is truly coherent today" (Larmore, 1995, p.59). This strength of CP in Larmore's reading, derives from the role that law plays in broader Habermasian theory. Larmore presents a conception of Habermasian constitutional patriotism which relies on the common political values of the constitution as the embodiment of desired social cohesion in face of multi-ethnic and multi-faith challenges of reaching an understanding within the public sphere.

Larmore's approach to Habermas's CP and his cosmopolitanism are closely linked. He rightly holds that Habermas's quest to establish a common life and commandment of allegiance is based on principles of CP. Larmore does not elaborate on what these principles are. While his interpretation of Habermas' reliance on CP as the background on which social recognition among different identity groups is accurate, his abstinence in developing a notion of CP is remarkable in its way of beginning to criticise this notion without a comprehensive explanation of it: "This common life must run deeper than constitutional patriotism" writes Larmore so as to express mistrust in CP (Larmore, p.60). The political identity of a people, in Larmore's reading, ought to extend beyond the level provided by CP (ibid). He cites Renan in his quest of trying to understand what establishes a people. He refers to the famous essay by Ernest Renan titled "Qu'est-ce qu'une Nation?" of 1882. Larmore in my understanding has a conventionalist understanding of what constitutes a people: he writes that shared language and geographical situation may tie a people together but are not the sole components of a national identity. The most distinguishing feature of what constitutes a national identity, in Larmore's understanding, is a shared experience of common history which then creates a common collective memory. His references to Ernest Renan's work also emphasise the conventional aspects of identity formation as opposed to legal and abstract ideals. In the same work that Larmore is citing Renan, Renan defines a nation as a dynamic entity which re-affirms itself on a daily basis (Renan, 1997, p.1). Muller's references to Renan take Renan from this dynamic perspective of envisaging the nation as a 'plebiscite of everyday' (cite the 1882 essay and Muller). CP, in its own right as Larmore understands it, aspires for cosmopolitan ideals while leaving the question of political allegiance to sheer legal values. He does not make use of the everyday practice of identity creation and re-creation as a dynamic process captured by some aspects of the Habermasian theory. CP in his reading can only complement the conventional identity formations.

Chapter Four: Human Rights and Constitutional Patriotism

Section One: Habermas's Reading of Kant on Human Rights and Cosmopolitanism

Habermas's approach to human rights is influenced by his interpretation of Kantian cosmopolitanism. This cosmopolitanism, for Habermas, is characterised by Kant's appeal for a federation of all the nations in the world. In "Kant's Idea of Perpetual Peace: At Two Hundred Years' Historical Remove", Habermas defines Kant's essay "Perpetual Peace" as a definitive text for a contemporary understanding of human rights. While developing a distinction between legality and morality in the sphere of human rights, Habermas argues that an understanding of human rights and of a politics of human rights requires an appreciation of the mode of validity of human rights, which is beyond the borders of the nation-states. It is this mode of validity that, according to Habermas, calls for an understanding of human rights in the light of his approach to Kant's "Perpetual Peace". Human rights, for Habermas, are co-existential with the notion of cosmopolitanism, Habermas's theory of which has been developed in the previous chapter. In this chapter, I will summarise the Habermasian notion of cosmopolitanism, and argue that for a fuller grasp of Habermas's approach to human rights, it is imperative to consider his interpretation of Kant. It is Habermas's Kantianism which connects his notion of human rights with his cosmopolitanism. Habermas's approach to human rights also relates to his understanding of the relation between moral and legal norms. I will elaborate on this affinity below.

"The republican order of a democratic state founded on human rights calls for something more than the weak regulation of belligerent international relations by international law" Habermas writes (Habermas, 2000 ,p.165). Human rights, in and of themselves, call for a state like structure for their implementation. Without this, they would be merely abstract ideals without legal validity. The abolishment of war requires the collaboration of all states who seek to achieve the standards and a functioning implementation of human rights. Habermas quotes Kant's Perpetual Peace about the 'ending of all wars' (ibid.). He reminds us that Kant in Perpetual Peace calls for a position in which all the wars will have arrived at an end. This position, the perpetual peace in a cosmopolitan state, means that there will no longer be any need for international law (ibid). At an imagined future point at which there will be no wars, there will also be no need to have a legal structure regulating the way states relate to one another in cases of war. International law, understood in this sense, will need to be replaced by another kind of law that recognises the peaceful unity of differing states with one another: "The conclusion 'ending all wars' is surprising. It points to the fact that the norms of international law that regulate war and peace are only provisionally valid, that is, they are valid only until the process of legal pacification for which Kant prepares the ground with his work 'Perpetual Peace' has brought about a cosmopolitan order and thereby abolished war" (ibid). This formulation points out to another kind of law which Habermas will borrow from Kant; that is the difference between, the cosmopolitan law and international law. While international law regulates the relations between states in the age of nation-states, an imagined future cosmopolitan order requires a legal code of its own. Habermas defines this as the

cosmopolitan law. The previous chapter on cosmopolitanism has introduced the Habermasian terminology about international law, often referring to international law as 'classical international law'. While the classical international law is exercised in our day in international relations, the notion of cosmopolitan law has broader validity once wars and the possibility of waging wars come to an end. This future point will be the time originally theorised by the notion of Perpetual Peace.

Habermas argues that our historical experiences separate us from Kant (ibid). There are conceptual points in his writing which are no longer consonant with our times. The 'contemporary global situation' (ibid) in which we live now requires a re-reading of Kantian cosmopolitanism, he argues. Habermas combines the cosmopolitan understanding of our time with a politics of human rights as such: "But these objections to the universalism of cosmopolitan law and a poetics of human rights lose their force once we appropriately differentiate between law and morality in the concept of human rights" (ibid). Therefore, it is a reading of the notion of human rights that conceptually distinguishes between seemingly similar aspects of human rights that brings light to cosmopolitanism. Human rights, in this sense, are quintessential to Habermas's understanding of Kantian cosmopolitanism and cosmopolitanism writ-large. I will dwell on the differences between our time and then below.

Habermas argues that Kant has a negativistic interpretation of the Perpetual Peace. Peace for Kant, Habermas argues, is 'lack of wars'. Kant does not define the Perpetual Peace as a state of harmony in its own right but defines it through the use of the absence of a negative term which urges Habermas to interpret Kant's description of perpetual peace as 'negativistic' (Habermas, 2000, p.166). What separates us today from the conception of peace that Kant had had in mind is the historical circumstances in which we find ourselves: "Kant had in mind local wars between individual states or alliances; he had no inkling of world wars. He was thinking of wars between regimes and states, not yet of anything like ethnic and civil wars; of technically limited wars that still allowed for a distinction between combatants and the civilian population..." (Habermas, 2000, p. 167). Political conflicts of our day are manifest; it is not only states waging war against one another. Under the current system of nation-states, there are a number of other instances in which one ought to think about the notion of 'war'. Habermas is re-defining this understanding of war when he discusses the broadened scope of wars within which Kant's understanding of war (and as a result of that peace) had not developed. This new notion of war, Habermas argues and I would like to highlight here, overlooks the loss of life of the army soldiers ('combatants' in Habermasian terminology). International human rights law today also aims to protect the civilians predominantly and not those who consciously choose to take up arms. Today, we should no longer seek to draw a distinction between the identities of those who pick up arms and those who do not. The notion of dignity sought to be protected by human rights need to address the lives of the soldiers and not only the civilians.

I argue that it is the notion of human rights which tie Kant's notion of war with Habermas's notion of war as we understand it today: despite the increased number of ways in which wars can be conducted, it is the violation of human rights and the first

human right, the right to life, which calls for the attention of scholars pondering upon the issue which relate to human rights. While even a single non-civilian's death is a violation of the most fundamental human right, in times of war many people die either to protect their country as non-civilians whose lives are nonetheless lost (and not protected by the classical understanding of human rights as we have it today as they take part of the armed forces of their respective countries) or they die in the hands of their governments at the instances of civil wars. While the loss of life of soldiers also remain as a human right violated, Constitutional Patriotism is relevant with respect to this in another way: people who die for their countries die for the love of their country. It is this notion of doing good for a higher number of people which culminate in the violation of the first right of soldiers: the right to life. While the circumstances within which people choose to take up arms is beyond the purposes of this chapter, it is appropriate to remind the readers of constitutional patriotism that only at a cosmopolitan state where Perpetual Peace prevails there will be no lives lost for the particular(istic) understanding of love of country.

“While perpetual peace is an important characteristic feature of a cosmopolitan order, it is still only a symptom of the latter. Kant must still solve the *problem* of how such a condition should be conceptualised from the point of view of law. He must specify what differentiates cosmopolitan law from classical international law-in other words, what is specific to *ius cosmopoliticum*. (Habermas, 2000, p. 168).

Therefore, Habermas defines perpetual peace not as the cause but as the consequence of a cosmopolitan order. While expressing his preference of arriving at such an ideal state of lack of wars between states, Habermas highlights the difficulty of achieving such an ideal position. This difficulty, in the way Habermas conceptualised it here, arises from the legal dimension of cosmopolitan law. It is legal impediments which we have today that stop a cosmopolitan order of states being established, it can be inferred. I argue that this difficulty of achieving perpetual peace has not only a legal but also a sociological character: how, it shall be asked, will individuals who have until then defined themselves as Italians or Greeks will give up these fundamental part of their identities in order to avoid wars between states in circumstances which the conflict between these differing national identities lead to armed conflict? And does the state of perpetual peace require an abandonment of these national identities in order to attain a cosmopolitan order? While an interpretation of identity under the conditions of cosmopolitanism is beyond the scope of this chapter, I argue that the kind of Constitutional Patriotism I seek to develop in this thesis does not require this abandonment of national identities. Constitutional Patriotism as I define it seeks to establish this balance between a cosmopolitan world state and the nation-states of our time. While Habermas points out to the legal difficulties before attaining perpetual peace, he overlooks the role played by the conventional ties of kinship. It is through identification with one another that nation-states wage wars in the name of individuals living in their borders. Constitutional Patriotism, understood as a dynamic project, seeks to transform these conventional ties in light of human rights and democracy.

Cosmopolitanism defined by Kant in *Perpetual Peace* read by Habermas means that nation-states retain their independence: "The order henceforth described as 'cosmopolitan' is supposed to differ from an internal legal order by virtue of the fact that states, unlike individual citizens, do not submit themselves to the public coercive laws of a superordinate power but retain their independence" (Habermas, 2000, p. 168). The independent states directing themselves towards a state of lack of wars are still to be sovereign within their own territories. In this way, Habermas's approach to Kantian reading of cosmopolitanism leaves the level of sovereignty to the states as it was only by subtracting the right to war among one another. Therefore, it becomes easier to envisage Constitutional Patriotism doing the same as cosmopolitanism as even the world state envisaged under the conditions of cosmopolitanism render nation-states sovereign. If national sovereignty is to be maintained under the conditions of perpetual peace and cosmopolitanism which includes all the states and peoples of the world, why would constitutional patriotism have a more radical approach to abandonment of national-sovereignty? National sovereignty, understandably, brings with itself national identities defined in conventional terms. These identities are going to be transformed but not wholly abandoned in light of the principles of human rights and democracy under conditions of constitutional patriotism. Constitutional patriotism is a project about identification; it is not a full blown cosmopolitan ideal as perpetual peace and cosmopolitanism itself. Constitutional patriotism I define seeks to establish the lost balance between the imagined and the real, between perpetual peace and age of (possible) wars, between cosmopolitanism and nationalism.

Habermas criticises Kant for not giving space to the notion of a constitution in the way he envisages cosmopolitanism. Kant defends a world state, which is united without a common constitution (Habermas, 2000, p.169). Without a constitution, a congress is understood as a voluntary coalition of different states, which can be dissolved at any time (ibid). Therefore, the federation of states under the conditions of perpetual peace and cosmopolitanism defined by Kant lack the characteristics of constitutional patriotism in the sense that the perpetual peace does not require a liberal political culture which is crystallised around the constitution of a federation in case of world government or that of a country in case of establishing constitutional patriotism at the national level. "Kant cannot have legal obligation in mind here, since he does not conceive of the federation of nations as an organisation with common institutions that could acquire the characteristics of a state thereby obtain coercive authority. Hence he must rely exclusively on each government's own moral self-obligation." (ibid). Therefore, Habermas seeks to establish a cosmopolitan condition with permanent peace that is legally embodied with the matching institutions and a constitution to support the principles of a possible world-state or organisation. Habermas argues for a legal and not a merely moral union of nations: "If the union of peoples is to be a legal, rather than a moral, arrangement, then it may not lack any of those characteristics of a 'good political constitution' that Kant enumerates a couple of pages later- qualities of the constitution of a state that does not need to rely on 'the good moral education' of its members, but ideally has the strength to foster such an education in turn" (ibid). Therefore, cosmopolitan world governance advocated by Kant lacks, Habermas is arguing, the qualities, which render it more easily, applied in practice. The component of legality is with which Habermas seeks to complement the Kantian ideal

of perpetual peace. In the theory of constitutional patriotism, this notion of legality is provided through reference to a constitution.

Habermas points out to Kant's preference of having a community of nations without a constitution in detail: "Viewed historically, Kant's reticence concerning the project of a constitutionally organised community of nations was certainly realistic. The constitutional state which had only recently emerged from the American and French revolutions was still the exception rather than the rule" (Habermas, 2000, p.170). A possible cosmopolitan constitution, which may come into existence in the future, needs to be respectful of the sovereignty of individual states forming the possible federation. The reason that Habermas gives importance to the sovereignty of nation-states being respected in a cosmopolitan constitution derives from the significance of nation-states in our day: "As long as this classical-modern world of nation-states defines the horizon of thought, any conception of a cosmopolitan constitution that does not respect the sovereignty of member states necessarily seems unrealistic" (Habermas, 2000, p.171). Constitutional patriotism as I seek to develop it here takes its cue from this position regarding national identities and national sovereignty. It is a way of thinking, a certain 'horizon of thought' which suggest embracing the notion of a constitution at national, supranational and cosmopolitan levels without letting go of the nation-states all together. Constitutional patriotism, on the other hand, requires a constitution for the political culture to embed its liberal principles within that constitution. While the theory of constitutional patriotism leaves it open as to what these principles are, Muller broadly defines them as human rights and democracy only.

The previous chapters of this work have discussed the tension between nationalism and cosmopolitanism. Constitutional patriotism, I argue, is a position between the two. The tension between nationalism and cosmopolitanism which plays such a great role in the way constitutional patriotism is organised emerges one more time in Habermas's interpretation of Kant's perpetual peace: Habermas criticises Kant for having overlooked the importance of nationalism in the way he conceptualised the perpetual peace founded on the principles of human rights.

Habermas is quoting Kant in Kant arguing that republicanism as opposed to the dynastic absolutist state structures decrease the possibility of war: the more the states embrace a republican structure, the less likely they are to declare war on one another, Kant holds. In this interpretation, it is a unity in principles which bring different nation-states together in the trust of forming a common federation. Kant's reason for arguing that republicanism is less likely to drive countries to war is that a republican state would be more likely to ask for and have the consent of its population to go to war with another state. Habermas does not encapsulate it as such here but it is not only a republican form which causes a state's seeking the support of its population before such an important decision, but another principle too is at play which has universal connotations together with an important place for itself within the theory of constitutional patriotism that Habermas leaves under-theorised in this interpretation of Kant: that is democracy. Democracy, I argue, is the main concept with which citizens of liberal democracies mobilise and express themselves. The requirement of having a population's support in a possible case of war is rendered possible not through the form of governance but through the principle of

democracy which may be embraced by a republican or a non-republican form of governance. Put in the simplest terms, it is the rule of the people which compels the government to have a popular support during times of decision, be it in the form of a referendum or not. Habermas is arguing that Kant relies on the reluctance of citizens to wage war against another state because of the inconveniences that may reflect on their daily lives. Kant trusts, Habermas is arguing, that citizens of republican states would avoid going to war because they would not see a reason to put themselves through the difficulties of life in wartime. The cause that is able to mobilise many people to fight and die for their (republican) states which escapes the Kantian interpretation of perpetual peace is nationalism for Habermas:

“This optimistic assumption has been refuted by the mobilising power of an idea whose ambivalence Kant could not have recognised in 1795, that is, the idea of the nation. Nationalism was certainly a vehicle for the desired transformation of subordinated subjects into active citizens who identify with their state. However, it did not make the national state any more peace loving than its predecessor, the dynastic absolutist state. For from the perspective of nationalist movements the classical self-assertion of the sovereign state takes on the connotations of national independence. As a consequence the republican convictions of citizens were supposed to prove themselves in their willingness to fight and die for Volk and fatherland. Kant justifiably regarded the mercenary armies of his day as instruments for ‘the use of human beings as mere machines... in the hands of someone else’ and called for the establishment of the citizen militia; but he could not foresee that the mass mobilisation of recruits inflamed by nationalist passions would usher in an age of devastating, ideologically unlimited wars of liberation” (Habermas, 2000, p.172)

This is how Habermas goes against the Kantian notion of cosmopolitanism: he is arguing that cosmopolitanism for it to be realistic cosmopolitanism and more than a mere chimera, it has to take into consideration the existence of nationalism as an important ideology of our day. Taking nationalism into account is how we can “iron out the inconsistencies” (Fine and Smith, 2003) in Kant’s thinking. While seeking to attain the same cosmopolitan goal as Kant, Habermas would like to do it in a way which is respectful of national sovereignties. I argue that in the theory of constitutional patriotism, this has to take the form of respecting national attachments based on the conventional ties of citizens, in addition to the sovereignty of the nation-states to be recognised respectively at the cosmopolitan level. Nationalism has provided the cause with which citizens of different nation-states can take up arms and fight against one another despite the fact that they are all citizens of different states embracing republican traditions. It is this sense of ‘doing good for one’s country’ which occludes thinking in the age of nation-states and gives the pretence of a good deed to killing for a cause; the cause being nationalism. Habermas and Kant both argue against killing for a nationalistic cause. Habermas is arguing that nationalism can be a tool for getting people to mobilise and that many atrocities committed against ‘humanity’ can be done in order to liberate ‘nations’ from their oppressors. While he does not give any examples to this notion of ‘liberation’ he brings up, it only makes sense to think about the bloody and painful periods of decolonisation from the British and French rules in their respective colonies.

Habermas relates the notions of 'democracy and human rights' with the republican form of a state: he argues that "...although states with democratic constitutions do not necessarily conduct fewer wars than authoritarian regimes (of whatever kind), they are less likely to resort to force in their relations with one another" (Habermas, 2000, p.172). Therefore the wars that liberal constitutional democracies conduct have different character, including the desire to spread their own 'value orientations'. If the value orientations can be among the (justifiable or unjustifiable) reasons of conducting war, Habermas is arguing that we should be able to include good universal causes to 'spread one's value orientations' such as human rights and democracy: "But if value preferences transcend the preservation of national interests to include the implementation of democracy and human rights, then the conditions under which the international balance of powers operates undergo a change" (Habermas, 2000, p. 173). Human rights, in this reading, is an ideal which justifies wars. While Habermas seeks to attain the Kantian cosmopolitan peaceful standstill between states, this reference of him to spreading values of human rights and democracy being legitimate proves the space he gives to human rights in his conception of cosmopolitanism. Constitutional patriotism, which I seek to develop, derives from this and maintains human rights and democracy as the two normative pillars on which it is built.

The chapter of this thesis dedicated solely to cosmopolitanism has defined increased international contact, interdependence of nation-states in face of globalised crises and especially increased international trade as the factors pushing countries in a cosmopolitan direction. Habermas revisits the importance he gives to economic powers as a pulling factor in a cosmopolitan direction in the way he interprets Kantian perpetual peace: Habermas argues that Kant has allocated space to financial power as the power that can be relied on the most for establishing a state of lack of wars. States which want to trade with one another would not declare war against one another in this Kantian interpretation. While Habermas allocates great space to economic globalisation as an important factor for the move towards cosmopolitanism in our day, he argues that Kant has overlooked the problems which can arise from a capitalistic mode of production: "Kant did not foresee that the social tensions that initially intensify in the course of accelerating capitalist industrialisation would both encumber domestic politics with class struggles and direct foreign policy into the channels of violent imperialism" (Habermas, 2000, p.173). Therefore, capitalism as a pushing factor towards cosmopolitanism is a positive step in that direction while it has its negative connotations at the same time.

Habermas often writes about human rights and democracy in the same vein: He opposes a notion of 'classical image of power politics' to the politics of human rights and democratisation (Habermas, 2000, p.175). A 'cosmopolitan right', which Kant talks about, takes the shape of human rights and democracy in Habermasian terminology. Habermas is quoting Kant:

"The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in one part of the world is felt everywhere. The idea of a cosmopolitan right is therefore not fantastical or overstrained; it is a necessary complement to the unwritten code of political and

international right, transforming it into a universal right of humanity. Only under this condition (namely, that of functioning global public sphere- J.H.) can we flatter ourselves that we are continually advancing toward perpetual peace” (Habermas, 2000, p.176).

In this sense, different peoples around the world are all connected with one another. It is the ‘violation of rights’ experienced in one part of the world which connects different parts of the world with one another. ‘Rights’ are here conceptualised as ‘a cosmopolitan right’ and ‘international right’ which is ‘transforming the political and international right into a universal right of humanity’ (ibid). Therefore, it is the rights which belong to the humanity as a whole and to all the human beings around the world qua human beings which relate them to one another. Habermas uses the term of a ‘functioning global public sphere’ to define the domain within which this communication about the violation and establishment of the ‘universal right’ takes place. Therefore, ‘the political and international right’, ‘the cosmopolitan right’ and ‘a universal right of humanity’ are all linked to one another in a way which form the background of the notion of human rights in Habermas’s interpretation of Kant.

Habermas is arguing that Kant regards the bounds of national sovereignty as inviolable (Habermas, 2000, p.180). He holds that Kant derives every right from the ‘original right’ of being human: “This was inconsistent in that Kant derived every legal order, and not just that within the state, from the original right that attaches to every person ‘qua human being’...This founding of law in general on human rights privileges individuals as the bearers of rights and lends all modern legal orders an essentially individualistic character” (ibid). Habermas is arguing, therefore, that Kant is being contradictory in the sense that on the one hand he wants to maintain national sovereignty while at the same time defining the source of every right on an individualistic basis. While the source of legal meaning and rights are individuals in the Kantian cosmopolitan order, how, Habermas asks, can Kant maintain the notion of national-sovereignty all at the same time while rendering individuals so powerful in themselves. While the contradiction between individual rights and collective rights of national populations are somewhat clear, it is not clear where Habermas would like to go with this. He is arguing that Kant lacks clarity in the way he founds human rights on an individualistic way but does not develop another notion of ‘world citizenry’ (ibid) which is any less individualistic. Habermas is referring to the Kantian notion of a cosmopolitan community as a federation of states as opposed to a ‘world citizenry’ and suggests the following formula for developing another theory which does make successful use of a balance between individual rights allocated to human beings in a cosmopolitan order while at the same time finding a balanced way to even out the maintenance of the notion of national sovereignty in a cosmopolitan order. If every individual can be envisaged simultaneously as a world citizen and a citizen of a given state, we can have people and peoples who are responsive to one another both within their national spheres as well as on a broader cosmopolitan scale: “Since the supreme constitutional authority (Kompetenz-Kompetenz) now resides in the ‘world federal state’ and individuals acquire immediate legal standing in this international community, the individual state is transformed into a ‘mere agency (Kompetenz) for individual human beings who assume double roles in their international and national functions” (Habermas quoting Kant, Habermas, 2000, p.181). Therefore, Habermas calls for a supreme constitutional authority which strikes a balance

between national sovereignty, national identities and a transnational sense of responsiveness to crimes committed against humanity or against the principles to be specified in a constitution. Here, Habermas does not clearly situate this into the framework of constitutional patriotism: his argument, however, is compatible with a theory of constitutional patriotism that I seek to develop in this thesis. In this sense, I both derive from Habermas's political writings as well as argue to complement them with respect to the missing notion of constitutional patriotism the spectre of which can be found in different places within his work such as 'Kant's Idea of Perpetual Peace' in *The Inclusion of the Other*.

Habermas is arguing that the developments of our time regarding the decisions and the functioning of United Nations 'have also outstripped Kant' (Habermas, 2000, p.181). Habermas puts the question of how individuals relate to their nation-states and to a transnational authority into the context of United Nations. He is arguing that the current developments are new in the sense that there are agreements rendering individuals capable of appealing to an international organisation like the United Nations (this is the OHCHR civil rights desk; based on the internship I have done with the OHCHR. Habermas names this desk as 'civil and political rights' (Habermas, 2000, p.181)). Therefore, it is a novelty of our time that individuals can complain against their nation-states, despite the lack of implementation mechanisms of these decisions which, according to Habermas, need to be backed by a supranational criminal court (and not only the OHCHR). A second novelty of our time is that the UN endows its members with the responsibility not only to protect but also to *promote* human rights: "The UN does not leave the protection of human rights solely up to the nation-states; it has its own mechanisms for establishing that human rights violations have occurred... The individual right of appeal, which gives individual citizens means of legal recourse against their own governments, is in theory of greater significance than states' right of appeal" (ibid). In this way, Habermas places the UN in a cosmopolitan position which has a successful balance of individual and collective rights of citizens. His criticism of Kant regarding the lack of a functional explanation about how to strike the balance between national sovereignty and the individualistic nature of human rights brings Habermas to a position of improving the Kantian notion of Perpetual Peace with a reference to the UN enabling the individuals to bring complaints against their states.

Habermas is emphasising the lack of enforceability of Human Rights at the global level. Despite that he supports the existence of the UN and in particular the right the UN alludes to individuals to bring complaints against their own states, he is concerned about the lack of a supranational court for bringing appeal against states as well as a better implementation tool than the UN itself for the General Declaration of Human Rights (Habermas, 2000, p.182). Habermas is arguing that there need to be an executive power capable of drawing a line to the sovereignty of the nation-states when it comes to the violations of human rights (ibid). The previous chapter on cosmopolitanism has discussed the role that the principle of non-intervention plays in international relations: to recapitulate the same idea, Habermas, bringing to mind the previous chapter of this thesis, uses the principle of non-intervention as a dysfunctional principle of international law which is an obstacle, not a tool, for the protection of human rights. While states often violate the rights of individuals living within their own territories, there are no currently existing means,

Habermas reckons, for re-establishing these rights of individuals without violating the sovereignty of nation-states protected by the principle of non-intervention. In this sense, the notion of principle of non-intervention discussed in the chapter on cosmopolitanism here combines with Habermas's approach to human rights. Here he returns to the same idea, without this time naming it as 'the principle of non-intervention' but nonetheless as 'prohibition of intervention': "Since human rights would have to be implemented in many cases despite the opposition of national governments, international law's prohibition of intervention is in need of revision" (Habermas, 2000, p.182).

Habermas reveals his anti-nationalist sentiment one more time in his recapitulation of Kantian notion of Peace. The terminology he chooses to use referring to nationalism in this context is 'a regression' (Habermas, 2000, p.183). The curtailment of national sovereignty of individual states in a federal world republic, in this context, is a must. In the previous chapter I have referred to the distinction between the cosmopolitan law and international law or international law which is 'classical' as the cosmopolitan law Habermas and Kant are both envisaging also has an international dimension: here he goes back to this distinction between international law and cosmopolitan law in the way he situates the world as it is now. "The contemporary world situation can be understood at best as a transitional stage between international and cosmopolitan law. But many indications seem to point instead to a regression to nationalism" (Habermas, 2000, p. 183). In this sense, the current world politics is merely a stage between the negativities and passions brought by nationalism which is addressed in international law only to be transformed into another form of law which respects while still allocates less national sovereignty to individual nation states perhaps in specific matters. While Habermas favours a 'curtailment' of national sovereignty in a cosmopolitan world government (Habermas, 2000, p.182), he does not refer to as to which areas of decision-making should nation-states succumb or adjust to the decisions of a worldwide authority. Human rights, I argue, represents an area in which all states should respect as well as promote their policies within a common framework. While the areas within which lesser national self-assertion has not been specified, human rights (and to a large extent democracy with it) represent the values within which every nation-state and all the individuals as citizens of their respective nation-states ought to unite. This notion of 'ought' renders Habermas's cosmopolitanism as well as the notion of constitutional patriotism I seek to develop here normatively oriented regarding the basic values to be specified in a constitution.

Habermas is critical of the current state of the world not only in the sense that it has a tendency to regress back to nationalism, but also in the two other meanings that it does not respect human rights enough and does not dedicate an important role to a common constitution (ibid). Habermas talks about a present world organisation of United Nations which unites "virtually all states under its roof, regardless of whether or not they already have republican constitutions and respect human rights. World political unity finds expression in the UN General Assembly in which all governments have equal rights of representation" (Habermas, 2000, p.183). In this sense, while the 'world political unity' (ibid) represents a sense of cosmopolitanism already in place, this unity does not, in Habermas's view, give enough space to the notion of human rights as a normative universal ideal binding all these states under its roof. While the inclusive attitude of the UN

General Assembly on the whole is a positive step in establishing a democratic world government, it is not positive enough because it prioritizes a democratic representation of all governments over their merits of implementing human rights to the fullest of their capacities. Habermas does not elucidate this point about the distinction between democracy and human rights uniting world citizens but his despise for the replacement of human rights with democracy can be inferred from the criticism he is carrying out against the structure of General Assembly of UN not being respectful enough of human rights. In our day, while the UN has a headquarters of human rights organised as the Office of the High Commissioner for Human Rights in Geneva, this office functions under the Secretariat of United Nations. Based on the internship experience I have had with them, I can argue that the bureaucratic structure of the UN gives more importance to the headquarters in New York than that of Human Rights headquarters in Geneva which is powerful in its own right yet subordinate to the office in New York. It is this secondary importance dedicated to human rights, which Habermas in my reading is critical of. The general structuring of the UN gives more space to all the countries being represented but this world-democratic representation does not give space to the notion of HR. In the way Habermas envisages the world political affairs of the future in a normative light, human rights ought to be the leading principle uniting all the peoples of the world. This interpretation of Habermas gives the notion of democracy a secondary nature. I will seek to explore his approach to democracy in the following chapter of this thesis. Constitutional patriotism, however, maintains and limits the principles he promotes to both human rights as well as to democracy. While the theory of constitutional patriotism is founded on the two normative pillars of democracy and human rights, I argue that it ought to leave the remainder part of the constitutions to the decision-making bodies of the individual sovereign states. This attitude would render the balance that Habermas is seeking between the Kantian Perpetual Peace and the current world order. Nation states, under the conditions of constitutional patriotism, can and should decide the constitutions of their respective governments while maintaining democracy and human rights as the highest ideals in these constitutions. In this sense, different national public spheres will have common ideals rendering them more similar to one another irrespective of the conventionally defined ties of kinship constituting their national identities. Constitutional patriotism as defined by me and by Muller is a dynamic project, which constantly recreates itself between nationalism and cosmopolitanism.

Habermas is referring to the difficulties of interpreting human rights differently in different cultural contexts: 'a normative agreement concerning human rights whose interpretation at the moment is a matter of dispute between the West, on the one hand, and the Asians and Africans, on the other' (Habermas, 2000, p. 185). While he does not go into the details of which articles of the Universal Declaration of Human Rights constitute the problematic matters on which there is no inter-cultural consensus, it is a point that needs to be developed further in a comprehensive analysis of human rights uphold as a universal moral principle by every state and every individual in the world. While the inter-cultural challenges before the implementation of human rights on a global scale provide the grounds for a broader research concerning this issue in particular, I would like to limit constitutional patriotism to the notion of being dependent on human rights. Habermas does not develop why or how human rights cause disagreement between the East and the West

in the article he dedicates to the Perpetual Peace; neither does he define any nation-state as responsible of not respecting human rights due to cultural reasons. While his writing is full of examples of nation-states violating human rights within their own borders (for instance Turkey and Kurds, Somalia, former Yugoslavia and many more on page 184), he does not go into the details of challenges facing the theorists regarding different cultural approaches to the ideal of human rights. He does, however, place the notion of respecting human rights above everything. For him, human rights politics is a must about which no intellectual or practical sacrifices can be made. This lack of reference to the sociological content of human rights is a theme he elaborates elsewhere in his work, which I will discuss in this chapter below.

There is one more point of commonality between Habermas's interpretation of Kantian notion of peace and constitutional patriotism envisaged in this thesis: Habermas is arguing that the complexity of causes of war in our day requires an approach to war which is not only a peace which prevents violence but a certain notion of peace which unravels as a 'process' (Habermas, 2000, p. 184). These 'procedural possibilities' (ibid) mean that there be an implementation of regulations. These procedural possibilities for establishing peace without conceptualising peace only as lack of violence has the notion of 'humanitarian intervention' as one of the possible means of intervention ingrained in it. The contradiction between humanitarian intervention and the principle of non-intervention thus takes its place in Habermas's conception of peace as a procedure. Constitutional patriotism, as a dynamic and ongoing process respects this conceptualisation of peace and derives from it in a straightforward manner: the regulations allowing humanitarian intervention and the diplomatic negotiating mechanisms that go with it can constitute a part of the theory of constitutional patriotism. Habermas's procedural peace and humanitarian intervention, therefore, take part within a theory of cosmopolitanism developed by him as well as that of constitutional patriotism.

Habermas is arguing that human rights in the modern sense can be traced back to the American Declaration of Independence and to the 'Declaration des droits de l'homme et du citoyen' (of 1776 and 1789 respectively) (Habermas, 2000, p.189). The French Revolution plays an important role in Habermas's thinking on the whole. These two historical moments of American Declaration of Independence and the French Revolution have provided humanity with examples in support of human rights:

"It is no accident that human rights first take on a concrete form in the context of these first constitutions, specifically as basic rights that are guaranteed within the frame of a national legal order. However, they seem to have a double character: as constitutional norms they enjoy positive validity, but as rights possessed by each person qua human being they are also accorded a supra positive validity" (Habermas, 2000, p.189).

The abstract universal ideals of human rights, in these two cases, find body in the constitutions of these two particular historical contexts. Furthermore, Habermas points out to a dualistic nature of human rights as moral and legal norms at the same time. It is peculiar to human rights to have a dual nature of being moral and legal at the same time: as rights of every human being, they have the moral character of belonging to everyone.

As rights to be implemented (by national authorities) they have a legal dimension. Habermas often revisits this dual nature of human rights and calls them 'Janus-faced' (Habermas, 2010, p.464). This point will be developed in this chapter in the next section in the discussion on dignity and citizenship highlighted in another article by Habermas published in *Metaphilosophy*. The space he allocates to Kantian Perpetual Peace and human rights does too refer to this demarcation line, which he often brings up elsewhere about the nature of human rights. In the paragraph cited above, human rights have 'a supra positive validity' and 'positive validity' at the same time (Habermas, 2000).

Habermas contends that the legal content of human rights should overcome their moral content. He is arguing that human rights do not have their fundamental core in morality, 'but rather bears the imprint of the modern concept of individual liberties, hence of a specifically juridical concept. Human rights are juridical *by their very nature* (Habermas's italics). What lends them the appearance of moral rights is not their content, and most especially not their structure, but rather their mode of validity, which points beyond the legal orders of nation-states. (Habermas, 2000, p.190)'. Therefore, Habermas renders human rights as legally valid rights of all the individuals across borders and the 'legal orders' of the nation-states. "It is this universal range of application, which refers to human beings as such, that basic rights share with moral norms" (ibid). It is the fact that they have validity in every nation and within every nation that they acquire a mode of validity which is juridical. The moral content of human rights, which derive from every human being having recourse to it, expresses itself within the mode of validity (that is juridical and nationally defined); Habermas talks of the rights of 'resident aliens' whose rights come to resemble that of citizens because of this moral content of human rights (Habermas, 2000, p.190). The challenge faced by human rights being realised within the national legal orders gives them a certain sphere of validity for citizens only. It is this notion of citizenship that Habermas takes on the article titled 'The Realistic Utopia of Human Rights' and develops further. I will revisit this idea below. What is important in the article on Kant's Perpetual Peace on human rights is the distinction Habermas would like to develop between human rights and moral rights: Habermas is arguing that there is the tendency within academic circles to conflate human rights with moral rights (as opposed to conceptualising human rights as having moral and legal aspects): "The erroneous conflation of human rights with moral rights is suggested by the fact that, in spite of their claim to universal validity, human rights have thus far managed to achieve an unambiguous positive form only within the national legal orders of democratic states. Moreover, they remain only a weak force in international law and still await institutionalisation within the framework of a cosmopolitan order that is only now beginning to take shape" (Habermas, 2000, p.192). Therefore, human rights have validity only within national contexts which make it all the more important to give space to the notion of national sovereignty and national identities in the theory of constitutional patriotism. Habermas is arguing that increased institutionalisation of human rights at the cosmopolitan level will rid the academic circles of this ambiguous position about the nature of human rights between being moral and legal norms. I would like to turn to this distinction Habermas is drawing about the nature of human rights in another article of his, that is the article 'The Concept of Human Dignity and the Realistic Utopia of Human Rights'.

Section Two: Dignity and Citizenship in Habermas's Approach to Human Rights

Habermas's understanding of human rights is marked by the co-existence of the notions of citizenship and dignity tied into the broader category of human rights. The moral content of the entire notion of human rights derive from the notion of dignity Habermas discusses in greater detail in this article originally published in *Metaphilosophy* later to be turned into a chapter in *The Crises of The European Union*. Twelve years after the publication of the chapter discussed above referring to the legal and moral content of human rights, Habermas develops this further in a future article dedicated solely to the notion of human rights. Habermas rightfully observes the very first article of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights... Nowadays human dignity also features prominently in human rights discourse and in juridical decision-making" (Habermas, 2012, p.71). I argue that the distinction he has drawn between the legal and the moral aspects of human rights has brought him to the point of elucidating this distinction with reference to what he means by this 'moral content' acquired by all individuals 'qua human beings' as the terminology he embraces in *The Inclusion of The Other* goes. The distinction between the legal and moral contents of human rights remains valid in different parts of his work studied for this chapter. The notion of dignity he elaborates later renders it easier to understand how he distinguishes these two spheres within human rights.

The article titled 'Human Dignity and The Realistic Utopia of Human Rights' demonstrates the importance that thinking of Kant has in the way Habermas thinks about the notion of human rights: "It is an interesting fact that it was only after the end of the Second World War that the philosophical concept of human dignity, which already existed in antiquity and acquired its current canonical expression in Kant, found its way into texts of international law and into the national constitutions that came into force in the post-war period" (Habermas, 2012, p. 73). At one stroke, Habermas brings nationality and constitutions into the same discussion with human rights. This reference of Habermas demonstrates how important the notion of national constitutions ought to be in the theory of constitutional patriotism. It derives from the effort of maintaining (a level of) national sovereignty at the cosmopolitan world governance level.

The first chapter of this thesis has situated the notion of Constitutional Patriotism in the context of nationalism and Germany. In the article on dignity and human rights, Habermas refers to this notion of some ideas being historically situated one more time. This time, he situates the concept of human dignity in a Western and predominantly German context: he is arguing that despite the fact that the notion of human dignity is inextricably linked with the idea of human rights from its emergence, it's only after the Holocaust and the atrocities committed during the second world war that the notion of dignity has been retrospectively charged into human rights: "Does the idea of human rights become, as it were, retrospectively morally charged — and possibly over-charged — with the concept of human dignity only against the historical background of the Holocaust?" he asks, only to

answer affirmatively in the paragraph following the question. It is through the principles embodied in the national constitutions that human rights and human dignity are to be implemented at a legal level.

“The appeal to human rights feeds off the outrage of the humiliated at the violation or preservation of their human dignity” Habermas writes (Habermas, 2012, p.75). The right that every human being has derives from the violation of this human dignity inherent in their very being. Referring to the notion of human dignity has rendered it easier, Habermas is arguing, to reach intercultural consensus on issues which can be challenging to have a legal document which is valid across cultures. While his references to intercultural dialogue does not specify which topics may constitute these problems at the time he wrote *The Inclusion of The Other*, his article on dignity refers to abortion and assisted suicide as examples of matters over which no cross-cultural consensus has yet been reached. A discussion about the value differences between the West and the East emerge in another part of his work which I will discuss in the following section. Dignity, as a concept, charges the notion of human rights with moral content in such a way that cross-cultural unity can be attained. “...human dignity forms the ‘portal’ through which the egalitarian and universalistic substance of morality is imported into law. The idea of human dignity is the conceptual hinge which connects the morality of equal respect for everyone with positive law and democratic law-making in such a way that their interplay could give rise to a political order founded upon human rights, given suitable historical conditions” (Habermas, 2012, p.81). Therefore, the link between morality and legality in the sphere of human rights is (retrospectively or not) established via the portal notion of dignity. Through the notion of dignity, the difference between morality and law is bridged within a human rights discourse.

Habermas names this dual nature of human rights as a state of being ‘Janus-faced’ with respect to the notion of dignity too:

“Because the moral promise of equal respect for everybody is supposed to be cashed out in legal currency, human rights exhibit a Janus face turned simultaneously to morality and to law. Notwithstanding their exclusively moral content, they have the form of positive, enforceable subjective rights which guarantee specific liberties and claims. They are designed to be spelled out in concrete terms through democratic legislation; to be specified from case to case in adjudication and to be enforced with public sanctions. Thus human rights circumscribe that and only that part of an enlightened morality which can be translated into the medium of coercive law and become political reality in the robust shape of effective civil rights” (Habermas, 2012, p. 82).

The coercive shape, which the moral content of human rights take in specific contexts, takes the form of nation-states in the world in which we live. The enforcement capacity Habermas seeks to have is only possible within the sovereign realm of nation-states. Human rights seek to be turned into enforced law in nationally determined territories

through the institutionalised mechanisms of individual governments. It is this aspect of human rights, which gets trapped with nation-states that the theory of constitutional patriotism is concerned with.

Another notion which human rights and dignity is closely associated with is 'citizenship'. Human beings are able to make claims as subjects of equal actionable rights only within the confines of nation states and only under the rule of a democratic constitutional state, which gives rights to its subjects (Habermas, 2012, p. 87). A constitutional state, which is a must for the enforcement of human rights recognising the dignity of each other, never comes into existence out of its own accord (ibid). It requires the participation of the citizenry within a public sphere which then makes them both recognise one another as addressees as well as the authors of laws that are being implemented: "As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order" (ibid). Therefore, both a national framework as well as the notion of citizenship, for Habermas, is necessary elements for (better) enforcement of human rights without being bureaucratically trapped in the structures of the international organisations seeking to implement them. The citizenship status, in this sense, is a must for human rights. Hannah Arendt in *Origins of Totalitarianism* defines human rights as being for those on the margins of societies (Arendt, 1968, p.272). It is this marginalisation that the status of citizenship brings to those who do not possess the citizenship status but yet live on the borders of nation states. They are immigrants.

The tension between the legal and moral contents of human rights marks this illuminating article of Habermas from the perspective of nation-states too:

"On the one hand, human rights could acquire the quality of enforceable rights only within a particular political community- that is, within a nation-state. On the other hand, the universalistic claim to validity of human rights which points beyond all national boundaries could be redeemed only within an inclusive worldwide political community. This contradiction would find a reasonable resolution only in a constitutionalised world society (which would not therefore necessarily have the characteristics of a world republic)" (my italics) (Habermas, 2012, p.93).

Thus, Habermas negates the necessity of an authoritarian world republic for the better enforcement of human rights. He opts for the notion of a 'world society' rather than a specific form of governance. Despite and especially because human rights are intertwined with the notion of citizenship of nation-states, the solution to the tension of the moral and legal contents of human rights lie in the establishment of a world society (and not a government) which derives from the national content of the nation-states constituting a federation. The question regarding the membership status of this world society remains unanswered. In the theory of CP, I argue that a point I raised in the chapter on Europe, that is an approach of envisaging the citizenry in a dual (or in some cases perhaps triple) manner might be suggested as a solution. While Habermas's writings on Kant's Perpetual

Peace seem to point to the need for a world federal government, Habermas's article on dignity and human rights call for a world society and not a world government. In this sense, Habermas is contradicting with himself to some extent. It still remains to be clarified as to what extent the national sovereignty content of individual states is to be transferred to a new form of governance he is supporting. Is the new world society to emerge function on its own without any mechanisms of institutionalisation? What would be the citizenship status of individual nation-states in this preferred 'world society' and federation? Are the mechanisms of institutionalisation that Habermas is calling for better implementation of human rights merely tools for these cosmopolitan principles to be implemented without giving larger space to other areas of governance? Habermas's writings on cosmopolitanism and human rights leave these questions unanswered. The theory of constitutional patriotism I seek to develop here does, however, call for a cosmopolitan federation of world nation-states to better implement human rights (and democracy) as well as to sustain the presence of a world society which Habermas clearly supports.

Section Three: Remarks on Legitimation Through Human Rights

Habermas's approach to human rights is multifaceted. In addition to bringing Perpetual Peace, dignity, and citizenship to the mind, human rights also have an internal relation with democracy (Habermas, 2001, p.113). Human rights, together with popular sovereignty, are conceived as the answer which political theory has to the question of legitimacy (Habermas, 2001, p.115). "Popular sovereignty and human rights provide the two normative perspectives from which an enacted, changeable law is supposed to be legitimated as a means to secure both the private and civic autonomy of the individual" (Habermas, 2001, p.116). The tension between the legal and moral content of human rights reveals itself in Habermas's writings in almost every instance he has referred to the notion of human rights. In 'Remarks on Legitimation Through Human Rights' he uses the term 'Janus-faced' for human rights for the first time in his writings, only to develop it further with the notion of dignity years after this. By 'legitimation', Habermas here means the validity human rights have across cultures: "Nevertheless, the general validity, content, and ranking of human rights discourse that has been argued on normative terms is plagued by the fundamental doubt about whether the form of legitimation that has arisen in the West can also hold up as plausible within the frameworks of other cultures" (Habermas, 2001, p.119). Therefore, Habermas brings to light the cultural tensions about the desirability and applicability of human rights in different cultural contexts. Belonging to a particular political community, that is bearing citizenship status within the bounds of a nation state, bring the form of governance of constitutional democracies into coexistence with the question of the applicability of human rights in the real, practical world (ibid). This desire to transform universal ideals into practical reality marks the Habermasian understanding of human rights.

Habermas recognises that the human rights discourse is a discourse which first gained prominence in the historical and intellectual context of the West (Habermas, 2001, p.120). Despite this historically specific context from which human rights emerge, they have the moral quality of reaching beyond nations and borders. Habermas emphasises the notion of

modernity as a cause of having different interpretations to human rights. "The reason is that other cultures and world religions are now also exposed to the challenges of social modernity, just as Europe was in its day, when it in some sense 'discovered or 'invented' human rights and constitutional democracy" (Habermas, 2001, p. 121). In this conceptualisation, human rights coexist with democracy and also function as a teleological end point towards which all the cultures are moving with different levels of modernity. The discourse of modernity has rendered it possible for the European societies to embrace the notions of human rights and democracy at a particular moment in time throughout their own processes of modernisation. While respecting cultural multiplicity and 'everyone having a voice in human rights' (Habermas, 2001, p.120), Habermas does not sacrifice his position of defending human rights and democracy as desirable notions by definition. This preference of him is irrespective of the different levels of modernization attained by every society on its ladder of historical progress. It is important to establish a discourse within which each can learn from one another, he holds, but for him it is equally desirable to have a form of governance and a political and social culture to support it, which enshrines universal moral norms of human rights and democracy. In this sense, Habermas excluded culturally specific traditions, which does speech of a liberal development of personality structures, in the case of which a feminist discourse becomes more interesting. I will revisit this notion of development of personal identity through an exploration of Habermas's understanding of the moral self and his interpretation of Lawrence Kohlberg's work.

Habermas advocates that the standard set by human rights derive less from the Western culture specifically but from a process of modernisation, which has taken place in the West. Every culture and society has its own trajectory of arriving at similar points which Western societies did in this reading: "My working hypothesis is that the standards of human rights stem less from the particular cultural background of Western civilisation than from the attempt to answer specific challenges posed by a social modernity that has in the meantime covered the globe" (Habermas, 2001, p.121). Therefore, the results of modernisation concern not only the West but the globe as a whole. Habermas singles out autonomy as the main component of the development of personal identities under the conditions of modernity and human rights. He is arguing that the main controversy about the desirability of applying human rights in different contexts revolve around the notions of individualism and the secular character of human rights 'centred in the concept of autonomy' (Habermas, 2001, p.121).

Habermas is arguing that at the conferences, which address the issue of cultural, dialogue over human rights, the main objection that human rights are facing regards the individualistic character of human rights (Habermas, 2001, p.123). It is assumed, by some critics of human rights, that the individualistic nature of human rights, enabling every human being more capable as bearers of rights, goes against the cultural values that can be upheld globally. Habermas is arguing that bringing forth the claims regarding the individualism in cultural differences in the sphere of human rights would cause the debate about human rights to take a 'false turn' (ibid). Regarding the cultural differences in interpreting human rights, Habermas does not return to the question of modernity this time but re-emphasises another idea which I have highlighted in the chapter on cosmopolitanism of this thesis: that is the power of globalisation. On finding a common

grounds regarding the cultural differences within the sphere of human rights, Habermas is arguing that the main issue is not so much the individualistic or collectivistic approaches to identity and to law but the real question for him is a matter of temporality about when or how to catch the standards set by economic modernisation (Habermas, 2001, p.124). Economic modernisation, like the notion of human dignity, has 'won approval on the whole' (ibid). It brings different parts of the world with different cultures in touch with one another. This communication, Habermas seems to presume, means that cultural differences will culminate in the question of how to attain the standards of human rights set in the West by different cultures who do not yet observe the same standards or forms of governance (such as democracy). While carrying out a sociologist's sensitivity to the issue of cultural difference, Habermas relentlessly upholds human rights over critics of cultural relativism and fundamentalism.

The discussion on human rights make it more difficult to accept or to let go certain parts of certain cultures which do not 'agree with' the standards of human rights:

"But that does not justify an authoritarian model of development, according to which the freedom of the individual is subordinated to the 'good of the community' as it is paternalistically apprehended and defined. In reality, these governments do not defend individual rights at all, but rather a paternalistic care meant to allow them to restrict rights that in the West have been considered the most basic (the rights to life and bodily integrity, the rights to comprehensive equal protection and equal treatment, to religious freedom, freedom of association, free speech, and so forth" (Habermas, 2001, p. 125).

The desire to understand and address different cultures within the discourse of human rights does not give space to an understanding towards paternalistic cultural traits, which leave women on the margins of the society or at the mercy of paternalistic traditions; in the name of 'preserving' their 'host' cultures. The paternalistic discourse Habermas seeks to rule out is disrespectful of the exemplar human rights given in the account above. If the critique of cultural relativism holds, the individualistic nature of human rights ought not address the individual as the bearer of rights, as the person who can and should try to develop his or her own personality based on the preferences of her free will. Not being able to question certain cultural traditions is avoided by placing the notion of human rights and personal development above the communitarian concerns regarding the individualistic and Western character of human rights, which a culturally relativistic reading might hold. Habermas gives space to a communitarian attitude to personal identities only to the extent that these collective identities increase the personal autonomy of the individual: "The choice between 'individualist' and 'collectivist' approaches disappears once we approach fundamental legal concepts with an eye toward the dialectical unity of individuation and socialisation processes" (Habermas, 2001, p.126). In this sense, the collective national identity of the individual is respectful of and derives from the socialisation process, which is an important ingredient of a national identity.

Habermas refers to the individuation and socialisation processes within this context of writing about identity and human rights. Another aspect in his work, which I will discuss below, adds a new meaning to the notion of autonomy in the sphere of identity and individuation. Here, I would like to take Habermas's reference to individuation and socialisation processes one step further and combine it with his critique of paternalistic interpretations of human rights which unwittingly perpetuate traditions within which feminism finds it more difficult to flourish: I would like to briefly discuss the example of wearing a headscarf in context of Habermas's understanding of human rights, socialisation and individuation processes. The choice of wearing or not wearing a headscarf belongs to a female individual, in an ideal reading of human rights. If a woman chooses to cover her head, in whichever preferred way that gave rise to detailed questions about the 'burka' 'the hijab' or the 'niqab' in the recent literature in social science, it is ultimately the result of the way a woman chooses to dress. This way of dressing, however, has been subject to many discussions throughout history. While French 'modernisation' as Habermasian terminology would dictate opts for a ban on the full headscarf as a result of their own history of secularism, the clocks of collective memory are ticking differently for members of different cultural communities. I argue that it is not always straightforward to decide whether women are choosing to wear a headscarf, or embrace certain cultural practices as being a stay-home mother, as a result of their paternalistic cultures or as a result of the actual choices they are making. The question about these choices being informed decisions is a difficult question, which requires further thinking. Individuation and socialisation, as Habermas argues, are two very similar processes. While every individual is on a path to individuate and establish an identity of his or her own, this only happens within a given social context. 'No man is an island' and it is hard to imagine a female individual who does not love and appreciate the members of the family or care-givers who are, unmistakably, members of a given society or community with a culture (John Donne). Cultures are not stones to be kept in museums, Kwame Antony Appiah is arguing (Appiah, 2007). We cannot argue that they don't change and they have the right to maintain every single aspect of their constituents at place. Lack of change within cultural settings, I argue, need not be a good thing by definition. The possibility of women choosing or not choosing to dress in a given cultural way is of utmost importance for a liberal development of personality structures of individuals within constitutional democratic regimes. Constitutional patriotism as a process, which favours human rights, and democracy as universal ideals to be attained also favours a socialisation process, which aims at arriving at 'increased autonomy'. While the following section on the moral self will discuss this point further, for the time being I argue that it is worthy of highlighting the emergence of the notion of autonomy in Habermas's writing on human rights in 'Remarks on Legitimation Through Human Rights' (Habermas, 2001, p.127). Here, Habermas equates the critique of human rights from the point of view of not respecting different cultures with the central notion of 'autonomy' that human rights dedicate to personal identities. Habermas's answer to the question of including different cultural traditions within the discourse of human rights prioritises this notion of autonomy in every example one can imagine including the long standing discussion about the headscarf, I argue.

Chapter Five: The Enlarged Moral Self

“We must reinvent love”
Solomon

Section One: Ego Identity and Moral Consciousness

Contemporary social and political world offers a number of problems regarding matters of identity and Otherness. This paper places the notion of Selfhood at the centre of the confused political and social structure of today. Here I will develop an understanding of Habermas's understanding of the moral self within a process, which seeks to transform (parts of) national identities. I argue that Habermas's approach to the moral self, understood in light of the writings of Lawrence Kohlberg, presents a fuller analyses of the political self sought to be represented in CP. I will ground the idea of the moral self will upon the normative principles of human rights and democracy in conjunction with other aspects of constitutional patriotism. Three stages of moral development in this paper distinguish different levels of autonomy and deliberation in the process of national will formation. The notion of selfhood requires more of a moral reading offered by CP. Kohlberg and Habermas have both used this three level typology to define separate levels of moral causes. Autonomy, in Habermas's approach to the moral self, is the conceptual hinge on which the different stages of moral development differ from one another. Jung, Freud, Winnicott and Mead offer some crucial underpinnings of post-conventional morality in order to complement Habermas's project which Habermas left underdeveloped. It is this transformation of the self and invitation to a synthetic interdisciplinarity which I will unravel below.

“Philosophers have only interpreted the world, in various ways. The point, however, is to change it” wrote Marx in 1845. The academic tendency of interpreting the world, intellectualising the problems it carries within it and attributing different names to different disciplines all inhabiting the same social habitat has continued for much longer than Marx could have imagined. This article is dedicated to social change. It keeps the cultural at the centre of all that is legal, metaphysical and social scientific. Therefore, I have an ambitious goes of offering an answer to the question of ‘how’ the change much desired by those who think and feel can crystallise. The change I seek to depict in CP is rendered possible through the study of identity. Identity, as a broad term, feeds off from the culture surrounding it. Moral development offers a way to reconstruct the self for the good. This notion of the good, read through the lens of Kohlberg and Habermas, makes almost no reference to a religious reading to the right and wrong. Contemporary legal theory, instead, offers a framework outside religion.

Through an introduction of Kohlberg's theory of moral development, Habermas explains how the individual moral self can be transformed. The individual, which at the

emergence of constitutional patriotism is construed as national moral self only, is transformed into a cosmopolitan citizen who acts in accordance with the collective will.

¹²This is a process which requires the development of the individual ego and increase in autonomy. An autonomous post-conventional moral self is integral for the individual to embrace cultural values and individual perspectives which are (seemingly) different from hers; to include the outermost circle of cultural formations closer to the self and to participate in deliberative politics. The individual ego needs to go through a process of transformation and reach an increased level of autonomy - a process during which the individualistic nature of the former stages of moral development are replaced with collective moral concerns. Autonomy, for CP, is a concept with connotations resembling freedom and empathy. Individuation requires freedom and distancing oneself from the carer with whom a relationship has been (without a conscious decision) formed at birth. Freedom, on the other hand, is a term with more political connotations. Autonomy, for CP, is the ladder which links the is and ought. This ought should be read in a completely non-metaphysical and secular sense. The 'right' behaviour I use in CP is only a critical one. The cosmopolitan citizen 'ought to' relate to others. This is the mephitic aspect of autonomy in CP.

By desiring and acting upon a process of mutual cultural understanding, the autonomous moral agent enlarges her own perspective while putting herself in the shoes of others. In matters relating to international relations; one good example to this would be to ponder upon the policies of one's own country in relation to others. The refugee crisis of 2016 has made the question of Otherness more relevant than the history of modernity has ever seen. The responsible constitutional patriot who has reached a higher level of critical thinking skills and autonomy would not stop at considering the policies within one's own nation-state but desire and acquire the capacity to relativize this in order to come closer to the nature of the truth. The academic turn towards comparative politics and comparative literature demonstrates this approach in social sciences of today. Truth is comparative; but not relative. This paper explores how different aspects of Habermas's work render this transition possible. By exploring the themes of 'ego identity' and 'moral consciousness', I seek to place what Habermas wrote on these issues into the yet developing notion of Constitutional Patriotism.

Habermas's conception of the self is influenced by Kohlberg's six different stages of moral development. In order to discuss the moral self from the perspective of constitutional patriotism in a coherent manner, it is helpful to impose three broader levels. This means situating the moral self. These three broader levels are the 'pre-conventional', 'conventional' and the 'post-conventional' levels (Habermas, 1990). Habermas's choice of terms 'conventional' is crucial for the reflexive and contemporary nature of CP. It is ('post-' or 'pre-') conventionalism, which allows us to situate the moral self into a paradigm of

¹² Habermas uses the term "will" in the same sense as the Rousseauian notion will formation ('la volonté generale').

communitarianism and spatio-temporality. The operating principle behind each stage is interactive competence, reflexivity and different levels of autonomy. The post-conventional level, which I will elaborate below, is the level in which constitutional patriotism operates. I aim to add constitutional patriotism to Habermas's and Kohlberg's schema as yet another broader and novel framework. The framework of CP mobilises the stages of moral development.

Habermas's 'Communication and Evolution of Society' offers a rigorous reading of Kohlberg's stages of moral development. In this, Habermas offers several different interpretations of Kohlberg's one specific schema of moral development. The one that he revisits several times after the introduction of Kohlberg into his work in the chapter on 'Moral Consciousness and Ego Identity' offers a reading of moral development which places identity at the centre of his thought. This specific reading of identity, which I'll discuss below, offers a place for identity between Habermas's political theory and his political writings. His early work on communication is the missing link for turning Habermas's interpretation of Kohlberg into the quintessential milestone for the theory of Constitutional Patriotism. 'Communication and Evolution of Society' has a significant but nonetheless overlooked place in the literature. It is in this book of Habermas that his notion of communication comes in touch with society. It is this evolving nature, which focuses on the factual realities of the society and mobilises them. Habermas's attitude to evolution of the society, I argue, paves the way for his legal proceduralism.

In the preliminary schema which did not in any way refer to the notion of Constitutional Patriotism: the pre-conventional level represents the early years of life in which the individual is responsive to externally ascribed labels to behaviour. The early infant follows the judgements of her parents and acts according to reward or punishment. This holds same for female and male infants. At the end of level one-the pre-conventional level-the right action gradually starts taking the shape of considering the views and needs of others, albeit occasionally. At the second level, that is the conventional level, the individual (citizen) develops and maintains loyalty to fellow citizens and family members. She values these affective bonds in their own right. The consideration of the needs of others, rather than the concerns about the parental reward or punishment, takes the form of helping others. By focusing on understanding and caring for the other; the individual rids himself (or herself) off the instinctive selfishness human beings are all born with.

In 'Civilization and Its Discontents, Freud argues that this ultimate tension proves problematic for every human being and is the foremost reason behind mental illness ranging from the mildest to the most severe psycho-pathologies. For him, men suffer the most because of relationships with other men (meaning human beings). The sense of 'Otherness' which an individual feels vis a vis another human being takes the form of different moral agents in sociology and critical theory. In Freud's terms, demands of

instinct and restrictions of civilisation are at odds.¹³ Freud's understanding of instinct argues that every human being has a given level of aggression within. Civilization, for him, hinders the release of this aggression. In CP, this aggression takes the form of forming separate moral agents than the self: the other nation, the other ethnic group, the other linguistic community all provide this sense of otherness which allow the sense of aggression to find a functioning place for itself. Given that the members of these groups are conceived to be different due to different cultural traits, it is easier for the moral agent at the conventional level to maintain a sense of aggression towards them. Love, understanding and communication, therefore, is reserved for the fellow compatriots in this reading. In CP, aggression finds a form to sublimate in intimate romantic relationships: the basic instinct is turned into a tool for communication with the loved one in the innermost sphere of the self. Love, in CP, has different forms at different levels of identity: romantic love offers a sublimation rendering the human instinct completely unaggressive in relationship based on profound communication.

The Other is defined in terms of the fellow national citizen in constitutional patriotism or in the original way Habermas has formulated it; as a family member (Habermas, 1990). In Habermas's original work, in 'Schema 1a. Stages of Moral Consciousness according to Lawrence Kohlberg' the word 'other' is not clarified. Habermas adds another schema to this which he calls his own 'elucidation' (Habermas, 1984, p. 81) and in that, he does not develop the conception of otherness either. While he steps out of a strictly cognitive behavioural reading of early child development, he in no way delivers a reading of 'otherness' in this particular work of his.

As we follow the stages of moral development, we see different social and institutional actors enter the picture: At the end of the conventional level, law emerges as an external locus of identity.¹⁴ This 'locus' offers a centre to organise thought relating to the matters of 'who-ness', as I would like to call it alternatively. It merely offers something to care for which was not initially internal to the identity of the individual. An external locus of identity is different from having oneself for a personality trait or a social attribution one has at birth, but one which is acquired. While the constitution and the political culture surround it has been defined as the primary object of attachment in CP by the founders of the CP, I maintain that any external centre which will be sought closer to the meaningfulness of the internal thought ought to be evaluated in light of reason and emotion.

"If the adolescent cannot and does not want to go back to the traditionalism and unquestioned identity of his past world, he must, on penalty of utter disorientation,

¹³ This is why Foucault defines madness as emancipatory. Erasmus and Foucault both offer a positive reading of madness as madness, for them, offers a different way of being in the world. CP seeks to establish this reflexive attitude through Habermas's reliance on post-conventionalism.

¹⁴ For further reading, see Gazzaniga et. al. on Cognitive Science.

reconstruct, at the level of basic concepts, the normative orders that his hypothetical gaze has destroyed by removing the veil of illusions from them” (Habermas, 1990, p.126).

Here, Habermas brings the Rawlsian notion of the “veil of ignorance” in touch with his notion of identity. Traditionalism, conventionalism and unquestioned identity all link with one another. Individual’s reliance on the opinion of her parents is the result of a conventional system which the society had embraced long before the time the young infant opens his or her eyes to the world. ‘The world must be peopled’, according to Shakespeare, but the ways in which the society will shape this belongs on us. One befitting example to a conventional system prevailing over an era is the Victorian England. Known for the puritanistic social notes, the Victorian Era of England had inspired many cultural products reverting the strict norms imposed on the individual. One book in particular never ceased to captivate the imagination of ‘moral agents’ at every stage: *Alice in Wonderland*. In a 2016 book published on *Alice in Wonderland*, Robert Douglas-Fairhurst argues that the Victorian morals were behind Lewis Carroll’s desire to escape the civilised world and create a parallel one in which everything is upside down, and where everyone is ‘mad’. Alice, in *Alice in Wonderland*, is greeted at the Wonderland during a tea party where the Mad Hatter tells Alice that they are all mad there. Lack of norms, the opposite of a strictly religious sense of morality applied in several areas of the penal code created its opposite in literary imagination. In this imaginary world, cakes make you grow smaller, madness is praised and laws of physics do not hold. Despite the change which realised over time, civilisation requires an order. It is a certain aspect of this order which I situate CP against: traditional conventionalism as the point which sows the seed of unreflective moralistic attitude.

The original affective bond to the parents, which was expressed through the desire to receive reward in success and the fear induced by punishment, is one form of childhood which seems more conventional and inductive of unhappiness. This slowly transforms into a realisation and concern for others, he argues. I argue that while it is empirically verifiable that a child develops the cognitive skills to perceive the same factual situation in a different manner due to a development that is inherent to the nature of being a human animal only. The developing perspective transforms the selfishness of the human animal. It is through the process of socialisation and integrating ourselves into civilization that we lose this animalistic side. Through the reduction of animalism, we find the notion of romance emerging in the linguistically articulated human sphere only. Psychological literature¹⁵ presents the notions of egocentrism and empathy together: the mountain experiment developed by Piaget proves that empathy develops after an egocentric stage. For Stage 1, Habermas applies the term ‘egocentric’ in *Moral Consciousness and Communicative Action* but not in *Communication and the Evolution of Society*:

“This stage takes an egocentric point of view” (Habermas, 1990, p.128). In CP, egocentrism is being concerned for one’s own nation state only. At the second stage, he moves on to the notion of conflict and conflict resolution through the first realisation of

¹⁵ As in in the approach to psychology as a discipline by Gazzaniga.

psychological relativity. In CP, I would like to carry this relativity (which I call here psychological relativity) to the level of the sociological. This introduction of relativism is in no way similar to cultural relativism as I stand against the subaltern and postcolonial sociological literature in the field in matters relating to truth. Epistemology as a sub-branch of philosophy has reserved truth seeking to philosophical circles: here I seek to bridge gaps between disciplines, cultures, moral stages as Habermas introduced them as well as different aspects of Habermas's work. In today's world of international relations and global society, we notice that the perception of the suffering of another or a given factual setting such as the war in Syria does not immediately turn into a reaction for the suffering of these 'Others'. In *Communication and Evolution of Society*, Habermas argues for increased communication among different actors within a given society for the transformation of that particular society. He advocates that bridging the gap between psychology and philosophy provides the necessary tool for this: "Basic psychological and sociological concepts can be interwoven because the perspectives projected in them of an autonomous ego and an emancipated society reciprocally require one another." (Habermas, 1984, p.71). Therefore, ego, autonomy and Jung's understanding of individuation all tie together.

The interdisciplinary attitude of Habermas is very clearly articulated in 'Communication and the Evolution of Society'. While his later work focuses on the themes of democracy and constitutionalism to a much larger extent, it is this early work which paves the way for the elucidation of a coherent notion of identity of constitutional patriotism. The word 'constitutionalism' carries different meanings across different languages due to the place a given constitution plays in the specific social and political structure of a country. Habermas does not directly borrow the notion of 'constitutionalism' or a constitution from Carl Schmitt but like the latter, he is influenced by the German political and social context. The relation between society and identity paving the way for an idea about constitutionalism has been discussed by Chantal Mouffe:

"What is at stake in answering Schmitt's challenge, therefore, is devising ways in which antagonism can be transformed into agonism. The tension between the democratic logic of popular sovereignty and the liberal logic of individual rights needs to be acknowledged so that it can be negotiated in a way that does not destroy the basis of political association. How can one envisage a democratic form of commonality which makes room for conflictual pluralism? This is clearly one of the key tasks confronting liberal-democratic societies today, given the increasing fragmentation of identities and the multiplication of new forms of conflictuality" (Mouffe, p.5).

Mouffe brought several ideas together: the form of political association in Jürgen Habermas's approach to Constitutional Patriotism includes the formation of nation-states. In the field of identity in particular, several ideas depend on one another. In Habermas's work, 'reciprocally requiring one another' an expression he uses in *Between Facts and Norms*. In that context, he refers to human rights law and autonomy in human development. Moreover, Habermas's approach to human rights law does not rely on any references to an enemy and friend distinction such as some interpretations of Schmitt can offer. The friend and enemy distinction appears in Hirst's understanding as a political approach which groups human beings: "Every religious, moral, economic, ethical, or other antithesis transforms itself into a political one if it is sufficiently strong enough to group

human beings effectively according to friends and enemy”, Hirst quotes Schmitt (Mouffe, p.9). Constitutional patriotism seeks to replace this dichotomy with a cosmopolitan approach which brings different layers of the self together.

The empiricism provided by the aid of a psychology experiment of Piaget is captured in these words of his: “...none of these three theoretical approaches has yet led to an explanatorily powerful theory of development, a theory that would permit precise and empirically meaningful determination of the concept of ego identity” (Habermas, 1984, p.75). The three schools of thought within the discipline of psychology that border over into various other areas of social science are, to use Habermas’s own terms; psychoanalytic school of thought cognitive behavioural psychology and symbolic interactionist psychology.

“Man today is painfully aware of the fact that neither his great religions nor his various philosophies seem to provide him with those powerful animating ideas that would give him the security he needs in face of the present condition of the world” (Jung, 1964, p. 92). These great ideals used to fuel passions which could turn the individuals into collectivities. Religion, I claim, was the most powerful idea for identification before nationalism replaced this through the French Revolution. Nationalism offered another way of being in the social world instead of the unquestioning ‘belief’ characterised by religion. Through defining groups of people on the grounds of language, kinship and in most cases geographical position in which they found themselves at birth play important roles. Nationalism, in contradistinction to religion, can be defined as a ‘referendum of everyday’ in Ernest Renan’s words. The French Revolution has caused the stir in entire Europe by bringing the idea of superiority of one over the other offered in monarchical governance to an end. The French constitution holds that “the sovereignty belongs to the people”¹⁶. The principle and the motto of the French constitution gave sovereignty onto the people. This understanding of ‘the people’ of 1789 is the same as the current constitution of France as of 2016. It’s due to the rise of nationalism in France, some historians hold, that the de-colonisation of former British territories have started. Therefore, the interconnectivity of the world regarding ideals had already commenced.

CP addresses the main question about the meaning of life. Jung brings the mind and dreams into it; while I use the theory of CP to address similar problems of the self, identity and ‘who-ness’¹⁷. National attachment and conventional patriotism are the feelings which fall under the scope of CP. Patchen Markell has written on ‘Making Affect Safe for Democracy’ where he developed the notion of CP in his own words. His reading, Ciaran Cronin’s reading and Muller’s reading of CP go hand in hand when it comes to a defence of the notion of CP. An attempt at reinventing the notion of love carried out by Robert Solomon in ‘About Love’ paves the way for me to add romance, political attachment and love into the transformation of attachment we seek to attain here: “The meaning of life is

¹⁶ See the Constitution of French Republic. English copy available online.

¹⁷ My choice of terminology. I use ‘who-ness’ as a term borrowed from the Alice in Wonderland, denoting an in between place between ‘identity’, ‘identification’, and ‘selfhood’.

not exhaustively explained by one's business life, nor is the deep desire of the human heart answered by a bank account" (Jung, 1964, p. 93). In *Man and His Symbols*, Jung focuses on the notion of the social more so than he does elsewhere. The attitude Jung brings to psychology already has the discussion between scientism and relativity inherent in it: "Psychology is the only science that has to take the factor of value (i.e. feeling) into account, because the link between physical events and life. Psychology is often accused of not being scientific on this account; but its critics fail to understand the scientific and practical necessity of giving due consideration to feeling" (Jung, 1964, p.90). At the emergence of psychology as a discipline, this distinction between social sciences, positive sciences and psychology required Jung to carry out this defence. He sought to bring feeling into science.¹⁸ Life, as Jung calls it, or the 'lifeworld' in Habermasian terminology is laden with 'a multitude of traps', for Nozick. Wisdom, for Nozick, is what every human being needs to face life. Socialization is the process during which every person is acculturated into the lifeworld. It is for this reason that I seek to track down the process of socialisation in CP. Being (in the world) has been intertwined with feeling and existence for a long time. Heidegger and Sartre can offer different interpretations for being. In the approach I have to the moral self, the attitude that Neuburger has to being is helpful. I seek to resort to a psychological definition of existence in the theory of CP I develop here merely because psychology offers more solutions for feeling better, than do the (pseudo-)complexity offered by (some) philosophers.

Existence, according to Neuburger, is defined in relational terms: "We are here in the world, or expressed even in better terms, we learn to exist through the look of our parents and the society."¹⁹ (Neuburger, p. 21) He defines the world of identity in relational terms. Society, for him, is defined in the Durkheimian sense as a constellation of groups of attachment. Durkheim's *Suicide* is the groundwork for Neuburger's interpretation. In establishing the distinction between the organic and mechanic societies, Durkheim seeks to track down the causes which push men to choose to end their own lives. His bringing together of quantitative analysis gathered in France together with a sociological account is the landmark of social theory. Having meaningful relationships is the foremost reason for seeing oneself in harmony with what life has to offer at a given moment, or what life 'is'. It is the social relations which determine this intersubjective space as the container of attachment(s). It is this space which communication takes place. Bringing the Habermasian terminology into this picture would read as such: it is in the public space which we exist. Existence, for Neuburger, is inextricably linked with romantic love: "The couple today is a major source of existence"²⁰ (Neuburger, 2014, p.42). Starting from the most intimate, the circles surrounding the self expand.

¹⁸ For a discussion of feelings in neuroscience, see Nilufer Rahmioglu of Oxford together with her team workers on measuring suffering quantitatively.

¹⁹ The original in French: "On exist, ou mieux, on apprend à exister par le regard de sa parents et avec l'aval de la société." Neuburger, 2014, Paris.

²⁰ The original language in French offers a word for being in the world, that is "exister". I chose to translate it as "existence" and avoid the philosophical opening to a literature which cannot offer any

In Kohlberg's notion of moral development and socialization, we find ourselves in the terrain of slightly different terminology: At the last level of moral development, the moral reasoning takes a universal and legalistic form. The moral agents can stand back from their personal particularistic attachments and relate affectively and cognitively to the principles of the constitution. The love for the other half in the private sphere stretches towards the love of the world. At the stage of universal ethical principle orientation, the right norms are defined as principles appealing to logical comprehensiveness and universality. 'logical comprehensiveness means, for CP: having semantic content in the articulation and (re)production of the social life. So long as any utterance has this quality, transformation is possible. Comprehensiveness, for CP, is translatability²¹. If the theory of ego identity is to be complemented, the abstract object of universal ethical principle orientation, I argue, should be the constitution. It ought to be the constitution as an embodiment of the liberal political principles; or the 'universal ethical principles' as Habermas calls them in 'Communication and Evolution of Society'; which stands in as the object of attachment. This commitment has two things to bear in mind: firstly, the attachment to liberal constitutional political values does not require the abandonment of values at the private sphere, or at the first type of CP (within the nation-state level). Secondly, the constitution has a different form in divided societies and in conflict resolution cases: it derives from international treaties. The Cyprus problem is a case in point: the constitution of the future United Cyprus shapes on grounds of the UN Annan Plan which is the peace treaty developed specifically for Cyprus within the framework of IHRL. The constitution stands in the place of the object of attachment at the last stage of moral development in the theory of constitutional patriotism. The element that Habermas introduces at the sixth stage of moral development, that is the social contract, is transformed into a universal constitution in the cosmopolitanism aspect of the theory of constitutional patriotism. The stages of moral development of Kohlberg provide this ladder reaching the constitutional attachment level. The mountain experiment developed by Piaget and various contemporary American psychologists mixing different national and scholarly attitudes towards the self provide this semantically, emotionally and intellectually nourishing meaningfulness. The early work of Habermas is closer to the psychoanalytic tradition which was more prevalent at the stage of Frankfurt school's establishing itself early on than it is in our day.

The importance of the 'mountain experiment' is that the infant becomes more responsive to the way in which another adult may perceive the same situation or physical setting. As the young infant grows up, she becomes more perceptive about how another person, looking at the same mountain setting from another perspective, might perceive it.

solutions to the "problem of existence" as I call it. Here is the original for the readers of CP to make up their minds: "Car le couple est aujourd'hui une source majeure du sentiment d'exister" (Neuburger, 2014, p.42).

²¹ For an analysis of 'translatability'; see Roland Barthes, Christian Nord and Susan Bassnet.

The mountain experiment is merely that first test in history which the cognitive capacities of human beings have been measured at the preschool years. This is important because the IQ and the EQ tests can only measure the competence of adults after the socialisation process has, to some extent, been completed. The preschool years are the least social years as every child (under “normal” circumstances) is still under the care of the birth giver and the parents.²²

This experiment of Jean Piaget has been crucial for his demonstrating that as time goes by, infants increase their cognitive capacities stage by stage (Piaget and Inhelder, 1966). It is this realisation of the different stand-points of others which has a crucial role in the way the moral self is transformed in a way to achieve the universalistic moral and legal principles sought after by constitutional patriotism. I argue to bring Habermas’s notion of communication into the theory of CP through moral consciousness. An increased level of communication between different psychological and moral actors adds to the increased contact and empathy between different societies and nation-states I advocate in my CP. Habermas’s defining the last stage of moral development through the presence of moral and legal principles fits perfectly into the project of reconstructing Habermas’s work for CP. After having integrated the Other (human beings) which in constitutional patriotism are fellow national or global citizens as participants in rational political discourse, the individual seeks authority one more time; in a form that is more individuated and is better informed about the world and other moral agents (or political participants) in it.

In my interpretation, law emerges as a medium which provides the satisfaction of the need for authority in the social domain. It is this patriarchal alignment towards the need for authority that CP benefits from. One could argue that the word ‘patriotism’ derives from patriarchy to begin with. Etymologies of words, however, do not define how certain notions ought to be interpreted in contemporary world. Accepting the difficulties with the world is not a way of ignoring them, I maintain. Acceptance and recognition are merely steps towards the improvement of problems in a systematised manner. It is this idea which I have in the theory of CP for giving space to nationalism while not abandoning it. Constitutional patriotism is a new theory of political attachment. As every attachment, it has a Freudian patriarchal or matriarchal reading to it. It is the existing attachment which I seek to re-establish. Every form of love is a form of attachment. Love of country is no different.

²² My understanding is that the gender of parents does not, in any way, change the outcome of the test - of we are to add a more present twist to this study. 2014 protests in Paris were asking the French parliament to withal the legal right to parenthood for same-sex couples. Piaget’s, Kohlberg’s and Habermas’s approaches to the moral development would allow, and in the name of justice even desire, the legalisation of same-sex parenting. The theory of CP holds that the morality is best understood in light of love, not unreflective rule obedience withholding originally religious ideas regarding gender.

Constitutional patriotism makes use of the fact that in the way the self is construed from a moral standpoint, the infantile reliance on parental authority is gradually replaced with a reliance on the authority of law. Stage four of the conventional level is marked by an orientation towards authority that is in the form of a legal order. In Habermas's schema, concern for others is rendered possible through legally determined rules. The legal dimension of constitutional patriotism begins to take its initial shape through this final stage of the conventional level of moral development. While discussing Kohlberg, Habermas does not refer to a systematised political theory of identity in any way. He does, however, place several hints in this early work of his for a possible recapitulation of the notion of CP: at the stage five of the last level (third level) "postconventional, autonomous or principled level", Habermas defines a government structure which is strictly interwoven with a unique idealistic theory which he discusses here. This fifth stage belonging to the last level of moral development constitutes the penultimate level before absolute perfection that he reserves for stage six. The 'social contract legalistic orientation' of stage five is respectful of individual rights and includes a citizenry which can think in reflexive terms. In this sense, individualism is a way of thinking in reflexive terms. Habermas has received a mole criticism about communitarism. Here, we see an example as to why. Individualism, or 'individuation' in terms of Jung, is a requirement of emotional maturation. 'Maturational Processes and the Facilitating Environment' is necessary for a healthy development of the individual psyche. Some might argue that this is an implied Protestant attitude in Habermas's thought. I have no grounds for refuting a form of solidarity more common in (supposedly puritanically) Protestant countries. I do, however, have grounds for upholding a sound development of an individual, in relation to others. An inversion of this would be an overly altruistic, perhaps non-critical attitude towards the society and towards the self. In CP, I advocate a balanced position between empathy and criticism. Both should be applied to the self and to others.

The last stage of moral development is the sixth stage: "The universal ethical principle orientation" (Habermas, 1984, p.80). At this level; the pivotal point is the notion of 'right'. Therefore, it has legal connotations again. Habermas does not define right as the human rights here. Right, in some sense, also means the correct behaviour. His later work develops human rights as a utopia. In his approach to human rights, he derives from notions which are inherent to human beings. ('Self-evident truth' is the way human rights were defined in the American revolution). Habermas's 'Moral consciousness and ego identity' paves the way for the Habermasian equation of rights, the system of rights and human rights. The *Between Facts and Norms* justifies this similitude: "These principles are abstract and ethical (the Golden Rule, the categorical imperative); they are not concrete moral rules like the Ten Commandments. At heart, these are universal principles of justice, of the reciprocity and equality of human rights, and of respect for the dignity of human beings as individual persons' (Habermas, 1984, p.80).²³

²³ Habermas uses the term 'Golden Rule' but I suggest a secular interpretation of this term.

At the post-conventional level of moral development, Habermas argues that the citizens are able to define moral values and principles which have validity and application apart from the authority of the groups or persons holding these principles. This depicts a citizenry which can think for itself, who can detach itself from the ruling and possibly authoritarian figures. Habermas's reference to the need for critically evaluating the political leaders reminds the readers of the notion of charisma in Max Weber's work: while an initial conception of charisma is an important quality of an effective political leader, authoritarianism and dictatorship that were prominent in the context before CP was born in Germany can be avoided in a society where participants in rational discourse regularly think the political issues of their societies in light of moral principles offered by the world of thought. This is the in betweenness of CP between the political world and political thought. Morality offers us a track for thinking about the good life, the right behaviour and the good in the world.²⁴

In a reading of moral consciousness in Habermas's work without the interpretation of CP added to it; Habermas calls for a public sphere within which citizens and their needs grow stage by stage into a particular kind of universe which he calls a 'symbolic universe'. This symbolic universe, I argue, is similar to the psychology school he names "the symbolic interactionist theory of action" mentioned above. He places Georg Herbert Mead in this particular school of thought (Habermas, 1984, p.72). This symbolic universe defines the desirable terms at the last stage of moral development. Through a succession of three levels, the reasons for taking action change. In this interpretation, Habermas's choice of terms of reasons for 'taking action' implies that in order to act in a certain way, any agent evaluates her own position in light of her own perception of the situation. This perception constitutes the reason. Consequently, action follows from this reason which, according to the moral consciousness, expands from the selfishness of instinct towards the empathy provided by love. Piaget's experiment is studied under the notion of 'empathy' in psychology today. Time, in this sense, helps us reconstruct Habermas: in a way which adds even more meaningfulness sought by a theory of identity. For Habermas, moral consciousness, ego identity and empathy are all interlinked.

"Naturally ego identity is dependent on certain cognitive presuppositions; but it is not a determination of the epistemic ego. It consists rather in a competence that is formed in social interactions. Identity is produced through *socialisation*, that is, through the fact that the growing child first of all integrates itself into a specific social system by appropriating symbolic generalities; it is later secured and developed through *individuation*, that is, precisely through a growing independence in relation to social systems. (Habermas's italics)

²⁴ The right and the good as well as the superiority of one over the other hold a special place in Rawlsian thought. Life, however, is unmistakably social. CP, put into practice for this paper, avoids the elaboration of the right and the good in philosophical terms and focuses on the social.

These symbolic generalities are, I would like to add, set captured by the symbolic nature of language. Language offers phonetic symbols offering sound patterns equating to the emotions behind. A first language is, therefore, always acquired.²⁵ Learning and acquisition of language has this subtle difference in response to the social environment. This is how every 12 month old baby learns to relate to the universe of sound symbols offered by the presence of her first carers. The social life surrounds us with emotions and sounds. This way, through stepping into a linguistic sphere, socialisation starts. Habermas misses the step between language acquisition and learning. Development starts off with having acquired a sounds system; that is a language- which then turns into learning. This is all part and parcel of moral development.

Habermas's 1976 publication of several different ways of looking at the psychological does not give enough space to the more contemporary understanding of the same themes that we find in American psychological literature today. I use the term 'American' only as a way to harmonise different schools of thought and demarcation lines of several kinds, and not as a way to determine a teleological endpoint to intellectual thought. In the paragraph above, the reader finds clear utterances of Habermas's insistence on socialisation and individuation processes which are of utmost importance for a sustainable and coherent definition of a(n ego) identity and the moral self necessary for the theory of CP. Jung is the psychologist who has made the most sustainable contribution to the notion of 'individuation' which in my opinion best fits the Habermasian search for the moral self. Jung's process of individuation, in my approach to the moral self, is supported by the object relations school.²⁶ I propose a synthetic reading of different psychological schools of thought for a mosaic which builds the theory of CP. Habermas indicates three separate psychological schools of thought for deconstructing the notion of the ego identity; which he then argues to converge (Habermas, CES, p.73). His reference to 'convergence' is similar to what I mean by 'synthesising'- the latter is focused on a reconstruction that I spread over the entirety of my research. Therefore, I seek to bring the 'symbolic interactionist theory of action' together with several different branches of psychology for a more lucid definition of identity in CP.

Another solid discussion of the self comes from Freud. Despite that Habermas does not immediately cite Freud, the notion of 'ego' came into psychological parlance only through Freud's introduction of the psychoanalytic method. Freud's notion of the id, ego and the superego is at the background of any references to 'ego'. In Habermas's work, As the infant grows up and goes through the stages of moral development the satisfaction of needs which Freud reserved to the 'id' starts depending on following socially recognised expectations. This cognitive learning process can be interpreted in individual as well as in social terms, for Habermas. The need interpretations, which up until the introduction of the

²⁵ Citation required. Title: 'Language'.

second Kohlbergian level depended on uncontrolled cultural tradition and institutions in the social domain, are elevated into another level in which increased interaction between collective moral agents take place. As a social learning process, Kohlberg's moral development offers the abandonment of unreflexive need interpretations²⁷ at the earliest stage of the moral development. In Freudian terms (and not in those of Habermas) the basic instincts are the initial needs. The psychosexual needs of the adult life derive from the primal needs of early infancy.²⁸ Habermas's definition of this transformative process perfectly fits into the transitional and dynamic definition of CP I seek to develop. Building on Habermas's 'postnationalism', the transitional (justice) and in between nature of CP - between is and ought- finds a broad and developed Habermasian (first) literature to work on. In Habermas' terminology, the need for care and intimacy is called "needs". It is the "need interpretations" which transform the individual from one stage of socialisation to another. I would like to emphasise Habermas's twist. He relies on interpretations of needs. This term he chooses calls the individual moral agents to think about their own needs, initially, and understand them in 'given social relations' in the way Marx defined the 'given social relations' in *Capital*. Interpretation, I would like to add, belongs to the study of semiotics in particular. In semiotics, a signifier and the signified relate to one another in linguistic terms. Rene Magritte, Roland Barthes and Jacques Derrida's deconstruction theory offer this sense of 'interpretation' in cultural studies. I should avoid further elaborating this here for space concerns.

Object relations school offer different objects of attachment as the infant grows up. Attachment is a complex matter. Interpreting the basic instincts into a comprehensible and meaningful emotional terminology produces social norms and institutions that go with them. Freud offers monogamy as an example. Civilization and the social world has a different language of its own which is not at all the same as the animalistic nature of human beings. Darwinian evolution holds that humanity has evolved from animals. Habermas's evolution does not go that far back. It does, however, offer a (somewhat incomplete) reading of what it means to be in the world. The missing link is more psychology. In CP, I merely borrow the psychoanalytical notion of attaching oneself to an object in order to define a relation. A constitution provides a document on which national or international allegiance is based. The body of the lover, in a strictly private sphere, provides emotional satisfaction through meeting the innermost need for relating to another

²⁷ 'Need interpretations' is a term Habermas borrows from Kohlberg. In psychological literature, it refers to the infant's innate need for care. For further discussion, see Gazzaniga et al., "Playing and Reality", "Maturational Processes and the Facilitating Environment", "Home is Where We Start From" and "Playing and Reality" by Donald Winnicott. Also, Wilfred Bion's work.

²⁸ Despite that Habermas uses the term 'psychosexual', nowhere he refers to the Freudian development of the same term. In 'Civilisation and Its Discontents, Freud argues that the negativism and the permanent neurosis of contemporary societies derive from the unsatisfied unconscious needs. Civilisation, he argues, derives from the repression of these needs. Freud's interpretation of ego is integrated into this specific reading of society he has, whereas sex has no place in Habermas's account.

human being. The initial physical and emotional needs of the baby are transformed into a healthy form of attachment.²⁹

The last stage of moral development introduces the social contract. In my interpretation needs to be developed into the constitution, it is the right place to discuss the possible fetishistic role any fixed document can play in a given legal system. A criticism from within the literature on CP defines the dry nature of the constitutions as a potential threat to its success as a theory: “As these norms may become ‘obscure objects of desire’ for citizens, scholars or politicians, they risk becoming at the same time objects of fetishism, a fetishism that will only render more difficult the acknowledgement and evaluation of possible gaps between ideals and realities (Des Biens, 2010, p.2).³⁰ Adding a reading of International Human Rights Law into the theory of CP helps us to critically examine any set reading of a constitution as the object of political attachment. I defend that neither a constitution nor the UNDHR can or should be the epitome of morality understood in a religious sense. The discussion between the natural and positive law theories does not offer a productive footing for a functional political theory which is, to quote Habermas ‘empirically meaningful’. Des Biens’s reading of CP which is weary of this fetishistic aspect of constitutionalism applies CP to divided societies in particular. This application is certainly one of the best contexts within which CP can become meaningful. It offers a practical import. His reference to the ‘Obscure Object of Desire’ borrows the title of a Luis Bunuel film which has an important place in cinema theory. The director is a socialist artist offering art criticism in cinematographic form. It also rings Freudian bells of ‘object of attachment’ in *Psychopathology of Love* in Freud (Freud, 2006). I offer a healthy form of attachment in place of an ‘obscure’ one. A political culture which is theorised systematically avoids the pitfalls of this obscurity rightfully highlighted by Des Biens. CP makes use of the intersubjective bonds of fellow citizens. Attachment makes it possible to stretch this meaningfulness outside the domain of nationally defined citizenship.

In a gradual way, constitutional patriotism seeks to transform the national identity as an individual ‘grows up’, that is, without abandoning the conventional ties of attachments but by going through a process of improving them while maintaining a sensitivity to the needs of others. Different typologies of constitutional patriotism I seek to develop here may be read in a way to distinguish between national, supranational and cosmopolitan levels. Each one of these levels talk about an ‘Other’ in different terms: in national constitutional patriotism, the other is the immigrant or an ethnic community living in a multicultural society, in supranational constitutional patriotism the other is another nation state taking part in the same union such as the European Union, and in cosmopolitan constitutional patriotism the other is another nation-state taking part in the world society or perhaps

²⁹ The symbolic interactionist theory of action and the psychoanalysis reading of the object relations school supports my reading. For further reading, see Christina Wieland in “The Past in the Present”.

³⁰ Fetishism of Formal Law and the Fate of Constitutional Patriotism in Communities of Comfort: A Canadian Perspective- JFG Des Biens.

constituting another member of a loosely defined world federation. While the form of governance loosens the higher we go up in this typology, the role the human rights and democracy play as universal ideals increase.

The refugee crises of 2016 adds a different dimension to this typology of CP. The refugee crises added a whole new dimension to who the other is. The nationals of a formerly colonising country, such as the U.K., would find more moral motivation to accept the colonised other coming to its doorstep. The responsibility of the refugee crises does not directly fall onto the Western countries- if one is to follow the media of these Western countries. The lack of clear reason and moral responsibility makes the (mostly Syrian) refugees more othered than the colonial ones. The populist democratic referendum carried out in the U.K? shut away the others of several kinds: the European immigrant together with the non-EU immigrants all fall under one title: non-British. This national self-assertion is also expressed in the slogan of making a country great again popularised in USA around the same time. What all forms of migrants have in common is this: the sense of being associated fear. The host culture finds itself in the face of an unknown through the exposure to people of different national identities. It is lack of knowledge which produces fear. Different language, different customs and different ways of being in the world are mostly interpreted as threats to the way of life of the majority or the host culture. Europhobia and xenophobia are fears intertwined at the UK referendum on EU membership.

In the earlier stages of the development of the moral self, the irrational and/or affective aspects of traditional forms of life that would seem to be in contradiction with the values of a global political world order. These conventional forms of life, which have not been reflexively questioned in light of reason and a liberal political culture, are oriented towards the opinion of one's parents in individual moral development (as opposed to social moral development-a distinction which does not immediately arise in Habermas's social theory). Through the recognition of other moral actors, individual citizen arrives at an emphatic and fully developed stage in terms of autonomy as she starts to value the moral other and satisfies her need for authority through an orientation towards law. At the last level of moral development the moral agents can develop and assert their identities according to cosmopolitan principles. At this post-conventional level with global connotations, moral agents develop the ability to scrutinise the traditionally settled forms of life. This transformation rendered possible through a constitutionally patriotic reading of Kohlberg's stages of moral development in Habermas's social theory, offers a complex way of addressing nationalism and cosmopolitanism in terms of identity.

The norms that guide action in different levels of moral development have different validity claims of rightness or justice. In this sense, social justice is attained through the learning process of the citizen as a moral agent attaining an autonomous moral self which has the characteristics of the post-conventional ego identity. An autonomous will emerges

in the individual agent's ego. Through a process of learning; it reaches the stage of taking reflexive decisions. This increase in autonomous decision making mechanisms of the individual moral self is oriented towards justice in the social domain. CP offers International Human Rights Law as a medium for stabilising an abstract notion of justice. At the last level of moral development I place into CP; principles that are embodied in a constitution are principles of universal justice, such as the equality of human rights and respect for the dignity of human beings as individuals. The citizen develops the skill of generalising particular norms. This enlargement of the perspective is reminder of Martha Nussbaum's approach to the cosmopolitan self: Nussbaum argues that the duty of the cosmopolitan citizen is to imagine the self in the form of concentric circles (Nussbaum, 2002, p.9). The innermost circle constituting the immediate family, the circle right after that our fellow city dwellers, the one after that the members of our linguistic group and so on. The cosmopolitan citizen, Nussbaum holds, ought to bring the outermost circle closer to the innermost one as a means to enrich oneself.

An interpretation of the moral development brings a new perspective to an understanding of constitutional patriotism as a transformative political identity: the possibility of construing constitutional patriotism as an attachment to the values of a constitution partly independent of the patriotic attachments of the citizens or with minimised particularistic attachments. This is one of the possible interpretations of constitutional patriotism. By going through the cognitive learning processes of moral development, an individual citizen or a collectivity finds herself able to relate affectively to the ethical principles of a constitution firstly, and secondly to societies who constitute different nation-states of their own. While linking the individual identity to the identity of other individuals around us in psychological terms, the theory of moral development has the missing link of CP pushing it towards a cosmopolitan direction: "Identity is produced through socialisation, that is, through the fact that the growing child first of all integrates itself into a specific social system by appropriating symbolic generalities; it is later secured through individuation, precisely through growing independence in relation to social system" (Habermas, 1984, p.74) A holistic approach to Habermasian theory facilitates a reading of constitutional patriotism. Introducing the moral self and the different levels of moral development that culminate in the sixth principled stage, the utopia of cosmopolitan world governance is tied to a constitutionalised and dynamic vision of a post-conventional world society. The notion of individuation brings a reading of Mead into this discussion of Habermas and CP.

Section Two: Language and Individuation

Habermas's analyses of George Herbert Mead's account of language and individuation offers a description of language and the self as partly local and partly global concepts. Both in Mead's and Kohlberg's accounts a social process of individuation is explored in terms of autonomy. In Mead's account as opposed to that of Kohlberg's account,

language plays a central role in the process of individuation: language, for Mead, goes hand in hand with autonomy. In his social psychology, George Herbert Mead makes the connection between different social roles and the gain in autonomy by individuals who are socialized in increasingly differentiated conditions (Habermas, 1992, p.151). For Mead, different moral agents and the Other that monitor behaviour ought to be internalized for a successful process of individuation. In Kohlberg's approach to autonomy, this stage of internalizing the other starts taking place when the individual begins to develop concern for others at the conventional level of moral development. Mead argues that 'monitoring mechanisms' need to be internalized. These monitoring mechanisms, in Kohlberg's stages of moral development, were originally one's parents. Other moral actors -such as fellow national or global citizens in Kohlberg's account- constitute the moral agents or 'monitoring mechanisms' in Mead's terminology at the later stages of moral development. Nussbaum's argument about the duty of the cosmopolitan citizen of having to bring the outermost circle closer to the self, Kohlberg's argument about the need of increasing autonomy through developmental stages and Mead's argument about the internalization of agencies that monitor behaviour share similar connotations. All three philosophers argue for an enrichment of the national self through an inclusion of the Other. Mead and Kohlberg's approaches to the moral self both have influenced Habermas's understanding of individuation.

A concept I would like to draw attention to is 'care': different authors and schools of thought use different terms for referring to the notion of care. The term 'monitoring mechanisms' used by Kohlberg and following him Habermas depicts a picture of the 'other' as a source of authority and fear. The first person to be conceived as the 'other' by the young infant is the mother. The mother, according to the object relations school, is the first object of attachment as every human baby unmistakably comes out of a female carrier. Individuation, in this reading, is a process within which the human infant finds a way of being in the world through gradually distancing herself from the first object of attachment. I have referred to this elsewhere in this chapter in light of the attachment to the constitutions in CP. Here, I would like to highlight another theme which is useful for bringing light to issues remaining in the dark: the monitoring mechanisms, for Kohlberg and Habermas, and the 'other' are not any different from different sources of care, I argue. Human beings seek the warmth of care. It is this warmth which Schopenhauer and Freud have developed in the hedgehog's dilemma.³¹ Romance, in an adult age, steps in to fill this gap left by civilisation. Socialization distances us from the first caregiver, only for having to and needing to replace it with 'another'. This another, in psychological terms and in object relations in particular, is a partner. The way I develop this form of attachment avoids the heterosexist critique of Freud for contemporary forms of multiple sexual identities.

³¹ For further reading, see 'the hedgehog's dilemma' in Freud and Schopenhauer. Space and focus reasons do not allow me to develop it any further here.

Individuation, in the way Habermas reads Mead, is pictured as a linguistically mediated process of socialization and recognition of one's own life history consciously: "The identity of socialized individuals forms itself simultaneously in the medium of coming to an understanding with others in language and in the medium of coming to a life-historical and intrasubjective understanding with oneself" (Habermas, 1992, p.153). The life history of the collectivity ought to become conscious of itself in order to complete a successful process of individuation: it ought to recognize itself as a completely autonomous moral actor. (ibid). This is a way for me to elaborate on the individual psychology towards a collective one. For CP, I suggest distancing oneself from the notion of history for an autonomous development of the ego identity. Individuation, for CP, is a process between the present and the future. The past is here only for us to evaluate our present selves accurately; not for getting trapped in the negativities it may offer. The German context and the Holocaust offers one example for the theory of CP as a form of identity. Rather than focusing on the 'history' aspect of Habermas's initial writing, I offer to turn towards the linguistic interpretation that can and does fit into the construction of individuation: Language provides a tool with which the infant can relate to the first object of attachment. Without the linguistic medium, the communication between the early infant and the carer is nothing but an instinctive one based on satisfaction of the infant's needs. One can argue that the infant also helps the parent to satisfy a need too: that is the need to feel needed, the need to join the society in some sense by composing the smallest unit of society that is the family. Language is the first abstract medium to communicate: all the needs of the infant are physical and biological. The baby needs to be changed, therefore he or she cries. He or she does the same when hungry, or in any form of physical pain or need. All the needs of the baby can be satisfied through addressing the cause, except the need for love and care. Meeting the physical needs of the baby can provide satisfaction too; the baby will no longer cry when you feed him if the reason for crying was hunger. If you change the nappies of the baby while the baby is hungry, this will not satisfy the need. This is what Habermas, I take it, means by 'need interpretations': we interpret the needs of the baby from the perspective of an adult. The physical and biological remains at place while the infant grows up and goes through different stages of socialisation and moral development. *The interpretation in adult social life, however, is not readily available to the untrained eye.*

Such is the crucial importance of the process of individuation. Jung defines the process of individuation as 'the complete actualisation of the whole human being' (Jung, 1974, *Dreams*, p.108). Language does not play such a central role for Jung as it does for Mead. Wittgenstein, also, presents the idea of language as a tool for entering into social relations. Mead's reference to the necessity of thinking of one's own national self in conscious and reflective terms would have its reflection in Kohlberg's moral development at the sixth stage, that is the last stage of the postconventional level. Constitutional patriotism, as a form of political attachment which seeks to transform national identities, invites citizens of nation-states to think about their collective identities consciously, in reflexive terms- as Mead puts it; and at the sixth stage, as Kohlberg puts it. A linguistic process of recognizing the other moral agents who are external to the self initiates the process of moral development and socialization. Coming to an understanding with others

and the presence of others in the medium of a language paves the way for individuation. In this sense, the identity of socialized moral agents begins to form itself in language.

Language, in Habermas's account, answers a question about an odyssey that the human spirit is condemned to (Habermas, 1992, p.153). *The self finds its way to itself on a detour (my italics)*. The moral agent comes to understand herself via recognizing other humans; while externalising itself, it internalizes the Other. In order to become conscious of itself as an individuated being, the self needs to stand in the greatest distance possible to it (ibid). Standing in distance to oneself means engaging in the Habermasian attitude of the participant-observer perspective. Observing oneself through the objectivism of a social scientist is required for having a well-balanced opinion of oneself. It is through a clear evaluation of the current state of affairs, or the problem at hand, that one can develop an effective model of improvement. Practicing the (social) scientific attitude in the introspective process is a must: "He who looks outside dreams, he who looks outside awakens" wrote Jung before taking his readers into an odyssey into the unconscious. CP seeks to define what is before building what ought to come to be.

Habermas's approach to language situates the language in an external space which shapes the mind of every human being through a process of socialization. The human mind stands in relation to others, and gradually distances itself from itself so as to acknowledge the existence of other humans. This approach to language, as an external entity that every human being relates to, conceives of language as a universal concept that has different manifestations in different national contexts. From the perspective of translation and language; this brings the myth of the tower of Babel to mind: the dispersion of humanity into different languages and the linguistic differentiation that leads to cultural confusion, from the perspective of constitutional patriotism, ought to be overcome through encompassing universal principles. Recognition of other moral agents and increase in autonomy, that takes place in the linguistic medium, builds the path to a richer ego-identity that transforms national contexts. From the perspective of translation and language; this brings the myth of the tower of Babel to mind: the dispersion of humanity into different languages and the linguistic differentiation that leads to cultural confusion, ought to be overcome through encompassing universal principles.

Recognition of other moral agents and increase in autonomy, that takes place in and through the linguistic medium, builds the path to a richer ego-identity that transforms national contexts. Language renders the process of personal as well as international processes of communication more feasible. The private sphere has a physical domain within which communication takes place but for this thesis, I would like to reserve physical communication to romance only. Winnicott's interpretation of feminism gives space to an age of the infant in which love can only be expressed physically. (Winnicott, 1986).³²

³² See the chapter 'This Feminism'.

“Home is where one starts from. As we grow older
 The world becomes stranger, the pattern more complicated
 Of dead and living. Not the intense moment
 Isolated, with no before and after,
 But a lifetime burning in every moment”

T.S.Eliot³³

For Winnicott, physical expression comes before the linguistic one. This is a fine distinction between physical and verbal expressions of love. History of literature is filled with romantic declarations. Civil law allows couples to call for an annulment if a marriage has not been ‘consummated’. It is this distinction between physicality and emotionality (or sentimentalism in literary terms, or meta-physicality if one prefers philosophical terms) which renders it easier to distinguish communication in different ‘spheres’ of the lifeworld. In Sonnet 116, Shakespeare writes of a clear definition of love. This definition he provides benefits from a linguistic medium, the elaboration of which constitutes the literary form of art. This significant contribution of him to the field of literature and thought would not have been made, had he not possess the desire to physically ‘consummate’ a romantic relationship. Therefore, I argue that even the most elaborate linguistic or verbal articulations stem from the sublimation of the basic instincts. CP observes these fundamental aspects of the construction of the self in order to situate the self in a realistic position for further transformation.

According to Habermas and Mead, consciousness and ego identity are explained through a construction of an abstract linguistic communicative space which is external to the self. For Mead, the self emerges in contexts of interaction with an Other through language. Mead’s reading of intersubjectivity and Kohlberg’s reading of interaction both lead to increased autonomy. In this sense, Habermas argues, Mead’s approach to individuation alters the fundamental principles of philosophy of consciousness by tying understanding to a concrete tool: that is the language. “Language, itself subjectless, makes possible the linguistic practice among subjects who belong to a linguistic community, while at the same time it renews and maintains itself as a linguistic system through this practice” (Habermas, 1992, p. 163). This bridging of the gap between Is and Ought, between social science and philosophy is a distinctive feature of Habermas’s social theory. Theory of constitutional patriotism, as I construe it, juxtaposes national identities and language by introducing language to Habermas’s understanding of moral selves as constitutive of the national identities while deconstructing the moral self from the standpoint of Mead’s account of individuation.

³³ Winnicott borrows the name of the book from this poem by the great English poet T.S.Eliot, which he also chooses as the epigraph of the book.

While Habermas leaves socialisation through language at the level of inviting the individual to become an autonomous moral self, I would like to add a small twist to this: in a coherent interpretation of CP, a theoretical suggestion is to offer a way for the factual or currently existing forms of identity to transform. History of thought has witnessed several different ideas of evolution; the most prominent one belonging to Charles Darwin. Darwin has made the historical contribution to biology by studying the ancestry of the human animal. Through factual documentation (to use a legal language), he has demonstrated how humankind has descended from apes. This, at the time, went against the religious reading of the origin of the humankind. Darwin's theory in *Origin of Species* documents his study of birds, and leaves and several other natural entities perpetuating themselves in the lifecycle of the universe. Human beings live in a natural universe: Darwin has interpreted the nature around us through scientific terms. Scientism and mysticism reaches a clear juxtaposition (or opposition) through an introduction of Darwinism. Psychology is a discipline which derives from Darwin as psychology studies human and animal behaviour. In CP, I seek to propose another theory of evolution quite like that of Darwin. Habermas's choice of words of 'evolution', I argue, is not coincidental at all. I advocate a procedural structural transformation of the society through enlarging the individual moral self through different developmental stages.

In contradistinction to Charles Darwin, Habermas invites us to think through the social transformation processes. In 'Past as Future', he clearly states that in his opinion, societies ought to change:

"'Only God can save us'- that's the kind of noble tone in philosophy that already got on Kant's nerves. Philosophers don't change the world. What we need is to practice a little more solidarity: without that, intelligent action will remain permanently foundation less and inconsequential." (Habermas, *Past as Future*, p.96)

Therefore, Habermas refuses a non-secular or mystical interpretation of the origin of the species. The term 'origin of the species' is the Darwinian counterpart of the Habermasian notion of social evolution I seek to elaborate on in CP. It is this insistence on optimism and positivism, in my opinion, which renders Habermas different from most other philosophers of our time. His magnum opus offers an elaborate positioning of the in betweenness of the social life. It is his political writings, especially the 'Communication and Evolution of Society' which offers one more step-stone for the elaborate of this theory of identity.

I would like to discuss these links between the aforementioned thinkers which in my opinion until now remained unseen: Mead's reference to the necessity of thinking of one's own national self in conscious and reflective terms would have its election in Kohlberg's moral development at the sixth stage, that is the last stage of the post conventional level. CP, as a form of political attachment which seeks to transform national identities, invites citizens of nation-states to think about their collective identities consciously, in reflexive terms-as Mead puts it; and at the sixth stage, as Kohlberg puts it. A linguistic process of recognising the other moral agents who are external to the self initiates the process of moral development and socialisation. 'Other moral agents' in the initial conceptualisation of CP and in existing literature would be the first object of attachment or the carer. The

mother, by definition due to being a person, has an agency. Habermas has a moralistic attitude towards agency; which is why he names the first object of attachment (in psychoanalytic terms) the 'other moral agent'. In a process of communication, the other moral agent would be the another interlocutor. In international relations, one would find oneself in a medium where a number of interlocutors are already established. Establishing oneself through linguistic articulations and exchange with the carer, at the initial stages of moral development, would be the seed of recognition. Through growing up into a symbolic universe of other international moral agents as interlocutors, the infant (or the minority group or the de facto state) enters a process of communication. It is through a process of communication that we establish ourselves. Neuburger's definition of existence in relational terms is what I would like to bring into a social psychological terrain.

In this reading I propose, moral development and socialisation go hand in hand. I argue that getting to know others around the self and learning to relate to the people in our intimate public circles help increase the level of autonomy stage by stage. Habermas's distinction of the public and private spheres regarding autonomy offers a systematised framework for this elaboration of communication and psychological development I call for in order to render CP theoretically viable.

Love can be conceptualised in political, civic and intimate forms. Psychologists have for long categorised the notion of love as maternal love, romantic love, etc. CP is an identity theory of love: my main objective is to transform the notion of love in the public domain. Habermas's notion of the public sphere need to be interpreted in cosmopolitan terms: communication taking place in the public sphere among participants (in rational discourse) may as well be, and in my opinion should definitely be, pulled towards the cosmopolitan direction. Patriotism is a love of country: this is how the theory of CP is different from a merely legalistic idea. Constitutions, international law, international human rights law or just the human rights law are not capable of recreating the world in which we live. The collective power of reflexive moral agents united, however us. The technical details of my thesis and the need for situating it within (at least seemingly) one academic discipline does not allow me to develop the notion of love further. I would, however, like to shed light on one thing about love: CP calls for increased communication between different identity groups. The notion of the enlarged moral self offers this interpretation of decentralisation. By getting in touch with different social groups, the 'self' comes to transform. Communication opens channels which clarify the muddled waters of conflict. This is true in communication in interpersonal relationships as well as international relations. Understanding a different culture requires the capacity to love, first of all, and the desire to love who is, or who are, (seemingly) different. This is the public aspect of autonomy in CP. The private aspect of it, however, belongs to interpersonal relationships only and not to the inter-social or inter-state relationships.³⁴ The form of love one has to one's own country ought to be transformed in order to which the members of different communities come closer to the heart: to the form of love one has to own's own country.

³⁴ This fits into the public and private distinction of autonomy and the system of rights developed in *Between Facts and Norms*.

This is a loose form of love. CP also has thick and thin interpretations of it defended by Muller, fitting into the schema I develop here by loose and intense forms of love (or attachment). The less dense nature of love in patriotism renders it easier for CP theorists to fuse it into other domains: such as law, or morality. The more intense and most profound form of love, however, belongs to the private sphere. Nussbaum's conception of the self, and that of Stoics, offers the innermost circle as the close family.³⁵ The circle after this belongs to the family. I would like to change this to a minor extent: the innermost circle involves the loved one only. The circle after this belongs to the family. Only by loving another person as much as one loves oneself one can develop healthy attachments. The notion of the 'carer' or 'the neglectful mother' in psychoanalytic theory gives rise to this significant other in the currently existing psychoanalytic literature. I invite my readers to interpret the process of individuation as a process of finding the perfect 'match'. This interns for of love need nor arise in members of the opposite sexes; it is, however, romantic by definition. The kind of romance I seek to establish in the moral self is similar to the notion of passionate love many poets in particular has expressed. Wordsworth's and Baudelaire's poetry are great examples to this linguistically articulated passion. By introducing the notion of language into the understanding of the moral self, Mead, Kohlberg and Habermas all complement one another. Romantic love is the most transformative and most powerful form of love. Civic love, on the other hand, is a more malleable version of it that constitutes the substance of national attachments. CP addresses the latter.

By this last level of moral development, the cause of judgements have taken a more universal and legalistic form. The moral agents can stand back from their personal particularistic attachments and relate affectively and cognitively to the principles of the constitution. At the stage of universal ethical principle orientation, the right norms are defined as principles appealing to logical comprehensiveness and universality. If the theory of ego identity is to be complemented, the abstract object of universal ethical principle orientation, I argue, should derive from the constitution as an embodiment of these principles. The constitution stands in the place of the object of attachment at the last stage of moral development in the theory of constitutional patriotism. The element that Habermas introduces at the sixth stage of moral development, that is the social contract, is transformed into a universal constitution in the cosmopolitanism aspect of the theory of constitutional patriotism.

Habermas advocates a liberal political culture in which different linguistic groups communicate with one another. The crucial issue is whether and to what extent the sentiments and attitudes of different cultural groups can be cultivated through reasoning (Raz, 2001, p.10). Language, in the Habermasian sense, is emancipating as it is construed as a system which renews and maintains itself externally to the participants. In this sense, Habermasian language acquires a life of its own while remaining partly as a

³⁵ See Nussbaum's 'Cosmopolitan Patriotism' and 'Is Multiculturalism Bad for Women?'

ghost in a linguistic community. I argue that a postconventional morality that is at level three, stage six of Kohlberg's developmental stages establishes a global universe of discourse which transcends specific national contexts. Members of a given national or linguistic community agree upon changed habits and values. National selves which from the perspective of constitutional patriotism use an analyses of Habermas's approach to the moral self, are necessary for social individualization and for reaching global principles. Having humanity divided in linguistic national terms is a condition, not an obstacle, for constitutional patriotism as a transformative project which has a mix of different cultures embedded in it. Constitutional patriotism, by increasing autonomy stage by stage, offers this thought experiment for a global order which respects universal ideals as well as particular national cultures.

CHAPTER SIX: DEMOCRACY and IDENTITY

“If I could start all over again, I would start with culture”

Muller (Jean Monnet)

Section 1: Procedural Two-Track Model of Democracy as A Principle of Constitutional Patriotism

In Habermas’s approach to democracy, discourse theory supersedes human rights. “Practical reason no longer resides in universal human rights, or in the ethical substance of a specific community, but in the rules of discourse and forms of argumentation that borrow their normative content from the validity basis of action oriented to reaching an understanding. In the final analysis, this normative content arises from the structure of linguistic communication and the communicative mode of sociation” (Habermas, 1998, p.296). Therefore, there has to be action towards understanding between one another. This quest for reaching an understanding, in the discourse-theoretic understanding of democracy, no longer resides within the confines of a nation-state. It is this cosmopolitan approach that I need for CP. Despite that Habermas does not refer to the notion of constitutional patriotism in this formulation of the discourse-theoretic approach to democracy, he does refer to the ‘ethical substance of a specific community’ (Habermas, 1998). In the theory of constitutional patriotism, this specific community can be either conceived as a particular identity belonging to an ethnicity within a multicultural nation state or the ‘ethical substance’ of a national identity that is to observe the rules of discourse ‘for reaching understanding’ within the international relations domain with other nation states. While Habermas’s reference to the ethical substance of a particular community is being superseded by the desire to reach an understanding between one another, it is not clear how this ethical substance can be interpreted in terms of identity within the theory of constitutional patriotism. In this vein, I suggest that this ethical substance can take various ethnic or national forms depending on which type of constitutional patriotism one seeks to place this ethical substance within. The typology of CP developed in this thesis allows for three different approaches to this ethical substance being interpreted in terms of particular identities within the broader theory of CP: these levels which have been specified in the introduction of this thesis allow for an ethnic (multicultural, pluridisciplinary) identity in a multicultural nation state; a national identity in a supranational institution or a national or supranational identity in a world federation. Different types of CP integrate different levels of identity into it.

By defining the as communicative, Habermas alludes large space to the notion of communication in his approach to democracy. It is due to this that I dedicate the last chapter to communication. Sociation, which in his work on Kohlberg is discussed under the term of ‘individuation’, is a process which is marked by the transformative power of communication as an ideal capable of transforming the individuals together with the societies. (Habermas, 1998, p. 297) The form of democracy Habermas highlights in the ‘deliberative politics’ reveals that his preferred normative notion of democracy has close links with the European nation-state. It is not just the state but also the society which is

constructed in normative terms. In the world of international relations of our day, there are already existing institutions which facilitate and shape my conceptualisation of CP: Multicultural (nation-state level), supranational (European level) and cosmopolitan (United Nations level). The larger the scope (of thinking), the more cumbersome bureaucratic procedures of CP become. Habermas's 'The Lure of Technocracy' published during the Grexit debate is an example of the role of technocracy in regulation international relations.

A certain presupposition of a governmental structure which came into existence in Europe in the form of a European nation-state is a must for the form of democracy Habermas seeks to constitute in discourse-theoretic(al) terms (Habermas, 1998, p.297). In this formulation, the nation-state provides the administrative means within which communicative processes can take place. "All we need presuppose is a type of public administration that emerged in the early-modern period with the European nation-state" (Habermas, 1998, p.297). The connotation of this for the theory of constitutional patriotism is that with a supposed abandonment of national identities conceived in some criticisms of CP, there would be no governmental apparatus for implementation of universal ideals such as communication, democracy, and human rights. While Muller does not define communication as a component of CP, it is important to note that Habermasian notion of democracy is closely associated with communication. Communication, for Habermas, is an ideal which resides above democracy even above human rights. The nation-state in the theory of CP I seek to advocate in this thesis plays the role of practically providing the institutions within which communication between different agents in the society and between different components of the society can take place. This, therefore, is one more use of the concept of nation-state within a realistic ideal of transforming national identities under the conditions of CP.

Habermas's approach to democracy is conceived of as a discourse-theoretic understanding of democracy. It derives both from two distinct models of democracy which are liberal and republican. Habermas draws a careful comparison among these models and the discourse theory: "Discourse theory invests the democratic process with normative connotations stronger than those found in the liberal model but weaker than those found in the republican model. Once again, it takes elements from both sides and puts them together in a new way" (Habermas, 1998, p.298) It is not easy to follow how this new way establishes itself. Here, Habermas explicates the role that the constitution plays in the discourse theory of democracy: there are constitutional principles that are spelled out in the constitution itself. These constitutional principles are answers to the questions about how the demanding process of communicative process of opinion and will formation can be institutionalized (ibid). Principles of the constitution are, in this reading, facilitating the transformative process of communicative opinion and will formation within the bounds of the nation-state. The answers specified in the constitution are taken for granted as 'consistent' answers. I would like to interpret Habermas's reference to institutionalization from the perspective of nation-states one more time: Institutionalisation of the opinion and will formation can still be rendered possible through the medium of bureaucratic governance which best functions within the confines of the nation-states. Developing a

coherent and fair (or just) piece of legislation can take the form of a constitution in a nation-state, the 'acquis communautaire' in EI and the UNDHR at the cosmopolitan level of CP. The author of these lines advocates reflexivity and critical thinking for each stage of moral development and (re)construction for CP.

The discourse theory dedicates space to the informally structured opinions of the citizenry: there is an interplay of an institutionalized deliberative process with informally developed public opinions. These informally developed public opinions, in the theory of CP constituted here, takes part of the identities of citizens who bring their life perspectives together with their cultural background to the communicative processes within which they will take part in the discourse-theoretic democracy. "Proceduralized popular sovereignty and a political system tied into networks of the political system tied into the peripheral networks of the political public sphere go together with the image of a de-centered society" (Habermas, 1998, p.298). Habermas's original conception of democracy fails to delineate and surpass the borders of thought and nation-states. In the theory of constitutional patriotism, this decentred society is either a national society constituting a number of ethnicities possessing identities of their own or different national identities constituting a federation of states, or a supranational institution of a number of states. Therefore, the decentred structure of the society developed in the discourse theory for the confines of a nation-state thus finds its place in a hypothetical constitutionally patriotic society too. The peripheral networks which Habermas specifies make it possible to include differing worldviews into the democratic decision-making process of a discourse-theoretic democracy under the conditions of constitutional patriotism.

Habermas refers to the two different tracks of opinion and will formation several times in the chapter on Deliberative Politics: "This becomes especially clear if one keeps in mind that deliberative politics proceeds along two tracks that are at different levels of opinion- and will-formation, the one constitutional, the other informal" (Habermas, 1998, p.314). The constitution, in this reading, constitutes a formal track within which opinion and will formation takes place- albeit Habermas's lack of clarification on this. Constitution, as I see it, belongs to the institutional structure of the government and is rid of the concerns and perspectives belonging to the private sphere. While the identities of the individuals involve the preferences which their culture and socialization processes incite them to have, the formal track of deliberative politics turns a blind eye to this aspect of identities. This is merely one track which parallels and runs along the informal one. The system of rights in BFN allows for this dichotomy between public and private autonomy. In CP, I seek to reconstruct these at different levels in different contexts. Particularity will determine how and to what extent.

The notion of deliberative politics advocated by Habermas has two tracks which co-exist and run together; one of which, the formal one, more neutral about different value orientations. The concept of constitutional patriotism pays attention to being attentive to

different value orientations and different cultural identities while at the same time having administrative concerns relating to the practicality of the theoretical principles it embraces. The chapter on human rights has discussed the practicability aspect of human rights through the instrumentalization of international law and human rights law. While having universal principles as guiding lights, constitutional patriotism is a theory which does not let go of the real world and problems of governance per se. The structuring of having two tracks running together in deliberative politics gives the theory of constitutional patriotism the possibility of situating competing value orientations within the informal track of opinion and will formation.

Section 2: Modernity and Feminism in Democracy

Discourse theory of democracy refers to a 'decentred society': being decentred reflects the multiple lifeworlds co-existing in societies as well as different mechanisms regulating the political life in a discourse-theoretic approach to democracy. In this decentred society, the public sphere is the arena which different problems affecting the whole of society are specified in (Habermas, 1998, p.301). Different social pathologies emerge in the realm of the public sphere. "The 'self' of the self-organising legal community disappears in the subjectless forms of communication that regulate the flow of discursive opinion-and will-formation in such a way that their fallible results enjoy the presumption of being reasonable" (Habermas, 1998, p.301). Therefore, the 'self', which has political and legal connotations according to constitutional patriotism, is defined in a 'subjectless' manner in the discourse theory of democracy in such a way that communication swallows up a form of political identification that could have been defined in national terms. If the communicative form and the subjectless forms of communication form a new kind of 'self' in the discourse theory as I interpret it, constitutional patriotism at the cosmopolitan level makes use of this for increased contact among societies as a means to dilute the national differences and a sense of national assertiveness in international relations. It is through the elimination of inequality among men, in the Rousseauian sense, that a more reliable sense of solidarity can emerge. Constitutional patriotism, I maintain, combines the subjectless form of communicative action in the discourse theory of democracy for reaching understanding through diplomatic means. The intersubjective interpretation of the self defended in deliberative politics of the Between Facts and Norms paves the way for less assertive national identities to form a medium of communication. This communication can be stretched to have a body of its own in international relations and international communication. Different typologies of CP give space to different collective identities to take shape. (CP addresses collective as well as individual identities. To be precise, it is the idea of identity which links the individual to the collective and vice versa. The processes of socialisation determines this transition and transformation of the self).

Deliberative politics and the discourse-theoretic democracy presuppose rationality in the domain of the lifeworld: "What is more, deliberative politics is internally connected with contexts of a rationalized lifeworld that meets it halfway". (Habermas, 1998, p.302). The

rational content of the conventional culture is balanced by the desire (or the condition) of meeting the institutional track halfway. Meeting it halfway means for the lifeworld as well as the reasonable practices to make sacrifices each of their own in order to attain a balance between reality and the ideal. In a multicultural system, this can translate into different (sub)cultural groups to communicate with one another. Liberal and illiberal cultural practices need to expose their respective sources of meaning to one another for any absolutist form of culture taking over in the public sphere. This attitude; “the price of exposure” as it is called in the literature on CP (by Patchen Markell), dissolves the communitarian critique of Habermas as well as the subaltern criticism of culture defended by Spivak and Chakrobarty. Habermas has an idealistic conception of the personhood which embraces the most reasonable values vis-a-vis culture and the political-cultural background to be embraced in the deliberative model of democracy. Habermas makes the deliberatively filtered political communications conditional upon ‘lifeworld resources- on a liberal political culture and an enlightened political socialization’ (Habermas, 1998, p.302). This insistence of Habermas on enlightened political socialization is useful, I plead. One can think that this attitude of keen insistence on values of Enlightenment together with Renaissance is not arbitrary. Normativity, and having a way of relating to the ‘Truth’ in the social domain is not to be apologized for merely due to the reason that the main author initiating the theory of CP was born in Germany. Geographic origins of ideas do not limit their scope of applicability. Neither do this merely temporal positioning rid utopian ideals off their desirability from within the peripheries of knowledge³⁶.

The criticism of being limited to the Western thought has long been applied to the ideal of Human Rights as well. French sociological literature has often been accused of Jacobinism for having set ideals of enlightenment as desirable. This (supposedly merely French) attitude, I argue, can, by all means, be criticized for excluding non-secular or non-liberal identity formations. The French Renaissance has taken its roots from the Italian Enlightenment originating in art. Helen Hunt’s work on human rights, in particular, situates the political ideal of human rights in a geo-political context. In France, the French Revolution arrived with the Universal Declaration of Human Rights. This is almost the same document acquired by the UN at its formation, with slight alterations to the French declaration. The document UN works under is Universal Declaration of Human Rights as well; the only difference being the global legal one being called ‘United Nations Universal Declaration of Human Rights’. This document represents a treaty which addresses multiple parties in universal democratic consensus, despite the long-standing disagreements between major political powers. These political powers in the UN sense are unmistakably nation-states. The global level within which UNDHR functions represents the cosmopolitan level of CP. At such a broad level, there certainly are disagreements as to the ‘right behaviour’ *tout court*. A refusal of the west as the sole patriarch of human rights leaves the west as well as the world at a loss as to what constitutes the right behaviour

³⁶ For a discussion of the center and periphery discussion regarding modernity, see Serif Mardin on Turkish modernisation.

within the domain of policy making which relies on an international (sense of) law. The broad definition of international law by the United Nations is the following: “International law defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries”.³⁷ Therefore, a global understanding of what can and cannot be done is already established as a framework.

Deliberative politics is this tool for opinion and will formation representing the value preferences and attachments of the population to represent itself at the governance level. This population ought to have recourse to citizenship status for having a say in the democratic will formation process. Habermas’s understanding of citizenship in ‘The Realistic Utopia of Human Rights’ and Hannah Arendt’s argument in ‘The Decline of the Nation-State and the End of the Rights of Man’ in ‘The Origins of Totalitarianism’ have similar resonances. Gerard Delanty’s ‘Citizenship’ also revolves around the same theme. Delanty argues that the classical theory of modern citizenship suffered from a failure to grasp the significance of the public sphere as the location of citizenship. Therefore, the literature on the topic has already made it possible for making one step forward and bring something else in. This novelty is provided by multifaceted and interdisciplinary nature of CP. Here, it is democracy, which addresses the problems raised by many writers. Without a democratic will formation at place, no group of people would have egalitarian access to governance. Political representation, in CP, avoids habitually oligarchy, hierarchy, and monarchy. To quote Muller, “When there is a problem of democracy, the only cure is more democracy” (Muller, 2011). Therefore, democratic will formation is not to be abandoned in CP for any aim. CP interprets deliberative politics to work with a citizenry who embraces certain cultural values such as liberal human rights and democracy above others. Both human rights and democracy leave large space for interpretation. For this thesis, however, they are nothing but normative pillars upon which CP is built. (Muller has defined the normative pillars of CP already.) Habermas here does not elucidate how cultural values can relate to one another but he defines an ‘enlightened political socialization’ as a primary value which the deliberative model of democracy aspires to regenerate. The most determining feature between these value spheres is ‘reason’ (Habermas, 1998, p.302).

I claim that feminism is the only valid position, which can almost discredit this singling out of ‘reason’ as a milestone. This is a novel kind of feminism, which puts different positions into communication. A normative approach to the right attitude establishing a norm may be criticised from a perspective, which aims at cherishing different cultural norms. An acceptance of rights violations in local contexts by members of given communities renders a global dialogue challenging.

“Since a group is in no doubt as to what constitutes truth or error, and is conscious, moreover, of its own great strength, it is as intolerant as it is obedient to authority. It respects force and can only be slightly influenced by kindness, which it regards merely as a form of

³⁷ <http://www.un.org/en/sections/what-we-do/uphold-international-law/>

weakness. What it demands of its heroes is strength, or even violence. It wants to be ruled and oppressed and to fear its masters. Fundamentally, it is entirely conservative, and it has a deep aversion to all innovations and advances and an unbounded respect for tradition. (Feud, Group Psychology and the Analysis of the Ego citing Gustave Le Bon in Brown, p.149)

Individuals become parts of groups as a result of socialization. Wendy Brown questions how the process of socialization works for identities of women. She takes locality and particularism into account. In her book 'Is Multiculturalism Bad for Women?' She focuses on how identities can be balanced in different multicultural circumstances. Wendy Brown criticizes Okin's understanding of feminism and multiculturalism. The point of divergence between the two is liberalism and individual personal development. An approach to development per se is easier while thinking about less human aspects of a society- such as urban development. Bringing a similar discussion to a more individual level, including individuals as constituents of groups, however, may sometimes be considered to be more offensive. It is the individual sphere, which has stronger emotional connotations. The personal sphere is likely to include stronger attachments than the collective one. In this sense, improvements or changes for the individual and the collective require different approaches.

Brown's commentary on Okin includes a broad set of cultural norms and practices which address a broad set of elements contributing to a feminine identity. Brown addresses eating disorders, which make women have a dysfunctional relationship with food and encourage them to focus on the appearance in a superficial level. She adds the 'epidemic of American women being pharmaceutically treated for depression' as she puts it, as a contemporary social pathology. "Why doesn't Okin find drugging such women rather than transforming their life conditions barbaric and intolerable? In sum, why is Okin more horrified by the legal control of women by men than by the controlling cultural norms and market productions of gender and sexuality, including norms and productions of beauty, sexual desire and behaviour; weight and physique; soul and psyche; that course through modern Western societies?" (Brown, p. 197). In this way, brown brings together the psychological approach to the identity together with a sociological one. A political economic reading into the role played by companies in post-capitalistic societies underlies Brown's criticism about 'drugging' one gender more than the other one due to a particular problem. Her approach to the identity of Okin as a Western feminist, however, fails to avoid the pitfalls of carrying out an *argumentum ad hominem*. In discussing the gender issue, one refers to individuals and collectivises belonging to a large variety of social geographies. While these varieties may pose challenges in an emphatic approach, silencing the voice of criticism tips into an illiberal place- a place which Brown's own depiction of tolerance prefers to avoid.

The arguments of both Okin and Brown both have merits. Okin discusses multiculturalism with references to some practices which have taken place or been defended in Western liberal societies. Polygamy, child brideship, rape, wife-murder and clitoridectomy are some examples (Brown, p.196). In cases like this, the tension between feminism as a liberal social theory and multiculturalism increase. The co-existence of

different identity groups can be read from the theoretical lens of multiculturalism or not. Liberalism, I would like to argue, can be interpreted in collectively and individually. It is the emancipation of the female individual in a repressive patriarchal group, which renders the liberal reading of identity difficult in large groups. Legal theory addresses this generality as well as normalcy. In circumstances, which no emancipation has, taken place, embracing norms and generalised attitudes which do not pave the way for emancipation of women constitutes a different form of collective attachment than it does in societies with higher levels of gender equality. (A United Nations employment attitude to this observes a form of 'positive discrimination' in order to fight with the on-going discrimination. United Nations resolution 1325 supports the inclusion of women in peace making processes too.³⁸)

Brown discusses feminine attachment in social context. She defends the possibility of a positive nature of the attachment of women in developing countries: she argues that women who want self respect and freedom do not, by definition, have to oppose their cultures. For her, arguing that such attachment is merely 'false consciousness' is problematic. She opposes to following view: "A woman who defends cultural or religious practices that others may designate as patriarchal cannot be thinking for herself; and so cannot be trusted to think clearly about her attachments and investments. Consequently, self-respecting liberals like Susan Okin must think for her" (Brown, p.196). In this way, in her approach to Tolerance as In Civilizational Discourse, Brown reduces the liberal critique to a broader criticism of development – mostly used in postcolonial studies. Her reduction is a logically valid one, despite that it remains where it starts: without a solution as to what constitutes the right approach for a structural transformation.

The way the attachments work collectively can be viewed from the perspective of reason. A nullification of reason is counterbalanced by the criticism at a closer reading: Deniz Kandiyoti argues that modernity brought different dress codes together under the urban circumstances. This multiplicity of expressing oneself through clothing, I argue, is a timely point. Kandiyoti refers to an anecdote from her life that she in person experienced this multiplicity in the cosmopolitan context of Istanbul. Culture is a conceptual matter, which can find different containers. In Kandiyoti's example, it took the form of women comfortably wearing swimsuits and men bringing their own food to the same beach as her. A big country like Turkey provides ample examples to this exposure and conflict. Juxtaposition and conviviality have its own cure in it: fraternity. Individuals belonging to different identity groups can come into contact due to different reasons. Reason makes it easier to place the west and secularism at a higher point in the ladder of modernity. It is not any different from the very aim, though, which renders the non-secular end of the ladder of modernity legible as well. Reason invites the questioning individuals who choose to express themselves in certain ways to embrace the habits of others: the other may be a woman wearing a headscarf or wearing a swimsuit. Paul Gilbert's description of identity and feminism depicts the hijab or the non-secular expressions of 'identity' as less desirable. CP addresses national identity in particular. However, a global discussion

³⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>

revolving around the 'right attitude' to be legislated gets trapped with women. Women's body-image issues or women's preferences with regards to what to wear ought not to constitute the grounds for global conflict. CP as I define it welcomes any idea, which is reflexive³⁹.

Habermas defines the discourse-theoretic democracy as a model that is sensitive to the mode of operation of functionally differentiated societies (Habermas, 1998, p.302). The complexity of society is taken into consideration by Habermas for the discursive social relations to assume association of free and equal citizens (ibid). Habermas seeks to establish a balance between different sociological components of a complex society for a deliberative model of democracy to 'operationalize' its core at the right level (ibid). This 'right level' denotes a point of balance. The line, which determines different cultural worldviews meeting each other, is an important one. The society having 'a core' presumes an inherent being to every cultural entity, I recon. For CP, I seek to establish this inherent cultural 'essence' as a flexible one. Anyone, at any moment, can decide to reconsider his or her past decisions shaming its present. CP makes use of human rights and democracy as reflexive, critical concepts, which systematically invite the citizens and the participants in discourse to call their intellectual faculties into the exercise in the sense John Stuart Mill, defined liberalism.

The role of nation-states, which come into the discussion through Habermas's discussion of Norberto Bobbio's approach to democracy, is a step-stone for a constitutional patriotism, which makes use of the Habermasian notion of deliberative politics. It is the 'Democratic Procedure and the Problem of Its Neutrality' which renders it the easiest to bring the notions of discourse-theoretic democracy and constitutional patriotism together. For a better understanding of this, it is worth summing up why Habermas has dedicated space to Norberto Bobbio's approach to. In Bobbio's approach to a polycentric society, there are different interest groups and large organizations involved (Habermas, 1998, p.303). Bobbio's polycentrism is akin to Habermas's decentred approach. Bobbio highlights a 'procedural minimum', which, according to Habermas, grasps the normative content of political systems, as they already exist in Western-type societies organized as nation-states. The details of this minimalist approach to democracy are beyond the scope of this chapter, as the primary focus here is to establish the missing link between democracy and constitutional patriotism. However, it would be sufficient to say that the minimalist approach to democracy embraced by Bobbio is *deliberative* in a slightly different sense than the *deliberative democracy* advocated by Habermas. (One is tempted to read this 'minimalism' in democracy as the active or passive state in regulating international trade and economy within a given nation-state.) The link between Bobbio's (minimalist) democracy and constitutional patriotism lies in Habermas's singling out of Western-type nation-states as the medium within which the minimalist model of deliberative politics advocated by Bobbio can function. Limiting his minimalist conception

³⁹ Critically justifying religion and belief is excluded in my version. I situate this position of mine in Freud's Totem and Taboo and Marx's Capital.

of democracy to Western-type nation-state allows Bobbio to develop a notion of democracy in a functionalist manner. In this sense, it is my contribution that nation-states define the contours of deliberative models of democracy. Situating the best functioning Habermasian concept of democracy into the national realm helps me to do the groundwork for CP. It is by standing on the nationally developed democratic model of Habermas that I seek to bring CP to a higher, more international level. Regulating Habermasian thought is, in this sense, international housekeeping.

The two-track model of democracy developed by Habermas is useful for theorizing constitutional patriotism (Habermas, 1998, p.304). Habermas is arguing that the democratic process itself is embedded in contexts, which it cannot itself regulate (ibid). These contexts, I argue, derive from the lifeworld and the cultural identity within which the individual citizens go through their processes of sociation (or socialization). Habermas does not in any way clearly delineate the link between constitutional patriotism and these contexts within which democratic process is embedded. While his approach to democracy is complex and multifaceted, it leaves little space for integrating the notion of political identity into the structure he develops. Multiplicity and diversity bring constitutional patriotism into a discussion of democracy. While theorizing constitutional patriotism has been marked by its aspiration to achieve democracy on the global level, a more detailed discussion of discourse-theoretic democracy implies links with constitutional patriotism due to the lifeworld contexts directly impacting the discursive processes of sociation in the discourse theory of democracy. Electoral politics and voting rights include the nationally broad citizenry in the democratic deliberation process. The latest edition of BFN has two appendices added which bring political identity forth in a clear manner. The integration of identity into Habermas's work, however, is nowhere to be found except in this thesis. The reason that the democratic process as he conceives it is embedded in 'contexts which it cannot itself regulate' is that the discursive mode of sociation would ideally penetrate into the society as a whole (ibid). I argue that this complete penetration between the discursive processes of sociation and the society as a whole is rendered impossible by the fact that the democratic process is under the strong influence of external factors, such as the culturally pluralistic lifeworlds. Multiculturalism brings this multiplicity down to the level of the nation-state. The cacophony in the world today about the admission of refugees into the nation-states is aggravated by the Paris attacks of 2015 and Syria war. The interdependence of world economy I highlighted in the chapter on cosmopolitanism and the interpenetration of modern societies today call for a new lens through which conflict and threat ought to be discussed in a scholarly domain. Political philosophy, understood in the classical sense, is blind to these new patterns emerging in 2016. In CP, I would like to have an approach belonging to practical philosophy.

Section 3: Deliberative Politics

Habermas's approach to deliberative politics is influenced by a number of scholars. He

introduces the notion of political identity into the discussion of democracy in a distinct manner in his discussion of Joshua Cohen's approach to deliberative politics. He takes different value orientations and cultural identities into consideration through an analysis of Cohen's approach to deliberative politics. Habermas, following Cohen, is arguing that 'political deliberations also include the interpretation of needs and wants and the change of pre-political attitudes and preferences' (Habermas, 1998, p.306). He tries to avoid the superiority of one cultural tradition over another in the discourse-theoretic understanding of democracy by giving large space to argumentation and to the force of the better argument triumphing (ibid). Arguments in this domain are trusted to do so in a neutral manner. While at this point he emphasizes neutrality, his previous argument within the section 'The Democratic Procedure and The Problem of Its Neutrality' prioritizes an enlightened view of the world together with reason as the guiding principles in the way social identities are constructed. The form of argumentation, which is designed to generate consensus, is expected to generate consensus on this neutral but yet at the same time 'enlightened' and 'reasonable' forms (ibid). In this approach to political and cultural identity and reaching consensus, language has a distinctive role:

"Every association that institutionalizes such a procedure for the purposes of democratically regulating the conditions of its common life thereby constitutes itself as a body of citizens. It forms a particular legal community, delimited in space and time, with specific forms of life and traditions. But this distinctive cultural identity does not designate it as a political community of citizens. For the democratic process is governed by universal principles of justice that are equally constitutive for each body of citizens. In short, the ideal procedure of deliberation and decision-making presupposes as its bearer an association that agrees to regulate the conditions of its common life impartially. What brings legal consociates together is, in the final analysis, the linguistic bond that holds together each communication community. (Habermas, 1998, p.306)."

In this sense, language is the only 'essential' concept of a cultural identity group defined at the conventional level of CP (see the next chapter). There are several different points emerging in this approach to cultural difference encapsulated in Habermasian approach to democracy which is all essential for the theory of constitutional patriotism. The spatiotemporal realization of this ideal community takes the form of a given citizenry. The status of citizenship, as discussed in the chapter on human rights, plays a vital role in being entitled to take part in this ongoing argumentation. As the argumentation within deliberative politics takes place within the confines of the citizenry, it has specific forms of life and traditions, which Habermas recognizes as 'specific'. Language takes hold of the public sphere as an important tool with which this argumentation takes place and supersedes the specificities of given cultural or national traditions. Here Habermas alludes to the universal principles of 'justice'. The role he allocates to justice in this approach to democracy is similar to the role that human rights and democracy play in the theory of constitutional patriotism. Despite the lack of references of CP to justice directly, Habermas's harmonisation of justice with democracy as well as the notion of human rights itself brings an implied notion of justice into the sphere of constitutional patriotism. Habermas's interpretation of Kohlberg's developmental stages alludes space to the notion of justice as one of the guiding principles of the public transformative process.

Habermas specifies the 'communication communities' as people who engage in speech acts in order to reach an understanding. In the theory of constitutional patriotism, these communication communities take different shapes following the different types of constitutional patriotism in different spatiotemporal contexts. Therefore, by thinking about linguistic forms of communication in the real world in given cultural and political contexts, constitutional patriotism and deliberative democracy implemented within the bounds of constitutional patriotism seek to bring reality and abstraction closer to one another. Constitutional patriotism as I seek to define it here is a theory of contemplating upon the political realities of our time regarding the notion of identity. While it faces the contemplative domain, I wish to construe it in a way, which never lets go of an optimistic and constructive sense of reality. The bridge between facts and norms needs nothing but communication.

The informal processes of the opinion formation within which the private autonomy raises level by level in CP is a theme that Habermas revisits in this chapter on deliberative politics in great detail. He claims that the deliberative democracy is silent about the informal processes (Habermas, 1998, p.307). A notion of a public sphere surrounding the informal process which is weakly defined constitutes the domain with divergent opinions and a multiplicity of worldviews: "The opinion-formation uncoupled from decisions is effected in an open and inclusive network of overlapping, subcultural publics having fluid temporal, social, and substantive boundaries. Within a framework guaranteed by constitutional rights, the structures of such a pluralistic public sphere develop more or less spontaneously" (Habermas, 1998, p.307). It is unclear how Habermas intends to maintain this 'uncoupling' with a well-intentioned sense of inclusion. He construes a 'weak' public sphere, which naturally establishes itself. The constitutional rights only regulate the processes, which function below the threshold of recognition of the public sphere where identities are created and re-created. The constitution kicks in as a stand-in regulator for a normative structure with the (hypothetical) power of implementation and enforcement rendered possible through law. The weak public is where the collective identities are transformed within a legal framework. The weak public, which can be interpreted as the domain within which informal opinion and will formation takes place, is distinct from the procedurally regulated public spheres (Habermas, 1998, p.308). The weak public sphere provides a domain in which expressions of identity will be 'less compulsive' (ibid). Cultural pluralism, in this analysis, is something, which naturally follows from the democratically regulated public sphere deriving from the informal public or private sphere. Habermas envisages the democratically regulated public sphere as an egalitarian public of citizens (ibid). "Deliberative politics thus lives off the interplay between democratically institutionalized will-formation and informal opinion-formation" (Habermas, 1998, p.308). Habermas interchangeably uses the terms 'constitutional' and 'formal' in his account of deliberative politics (Habermas, 1998, p.314). He opposes the formal and informal levels of opinion and will formation to one another.

This demarcation line between public and private is useful for observing the identity formation process. Habermas uses the terms of public and private 'autonomy' in the context of democracy. The distinction between publicity and privacy is relevant, however,

in his conceptualisation of the 'public sphere' as well. It is the latter, which marked his early work, and his political writings (as opposed to his political theory). A blurring of this line, I argue, is useful for the development of a happy life. Well-being, understood in psychological terms, has practical connotations in everyday life. Everyday life, I argue, is a component of life which should be born in life for a balanced, happy life which eluded many pessimistic philosophers of the critical theory tradition. I would like my elaboration of the CP to elucidate this notion of happiness, without remaining limited to the strictly academic and philosophical or legal tone sometimes prevalent in Habermas's work. "Philosophy may exist before it recognizes itself as philosophy," wrote Alan Montefiore on identity. Philosophy exists in the everyday life as well as in the magnum opus of some (I dare say) armchair philosophers. This theory of identity is a dynamic one, which invites its readers to contemplate on their own lives, live life and empathize with the experience of those who surround them.

Section Four: The Sociological Translation of Deliberative Politics

Habermas's approach to a sociological translation of deliberative politics begins with a reference to a liberal political culture for different identities co-existing together. He uses Robert Dahl's approach to deliberative politics and to a liberal culture for formulating his own stance: societies which are modern, dynamic and pluralist societies disperse power away from any single centre (Habermas, 1998, p. 317). This dispersion of power away from the centre is the opposite of Nussbaum's conception of the stoic self. While Dahl invites the government to dilute power outwards for fairness, Nussbaum invites the individual citizens to include the external circle closer to the self and nourish their souls through this contact and effort. I provide this brief link between Dahl and Nussbaum only to point at the depiction of the self in both authors, which I deem relevant to the relationship of democracy to identity.

"Thus, democratization is fostered not simply by the polycentric distribution of power emerging in functionally differentiated societies; the decentering of power must be associated with a liberal political culture supported by corresponding patterns of political socialization. Only in the framework of such a political culture can the conflictual tensions among competing forms of life, identities and world views be tolerated and handled without violence" (Habermas, 1998, p.317).

Therefore, in the formulation Habermas borrows from Dahl, there are specific kinds of socialisation, which are compatible with a liberal political culture. It is this notion of replacing illiberal identity traits with liberal ones that Habermas envisages the sociological background of deliberative politics. Democracy, for Habermas, needs to have the notion of a liberal culture to support it in the face of the multiplicity of worldviews and diverging identities which otherwise may come into conflict. He does not, however, give any details about how certain cultural practices can be harmonized in the name of embracing liberalism in the sphere of political culture. Constitutional patriotism and procedural democracy derive from this liberal political culture. Sociological literature has seen broad discussions on the contradiction of assimilation and integration especially in relation to migration. Different national models can represent different models of assimilation. Assimilation, for some, has severe negative connotations as it causes 'damage' to the

‘essence’ of cultures and subcultures. I disagree with the notion of an unchanging cultural essence. An example of this strong unchanging essence of a culture would be that of Herder. The following chapter develops the notion of language. While I agree that language is the most significant constellation of a culture, it is by no means a reason for developing and reinforcing a ‘belief’ about the unchanging, untranslatable ‘essence’ of ‘a’ culture.

Law has an integrative role in Habermas. It bridges over the differences in the sociological underpinnings of Habermas’s procedural democracy (Habermas, 1998, p.318). The distinction between the formal and informal spheres of opinion and will-formation here acquire the twist of ‘reflexivity’ (ibid). Muller’s and mine insistence on a reflexive reading of identity is in line with Habermas’s insistence on reflexivity. This chapter of my thesis and the BFN situate this notion of reflexivity within the framework of (a) democratic theory. The social integration which law seeks to institutionalize takes place *below the threshold of formal law* (ibid). Habermas recognizes this importance of the private realm of identity in BFN. The legal system as conceived by Habermas offers solutions to the problems, which are produced ‘below the threshold of law’. The reference to the informal channels of opinion and will-formation, I claim, does not allow particularistic value attachments, which have not been examined through a discursive process of reasoning. Identities, thus conceived, together with cultures, are different from entities kept intact as museum pieces.

This image of cultural habits and identities that Habermas holds and indirectly refers to in the chapter on Deliberative Politics is similar to the way that Anthony Appiah construes cultures as different from ‘museum pieces, which cannot be changed’ (Appiah, 2007). He argues that we can learn from each other’s stories only if we share both human capacities and a single world/ relativism about either is a reason not to converse but to fall silent” (Appiah, 2007, p.256). The law in Habermas’s political thought has a different nature than to politics, in that the former is more abstract and value-neutral than the latter. The law provides a system of rights standing above the lifeworlds of the individuals; whereas politics is much closer to the imperfections imposed by the human nature. A psychological reading, added in the next chapter, reconciles these extreme positions of reality and utopia, perfection and imperfection, worldly and metaphysical (or otherworldly in the religious sense of the term). By imposing a legal framework upon political and social questions such as social integration, the law creates a zone free from conflicting value orientations. Habermas is drawing a parallel between the private sphere and the unconsciously regulated impulses some of which can be compulsive. These unconscious desires translate into the informal public sphere. The implied formal public sphere is more legalistic and abstract. Identity formations of the conventional type in the theory of constitutional patriotism take place within the informal public sphere, where national identities are formed.

The traditional identifications such as national identities and various particularistic ethnicities are in line with the informal track of opinion and will formation which Habermas seeks to transform and supersede by the abstract, formal and legal forms of formal opinion and will formation. Habermas does not clearly elucidate the point about one sphere of will formation superseding the other one but the theory of constitutional patriotism calls for such a transfer of meaning from one sphere to the other one in the name of creating universal meaning and cross-cultural and cross-ethnic communication among differing 'communication groups' as the Habermasian terminology on democracy holds. Habermas places human rights above democracy. The formal opinion and will formation raises conflicting political and social issues regarding integration above a certain level which Habermas names 'a threshold'. The term 'threshold' in the international relations theory refers to the level which any given political party within a political system needs to attain in order to earn the right to political representation. (CITE: International relations theory and 'power and choice'). This framework and the distinction between the formal and informal processes of opinion and will formation take the form of conventional and post-conventional identities in the theory of constitutional patriotism. Post-conventional identities range from supranational to cosmopolitan identity in different typologies of constitutional patriotism. The two separate tracks of democracy help us to conceptualize private and public aspects of identity (*my italics*). The pre-conventional level, however, developed by Kohlberg, does not fit into the framework of CP I seek to develop. The level of individual freedoms (following Axel Honneth's use of the term) and autonomy for Habermas, are too weak to attain an international democratic structure. Therefore, the pre-conventional level is below the threshold of CP. In development studies, however, it serves to provide a theoretic framework for a teleological normative endpoint, by situating developing countries and illiberal cultures into its realm. For the reasons regarding the preservation of the right to particularism, I seek to distance myself from Habermas's reference to the 6th stage in his response to Kohlberg (CITE: Thomas Wren's edited book). It is through a gradual procedural increase in autonomy and development that CP situates itself in the real world. The future holds both in it, with different percentages. The formula of happiness is a recipe which one needs to find for oneself, I advocate. Winnicott defends the idea that creativity is in the everyday moments; such as cooking without a recipe. Life, I hold, is that dish without a recipe. The right level of theoretical discussion includes this approximate inclusion of is and ought in the domain of identity.)

The concept of identity comes to the fore in Habermas's account of the sociological analysis of the concept of democracy. Democracy conceived in this particular way discussed in this chapter of the BFN allows the value formations and the processes of sociation to have an impact on the democratic decision-making processes. The people who make the decisions shape and re-shape themselves in light of these identities and moral principles which they choose to embrace (unwittingly) or continue to embrace throughout generations irrespective of the critical attitude taken towards them. By placing the identity component of informal channels of opinion and will-formation under the light of reason, Habermas calls for a specific kind of identity which is likely to lead to a liberal political culture. Two notions which oppose one another regarding social integration are these for Habermas: moral regulation of conflicts or the ethical safeguarding of identities

and forms of life (Habermas, 1998, p.319). “Problems of balancing conflicting claims call for a normative orientation to legitimate orders of the social world. Problems of expressive identity formation call for an orientation to shared conceptions of the good life and the interpretation of needs” (Habermas, 1998, p.317). Normativity, in this account, is the only viable solution to the co-existence of competing for value orientations in the cultural domain. Law construed as an abstract system comes in to embrace this sense of normativity in the social and political domain. Constitutional patriotism benefits from this aspect of law in the way it deals with competing for national self-assertions at the supranational and cosmopolitan levels of constitutional patriotism. At the national level which is marked by multiculturalism within the theory of constitutional patriotism, the conflicting claims are carried out by different ethnicities or communication communities bearing different identities of different kinds. The good life and the life that is to be advocated and allowed by law is the life that is normatively regulated in light of principles of reason, enlightenment and reflexive attitudes towards identity formations. Simply holding on to the given cultural traits collectively would be ruled out in this stance of constitutional patriotism and a sociological analysis of deliberative politics as this unreflective attitude would be immune from the reflexive discursive processes of liberal constitutional democracies. Constitutional patriotism, defined by Jan Werner Muller, is confined within an area of liberal constitutional democracies (Muller, 2010). The construction of the lifeworld in a liberal society is rendered constitutional patriotism normatively dependent on liberal values and principles of democracy. A discourse-theoretic approach allows for the flourishing of collective as well as individual identities which are free from oppression and lead to a transformation of illiberal and anti-feminist practices towards the ethically regulated good life in liberal constitutional democracies.

The notion of constitutional patriotism being a dynamic process derives from Habermas’s understanding of democracy. In the ‘sociological translation of the concept of deliberative politics’; Habermas elucidates the approach he has to democracy being a process (Habermas, 1998, p.321).

“On the one hand, deliberative politics loses much of its off-putting and unrealistic appearance if one views it as a reflexively organized learning process that removes the burden on latent processes of societal integration while continuing these processes within an action system specialized for this relief work. On the other hand, in complex societies the gap between the need for coordination and the lack of actual societal integration, the gap politics and law is meant to close, only seems to grow increasingly wider the more the administrative system has to accept tasks that increasingly overburden the costly deliberative mode of decision making” (Habermas, 1998, p.321).

Democracy in Habermas’s account is closely linked with the notion of a learning process that takes place within the confines of the nation-state (re)shaping the legal communication community. His references to cosmopolitanism are scattered throughout his work and in the BFN. Therefore, one can only interpret his cosmopolitan stance. It is the literature on CP which brings cosmopolitanism into the discussion of CP much more distinctly than Habermas did himself. Soltan, Des Biens, Markell, Cronin, and Muller are some.

Therefore, it seems that the Habermasian democracy functions best at the national level. CP has three levels and a typology: ranging from nation-states and expanding into a global communication community. This account of democracy that Habermas is giving defines democracy only within nation-states, while it leaves it open to be interpreted at the supranational and cosmopolitan levels for the theory of constitutional patriotism. In the theory of constitutional patriotism, learning takes place either among different societies at the international level of CP or within different ethnicities within the confines of a nation-state. What is common to democracy and to constitutional patriotism is this sense of being discursive and in constant change. In this sense, CP as a contemporary philosophical matter is similar to a metaphor belonging to ancient philosophy: “You can’t enter the same water twice” Herakleitos wrote on change. This notion of change encapsulated through the viscosity of nature, such as a river bed, is what I seek to attain within the ‘dynamic’ core of CP. Thinking of the self-identity in relation to the social and political world, CP is part of an ongoing, procedural democratic structure. Perpetually addressing matters of decision making and issues causing conflict in cultural matters, constitutional patriotism relies on a specific understanding of democracy which Habermas depicts together with deliberative politics. The ‘relief work’ is meant to solve problems arising in matters of conflict under the structure of complex societies. This aspect of being a ‘relief work’ situates CP within international relations and conflict resolution subfields of political thought. The practical aspect of CP calls for (this) implementation. The complexity of contemporary societies gives rise to this multifaceted understanding of democracy which pre-exists constitutional patriotism. Politics and law step in the close the affective gap left behind during the decision-making processes of liberal democracies. CP, by taking the national attachments into account, is responsive to this affective gap. The affectivity left unaddressed in democracy has been addressed by Patchen Markell’s interpretation of democracy. In my interpretation of CP, one of the ways I define CP is a form of love.

Habermas’s ideal communication community transcends the bounds of a given space and time. In this thesis, I seek to interpret his communication community as a communication society. There is an intersubjectively shared lifeworld shared by all participants of a given communication community (Habermas, 1998, p.322). Habermas, in the sociological account of deliberative politics, does not define the bounds of this communication community as the citizens of a given nation state. Another moral ideal which has been discussed in this thesis, human rights, are much more closely linked with the territorially defined notion of a nation-state. Democracy represents a transformative process for everyone who can communicate:

“In this sense, communicative action refers to a process of argumentation in which those taking part justify their validity claims before an ideally expanded audience” (Habermas, 1998, p.322).

Therefore, Habermas defines the argumentative process of a democracy as a process which permanently seeks to expand the audience it addresses. Constitutional patriotism borrows this method of argumentation and carries it one step further: if it is

initially the citizens of a given nation-state who speak the same language that can participate in the communicative action, this audience and group of participants should expand and reach out towards other societies and other groups holding different identities at a given time. This can be rendered possible through increased international contact and through the practice of the linguistic medium of communication. Habermas's "realistic utopia" as he calls it suggests citizenship as the milestone of human rights. This work seeks to transcend the limits of nation states beyond the given enforcement mechanisms. The nation states of all varieties reserve the right to implement or not the internationally defined human rights. Human rights is a form of law which is international by definition as it belongs to humanity as a whole. The currently existing social science and law literature on human rights provide an elaborate discussion of the issue (See Goodman on IHRL, OUP). The reason that I see Habermas appropriate for CP is that his (broader) theory addresses the issue of sovereignty. It is a discussion of sovereignty that human rights can be rendered more pertinent for the contemporary world. (The first and fourth chapters of this thesis support this claim).

I argue that the 21st century has a number of different means of carrying out this messy process of argumentation. While the D Principle of Habermas holds that "Just those action norms are valid to which all possibly affected persons agree as participants in rational discourse", the circumstances of the modern era are marked by increased number of elements which willingly or unwillingly create a bond of communication between individuals belonging to seemingly different cultural identities. (Social media is one.) Habermas and Kant often revisit the notion of trade as a factor in increased international contact and a weakened political power in the face of international economics. I argue that cultural products add to this; films and music shared in different parts of the world all create a similarity in the models imagined through the narratives of these artistic products. This can be rendered possible through increased international contact and through the practice of the linguistic medium. The institutional forms of stronger international contact provided by economic forces are rendered even stronger through the cultural dominance of the West over the East. This cultural dominance is established through the prominence of Hollywood cinema in particular at the global cultural scene. Adorno's 'The Culture Industry' and Frederic Jameson's 'The Logic of Late Capitalism' provide rigorous and critical discussions of the issue of culture through the lens of cultural consumption. It is this international contact, rendered possible through several; and in 2016 even more diverse, forms of communication that the world society is more intimate than ever before. Habermas's political theory, including his approach to democracy, would better be read in the grand scheme of the critical theory tradition. Cultural reproduction, including its aesthetic dimension, takes part of this.

The discourse principle and the universal form of argumentation together seek to transform already existing spatiotemporal contexts. "Participants in argumentation proceed on the idealizing assumption of a communication community without limits in social space and historical time" (Habermas, 1998, p.322). There is an attempt at increasing the number of participants engaging in an ideal and universal form of

communication. Habermas's notion of democracy combines with this ideal form of communication and presents a novel interpretation of democracy. In the theory of CP, the discourse principle and the universal form of argumentation constantly transform national and provincial belongings towards universal principles of HR and democracy. Conventional identifications and attachments rarely give space to reflexive humanitarian concerns. Humanity, I reckon, is a group much larger than the conventional forms of identification allows us to attach.

Democracy as a procedural concept is dynamic by nature. Habermas's definition of democracy gives space to this sense of transformation for humanitarian purposes. It is the reference to the spatiotemporal contexts that bring the localisation of nation-states into mind. The form of argumentation advocated by Habermas can take, I argue, several forms: diplomatic negotiations regarding several different issues regarding different countries and their respective citizenry, and the sharing of cultural products and practices in the sociological sphere of a universal form of argumentation. The so-called 'provinciality' of the immediate reality around us is sought to be transformed into a cosmopolitan citizenry who all relate to one another. Habermas's reference to provinciality should be read through the lens of urban sociology. Constitutional patriotism borrows this argumentative approach of democracy and transforms it into the realm of reality and political attachment. Argumentation is one of the skills cherished in law. Habermas's concept of democracy is heavily influenced by jurisprudence. In CP, I borrow the legal virtue of carrying out a clear argument for the benefit of different interlocutors reaching consensus.

I will continue to place the Habermasian understanding of argumentation, lifeworld, and democracy within the framework of Constitutional patriotism here. Habermas is writing about real human beings who are raised in specific cultural contexts. That is to say that the universal forms of argumentation, and the desired ideal communication community, does not overlook the lifeworlds within which the individual preferences have been shaped (Habermas, 1998, p.324). A universal form of communication presumes either a common language or a perfected process of intercultural and linguistic translation.

Habermas tackles with the specificity of conventional forms of kinship without defining them as forms of identity but by capturing them under the term 'lifeworld': Lifeworld, in Habermas's account of a sociological approach to democracy, is transformed for increased contact among more people who engage in the process of communication. The particularistic attachments determined by the lifeworld are the conventional ties of kinship and language in the theory of CP. It is this conventional level initially determined by the lifeworld, which escapes the control of the individual, that is sought to be transformed into another form of identity marked by universal norms and increased contact among the citizens of a cosmopolitan potential world government (or federation):

“In fallibly interpreting a given situation, such actors must draw from resources supplied by their lifeworld and not under their control” (ibid).

The immediate family or the nation surrounding us when we were born are components of our identities which we do not have control over. Muller names this the ‘arbitrary ascription of identities’ in his book on CP. The cosmopolitan self as Martha Nussbaum holds in another chapter of this thesis constantly seeks to reach out towards other and more external levels of the self in order to enrich the self. Democracy here is laden with this notion of increasing the number of participants engaging in dialogue. It is this ‘provinciality’ or the spatiotemporally defined nature of national identities that CP seeks to transform. The chapter on cosmopolitanism argued that constitutional patriotism does not seek to abandon national identities but to transform them. An argument which calls for ridding the self off of such a source of meaning would be bound to fail. In a similar vein, the universal forms of argumentation and discursive democracy does not seek to abandon particularistic identities, as I define them, and the spatiotemporally defined lifeworlds as Habermas defines them. Habermas defends a concept which recognizes the importance of having ascribed lifeworlds but he persistently emphasizes the importance of individual choice in life as well: “...actors are not simply at the mercy of their lifeworld” (Habermas, 1998, p.324).

Habermas’s references to reflexivity during this process and the superiority of a liberal political culture over other cultures which do not possess this quality are in cohesion with his preference of the individual agency in determining to what extent the lifeworld and the immediate spatiotemporal context is capable of determining our lives and our personalities. Democracy, as Habermas understands it, is an all-encompassing notion which seeks to address all the above-mentioned points. The point about illiberal identities repressing the weakly articulated life forms particularly in multicultural groups has been discussed by Will Kymlicka. (Kymlicka, ‘Multicultural Odysseys, 2009) According to Kymlicka’s and Kukathas’s understandings of liberalism and illiberalism in identity formations within a model of governance, any cultural right is justified so long as an individual can choose to step outside his or her given cultural group (Kukathas, *Liberal Archipelago*, 2007). Generally, this takes the form of abandoning one’s cultural community of people ascribed at birth. Kymlicka’s principle of the right to exit in a multicultural model is very similar to Habermas’s right to exit in a supranational model of CP. Habermas holds that European Union can survive the criticism of democratic deficit because it gives the nation-states the right to exit (see the chapter on Europe for further discussion).

The transmission of culture from one generation to the other is an integral form of identity formations. This transmission, which liberal or illiberal interpretations shape and reshape, assists any form of identity to have a sense of continuity. This is the sense of continuity Taylor advocates in his understanding of identity. Taylor’s notion of continuity in narratives (in *Sources of the Self*) adds the twist of coherence to modern understanding of identity:

"The tremendous force of certain stories has to be understood in light of the discussion above in section 2.3, where I talked of our striving to make sense of our lives in narrative somehow related to the good. One way in which people do this is to relate their story to a greater pattern of history, as the realisation of a good, whether it be the traditional Heilsgeschichte of Christianity, or that of the Progress of mankind, or the coming Revolution, or the building of a peaceful world, or the retrieval or continuance of our national culture. It's almost as though these schematic historical narratives exercised a force of attraction of their own. The secret of their strength is their capacity to confer meaning and substance to people's lives. Just what gives them this is a matter of further inquiry. But that some schemata, including the above mentioned, have this power seems beyond question" (Taylor, 2009, p.97).

In postcolonial literature, one can find several examples to this broken narrative due to wars. The notion of just and unjust wars has informed Michael Walzer's approach to war in the contemporary world. The good and the bad have influenced social and political thought for a long time. (The scope of my thesis does not allow me to carry out a detailed discussion of Michael Walzer's arguments.) Freud, on the other hand, argues that society is based on the repression of human instincts. In *Civilization and Its Discontents*, he writes that the civilization stops the individuals (both men and women) from hitting one's enemy on the head. We can read the reference to an enemy as someone with whom we are in conflict. Political science and philosophy give ample space to war, peace and conflict. Freud's treatment of individual neurosis applies to individuals. In the chapter on the enlarged moral self and a social psychological approach to identity, I develop an idea linking the individual back to the social. Freud's *Civilization and its Discontents* provides an explanation as to why we as human beings find ourselves in conflict. Appiah writes: "A number of philosophers had found reason to emphasize that we make sense of our lives through narrative, that we see our actions and experiences as part of a story. And the basic human capacity to grasp stories, even strange stories, is also what links us, powerfully, to others, even strange others" (Appiah, p.256).

Here, I would like to add a comment about madness and civilization. Repression of the basic instincts, causing neurosis, is treated through an artistic lens in the work of Roland Barthes, through sociology in Michel Foucault and Durkheim. In Durkheim's 'Suicide', we find a theoretical reconstruction of the empirical data of people committing suicide. By intermeshing empirical data with a community, Durkheim has paved the way for modern sociology. In Foucault, we find an analysis of the evolution of treatment of madness in groups. All these thinkers have sought to understand social problems; for a sounding solution to recurrent problems throughout history; I argue that a human being ought to open the channels of communication. This involves communication between eras, countries, and cultures as well as different thinkers. Habermas defines this attitude as 'convergence' of a jigsaw puzzle.

In the sociological analysis of deliberative politics, Habermas brings the argument close to identity formations one more time but does not define the broader argument in terms of constitutional patriotism. I argue that CP is a missing ingredient in the

way Habermas has defined democracy as a neutral deliberative procedure as well as in the way he sociologically analyses the concept of democracy. The discursive processes apply to problems at hand which are 'productively answered in the light of a reflexive, post-traditional transmission of culture' (Habermas, 1998, p.324). Habermas does not specify conflict resolution, identity or contemporary problems in International Problems as the focus of his discourse-theoretic understanding of democracy. Habermas, a social philosopher and a legal theorist offer more answers than predicted for International Relations as well viewed through the lens of social sciences. Scientism, in social sciences, refers to the notion of objectivity and independence. The position of an observer, which Habermas prefers to define as a 'participant observer' is encapsulated in the role of UN in contemporary international relations.

Habermas's reference to the transition of culture under post-traditional circumstances sits into a specific place I define in CP: This post-traditional transmission of culture is the post-conventional identity formations in the theory of CP. CP seeks to transform conventional to the post-conventional. What I mean by the transition from the conventional to post-conventional is a liberal (philosophical) framework of defecting upon the impositions of civilization and invitations of nature. Habermas's conceptualisation of forms of argumentation establishing a global community of interlocutors and a process of post-traditional transmission of culture all complement the theory of CP by fitting into the framework originally defined by Muller and here developed by myself. Muller merely situates CP philosophical and introduces the terminology necessary for developing CP.

The mode of sociation, in this process, is defined several times and in a number of different ways as a process which is marked by liberal practices. Here I would like to clarify what I mean by 'liberal practices': Liberal practices in CP specifically refer to anti-feminist or conventional practices hindering individual emancipation and individuation of women in particular. Here, it is important to single out women as the most vulnerable identity groups a gender gap and inequality exists in different forms in different domains of life. The Eurostat statistics also indicate a pay-gap and a glass ceiling at top positions in European countries. Socio-cultural practices merely constitute a Rawlsian veil of ignorance for transcultural observation and diagnosis of lack of autonomy in the feminist sense (Rawls, *The Law of Peoples*). Rather than referring to the political culture as liberal, in the part following the universal forms of argumentation still in the sociological account of democracy, Habermas is arguing that 'dogmatic worldviews and rigid patterns of socialisation can block a discursive mode of sociation' (Habermas, 1998, p.325). Therefore, a liberal political culture in the theory of constitutional patriotism seeks to abandon rigid identities which do not allow for fluctuation and a reflexive reshaping of national identities in light of reason and justice. While the theory of CP defined by Muller defines the normative principles upon which CP is built as democracy and human rights, broader Habermasian theory refers to an ideal speech situation, reason, and justice as other important pillars upon which a sustainable and rigorously Habermasian understanding of CP can be built.

I would like to provide an interpretation to Habermas's reference to dogmatism. My interpretation refers to the domain of dogmatism in identity formations refers to unreflective, or, to use a more common term, 'uncritical' attitude towards every single individual's self-conception. Every person is an 'I' first, and then a 'We'. A mathematical construction of logical (re)placement would place number one before number two; making any sense plurality conditional upon one-ness. "No man is an island, in and entire of himself," said the poet (John Donne) Neither do I deny that human beings are social animals. I invite the readers of CP to embrace a synthetic attitude towards the self and the other. This is a peaceful approach which allows the individual to let go of guilt and self-flagellation. Forgiveness for the self and the other. Therefore, I seek to establish a new theory of identity which offers a balance; a balance between Me and the other; between past and future (after Arendt) and between Facts and Norms (after Habermas).

Here I would like to focus on the relationship between law and democracy: In his sociological account of democracy, Habermas allocates a large space to the function of law; a function which, to my mind, cannot be maintained in a theory of constitutional patriotism which can be put in practice:

"With the procedural concept of democracy, however, this idea takes the shape of a self-organising legal community. According to this latter view, the discursive mode of sociation is to be implemented through the medium of law alone. And the law as such already incorporates those features from which the model of 'pure' sociation abstracts" (Habermas, 1998, p.326).

A self-organising legal community, in the theory of CP, can be the citizenry of a given nation-state. With this terminology, Habermas brings the sociological to an anthropological level. Communities and societies function differently. The former is much more "organic" in the Durkheimian sense. CP, at a general level, requires a society as an object of transformation. There is no such thing as pure sociation. CP has an order of establishing the affective bond of intimacy. It is the loved one closest to the heart, and the arrow of expansion stretching outwards. From within the intimate, and romantic, a form of trust is established that facilitates the procedural annihilation of fear of others and fear of difference (as in xenophobia and homophobia).

The 'discursive mode of sociation', I think, can't be implemented through law alone. We, as sociologists, certainly need the non-legal and impure (or convoluted) aspect of societal existence which unmistakably imbues identity with a number of perspectives. Being members of the same political union may, in some ways, incite citizens to reflect upon the events going on in another nation-state and in some cases even make decisions about what the future of another nation-state holds. The Greek debt crises and the German reactions to this about austerity measures that are to be implemented in Greece can be one example to this from the world political scene. This particular example requires the elaboration of the point of view of both parties. Any conflict, as any form of communication has at least two parties. For CP, this is merely an example to the

interconnectivity of global political scene. (For further reading, see Habermas's "Why Merkel is Wrong" in Social Europe).

These are the crucial interpretations and applications of CP, which make the theory of CP stronger. The social and political timing of Muller's writing of CP did not give enough space to him for him to develop CP in light of these empirical evidence and pillars that I ornate CP with. Habermasian literature allows me to make use of 'is' and 'ought' as well as place them at different levels in CP. The Eurozone crisis is the perfect medium for CP to soak in the social and political environment for the aim of becoming a stronger theory.

Habermas's idealization of a legal community regulating itself is very hard to envisage at the cosmopolitan level, I argue. Even if we are to imagine international law and human rights law into more powerful, enforceable instruments than they are today, the future of nation-states in the theory of constitutional patriotism does not call for non-existent national-identities or for national attachments which are reduced to naught. People who speak the same language, and live in the same country will relate to one another first and be responsible to one another before they are to fellow citizens of other nation-states. The discursive mode of sociation cannot, in the theory of CP, be only implemented through the medium of law. It is at this moment that the theory of CP I seek to develop in this thesis departs from the way Habermas construes democracy. Democracy, with a component of law that suffices for social integration and a process of sociation, can't be a useful instrument for a theory of CP which recognizes the particularistic forms of attachment. CP borrows the notion of discursive processes and dynamism from a procedural concept of democracy, not the role played by law in this particular concept of democracy developed by Habermas. A constitutional patriotism which relies on law for the perpetuation and transference of conventional identities is a constitutional patriotism bound to remain within academic circles and scholarly disciplines. Transforming political affect is what CP ought to aim, not a forgetfulness about the notion of affect altogether. The law as a medium which incites social integration and creates social perpetuity is barren from the point of view of identity formations in the private sphere. Identity, as I see it, is composed of public and private constituents. Habermas's model of democracy overlooks the private sphere of identity formations. He does refer to identity taking place "below the threshold of law". I'm hesitant to say that he contradicts himself because the scope of his work, to my mind, leaves large space for specific regulations of different aspects of his work at varying degrees in different parts of his work. Therefore, independent of me accusing him of this gap, I would like to bridge the semantic lack of clarity regarding identity in his political theory through CP. Procedural democracy is a stepstone for this aim.

Chapter Seven: Democracy and Law

Section 1: An Interpretation of 'A Reconstructive Approach to Law: The System of Rights'

Habermas's political theory, as I read it, leaves space for re-reading his ideas with a view to CP. As in the other chapters of this thesis, I seek to make sense of Habermas's democracy for a particular view to CP. The system of rights constitutes an important aspect of Habermasian democracy. In 'A Reconstructive Approach to Law', he points out to a sense of pluralism which follows the role initially played by nationalism throughout the 19th century: "During the nineteenth century, a post traditional identity first took on a definite shape under a close affiliation between historicism and nationalism" (Habermas, 1998, p.97). Nationalism, according to Habermas, has been one of the most influential ideas of the 19th century. Nationalism as a concept came into existence under specific historical empirical (or factual) circumstances as well. In this thesis, I argue that the current political global affairs require a new form of identity. Habermas's reference to nationalism and pluralism in the reconstructive approach to law calls for this justification if situating nationalism in a spatio-temporal context as well. I agree that nationalism and pluralism are good conceptual friends in the sense that both can sit in a timely theoretical framework. "L'extremes se touchent" is a French proverb used in Cosmopolitan literature (see Fine). Too much of any ideology tilts into a fanatical fundamentalist position I seek to avoid.

A disintegration of the ideal of nationalism, however, has been followed by the development of the notion of pluralism, multiculturalism and, I would like to add to that, by increased (academic) interest in the field of cosmopolitanism. "A pluralism in the ways of reading fundamentally ambivalent traditions has sparked a growing number of debates over the collective identities of nations, states, cultures and other groups" (ibid). It was, no longer, just the immigrant groups and ethnic communities living in Western liberal cultures which were exposed to a different culture. Immigrant groups vary in the reasons which bring them into the host country, and also in the diversity of cultures they bring along. A simple category of "the refugee" or "the immigrant" does not fit all. The differences between e-migration and im-migration suggest a perspective to the movement of peoples. The Western societies are, today, even in a greater need of "reading" the different cultures which Habermas is calling 'ambivalent' here. This ambivalence, I think, arises from the decreased distance between different cultural habitats (in the Bourdeausian sense). We are, more than ever, compelled to understand the different. This is a process which requires the understanding of the self. (S)he who doesn't know himself cannot know the other.

Western democracies also found themselves in the position of questioning their own attitudes towards immigration and face value pluralism which has now increased through the arrival of other perspectives at their doorsteps. Immigration is a term which has addressed different identity groups at different times. Decolonisation as well as economic

interconnectivity which includes freedom of movement of peoples has allowed different communities to settle in different host-cultures other than their own. German context gives space to guest workers and the visa issues around them. The time lapse has given rise to second and third generation immigrants who were born to foreign (i.e. Turkish) parents in Germany. German and French legal systems call for an investigation of 'jus sanguinis' for citizenship status granted to these groups in their territories. The British context on the other hand, offers a different model of integration of former colonial territories. Current political scene of French and British societies are marked by different approaches political parties are taking towards the question of difference. It is this repositioning of national identity that Habermas briefly alludes to in his approach to law.⁴⁰ A disintegrating nationalism, he claims, leaves the political theorists pondering upon the questions left blank. CP seeks to establish this post traditional identity introduced here by Habermas in a framework of nationalism. CP is a theory about political attachment and forms of collective belonging.

The notion of ambivalence in the cultural sphere has to do with what one makes of 'reason'. Habermas gives large space to rationalised life forms. The informal sphere of opinion and will formation, developed in the 'Sociological Interpretation of Deliberative Politics' prior to this section, here expresses itself in a rational form. Habermas's insistence on rational life-forms combined with his two track model of democracy point toward a meeting of informal and formal public spheres at a rational point. CP, by placing the liberal political culture at a central place, relies on this sense of rationalization: "Without the backing of religious or metaphysical world views which are immune to criticism, practical orientations can in the final analysis be gained only from rational discourse, that is, from the reflexive forms of communicative action itself" (Habermas, 1998, p. 98).

Life forms and the worldviews, which are bound to impact the democratic decision making processes, for Habermas, need to be rational ones. He interprets lifeworlds and collective identities around the notion of communicative action, and excludes metaphysical notions, which in his reading cannot be criticised reflexively. This reference to metaphysics, I argue, situates Habermasian morality on a strictly secular spectrum. The democracy Habermas constructs is a democracy which is open to change on a daily basis, requires permanent criticism carried out by the participants in rational discourse and takes place in a domain which is marked by the rationalistic attitude of the Enlightenment. Deriving from this, I would like to add that the theory of CP, which takes its roots from Habermas's work broadly including his notion of democracy, has to be a theory of collective identity, which is 'reflexive' by definition. A collective form of belonging that is conventional, such as nationalism, would have to be placed under the spotlight in light of reason and be questioned whether it is any good for the future of a given country at hand together with other participants in rational universal discourse implied at the cosmopolitan

⁴⁰ The year 2016 has witnessed a newly introduced level of the refugee crises, which makes Habermas's writing ever more relevant.

interpretation of CP and Habermasian democracy. Nationalism and national attachments make it difficult to impose the razor-like light of reason on them. National identity includes emotions towards one's own country. This can be a form of love with multiple manifestations expressing itself in different ways. For example, the coup d'état of 15 July 2016 in Turkey was done in the name of love of the country. Both the government and the army choose different teleological moral footings for them for the same reason: love of country. In Turkey as well as in most Western countries, this form of love has been hijacked by the extreme right and by the populist front. Marine Le Pen's France is another example. CP seeks to save love from fanaticism of any sort. Different contexts offer different interpretations of this theory.

The discourse principle, which defines action norms to be valid among all the participants included in rational discourse, is a principle, which removes any barriers around the notion of communication that was there because of a nationalistic limitation. Nationalism and a legalistic interpretation of universal principles tie the conversation down to a level, which legal consociates (who recognise one another as fellow citizens) can participate in this 'rational' discourse. This definition leaves out non-rational and particularistic affective attachments as well as the opinions and arguments of those who are willing to participate in a rational discourse but are not members of the same legal community. In this sense, Habermas's work invites bridging the gap between his understanding of universal communication and nationalism. How can these two notions be brought together? His reconstruction of legality in his theory of democracy developed in the *Between Facts and Norms* suggests that communication should be for everyone. This is in contradiction with an interpretation of rights matters in international law, which restricts for members of a given community. Therefore, CP seeks to leave the nationalistic constraints behind in relying on Habermas's notion of communicative action and democracy. CP, which has cosmopolitanism and human rights as its main constituents, seeks to reach out to every individual living in the world today in an attempt to establish mutual understanding. Habermasian discourse theoretic democracy, therefore, is a normative pillar on which CP stands. It is through universal communication that a global notion of democracy for everyone is developed and carried ahead of the boundaries of nation-states.

For applying discourse theoretic democracy at the first type of CP that is within the nation state, one ought to focus on increased extensive communication between different polar ends of the political spectrum. Communication in discursive democracy is the antidote of conflict. Through the expression of different political beliefs and ideals, different identity groups within a parliamentary system can come closer to understanding each other. This, however, ought not to be viewed as a panacea to all the social political pathologies. It is a method, which I borrow from the positive sciences: before a medicine reaches a level of saturation, it does not offer any clear results. Rigorous and systematised application of the discourse principle increases the chance of a harmonious consensus within the political and social realm.

Religion, in CP, is an ideology, which hinders the ideal identity from questioning itself. The examined life, for Nozick and for Socrates, fits into a form of identity, which, for me, derives from public and private spheres equally. Secularism, which merely situates metaphysical worldviews (or religion per se) into the private sphere, is, therefore, key for CP to structure the private sphere (of the lifeworld or of identity formations). I would like to develop this re-structuring of the public sphere. Autonomy, I argue, is the conceptual hinge for an examined life. In CP, autonomy has the same role in public and private spheres (at least at this stage of CP for this thesis). Religion is a component of identity, which may hinder an autonomous evolution of the public and private spheres. Therefore, in CP, I strictly limit any metaphysical religious, or mystical attitude to identity formations into the private sphere. This formula facilitates the multiplicity of religious or irreligious identities co-existing in the public sphere. Presuming that an orthodox religious identity exists for every individual in the world merely imposes religion into the future. Religion, for CP is an ideology belonging to an age which now remains in the past. Religion, in my conception, was the tool to organise societies before nationalism came into existence (in 1789). Turkish and French history writing supports this view. CP is a form of attachment, which establishes itself on reason; *and not on belief*.

CP refuses to replace knowledge with belief. Matters relating to identity can be either truth, or belief. What matters, for me, is that the individual would “know” what she is, to the extent that she does. It is through this kind of self-knowledge that mysticism in social sciences is avoided. The etymological root of the word “philosophy”, love of knowledge, facilitates this secular and reasonable reading for identity. The UK philosophical circles are deprived of this radical shift due to a missed revolution which French, Turkish, German and American social and political contexts witnessed in different forms.

The role played by the constitution in a theory of CP is similar to the role allocated to a contract in the social contract tradition. Habermas’s reconstruction of law and democracy relies back on Rousseau to a large extent and he presents an analysis of the Social Contract of Jean Jacques Rousseau in this chapter in his account of law, rights and democracy: “As is well known, Rousseau imagines the constitution of popular sovereignty through the social contract as a kind of existential act of sociation through which isolated and success oriented individuals transform themselves into citizens oriented to the common good of an ethical community” (Habermas, 1998, p. 102). This is how the contract plays a role in the contemporary theory of CP as well as the original social contract introduced by Rousseau. It is an act of sociation.

Also, it relates to the existential dimension of being in the political world. Shared cultural traditions play a role in this tradition (ibid). Habermas adds to his interpretation of Rousseau a particular reading of reason and nation which attaches reason to the bounds

of a specific community: “If the rational will can take shape only in the macro subject of a people or nation, then political autonomy must be understood as the self-conscious realisation of the ethical substance of a concrete community; (...)” (Habermas, 1998, p.103). The macro subject of a people or a nation, in this reading, provides the medium within which the rational will can find concrete substance in the real world. Between Facts and Norms and Habermas’s broader political writings are marked by this tendency of having a back and forth between the world of thought and the world as it is. The rational will and the subject of a people can be placed under the parallel Habermasian conceptual terminology of norms and facts respectively. They are related to one another. This is a dual nature of the lifeworld. It is this duality expressed in the constitution of the society, which assists reading the society through the lens of CP. CP, in this reading, is a reconstructive process.

Habermas’s interpretation of the rational will in the section he dedicated to Rousseau is an example of this attitude, which marks his work, be it his political writings or his political theory. By bringing an argument about the way in which rational will finds body in the real world, Habermas uses nationalism as a supplementary ideology to his conception of discourse theoretic understanding of law and democracy. Political autonomy, which in the previous chapter on human rights had been discussed as a tool here emerges within the bounds of a nation-state: a tool for developing an emancipated form of identity who can criticise contemporary political social existence through implementation. The rational will is different from the unreflective national will. Nationalism and rationality ought to meet each other halfway for each to have a functioning solution. For conflict resolution it is important that a utopian rational ideal meets the demands of (in practices often times extreme) nationalist democratic expressions.

Section Two: Moral Norms and Legal Norms

In ‘The Reconstructive Approach to Law’, subsection ‘Moral Norms and Legal Norms’, Habermas raises a few ideas which are relevant from the perspective of CP. The relation between human rights and democracy, the link between law and morality, a cosmopolitan attitude emerging in his reconstructive account from the perspective of moral and legal norms and his references to the necessity of a liberal political culture all supplement the broader ideas I seek to develop in this thesis. Habermas’s account of rights and the way he redefines the notion of rights in connection with the role played by the nation-states harkens back to the importance of nation-states in the theory of CP. Having discussed human rights and the importance of nationalism for the theory of CP in the previous chapters, here I would like to link these to Habermas’s account of a system of rights. I then seek to demonstrate how CP can benefit from these seemingly irrelevant aspects of Habermasian democratic theory for better establishing itself as a holistic, coherent theory in its own right.

“Human rights, too, which are inscribed in citizens’ practice of democratic self-determination, must then be conceived from the start as rights in the juridical sense, their moral content notwithstanding” (Habermas, 1998, p.105). Habermas dedicates large space to the Janus faced nature of human rights pointing towards morality and law at the same time in an account in the previous chapter of this thesis. Here, in his approach to democracy and law, he chooses to focus on the juridical nature of human rights as opposed to its moral content. Despite this choice Habermas is making for this specific chapter at hand, he is still revisiting the tension between law and morality inherent in the notion of human rights through citizenship. Here, the notion of human rights are interesting one more time because Habermas is clearly establishing the link between democracy and human rights: he is arguing that the democratic self-determination has human rights inscribed in it (ibid). It is the right of every citizen to participate in the policy-making procedures.⁴¹

The distinction between the moral and legal content of human rights finds more space, on the distinction between morality and legality: “Despite the common reference point, morality and law differ *prima facie* in as much as post traditional morality represents only a form of cultural knowledge, whereas law has, in addition to this, a binding character at the institutional level” (Habermas, 1998, p.107). CP derives from an in between position between morality and law. While referring to the attachments of citizens at the emotional level, it points toward the sphere of morality. The post-traditional morality is fitting for CP. The cosmopolitan level at which citizens of different nation states all participate at a global public sphere and care for one another represent this level of post traditional morality and a cultural knowledge inherent in it. For the types of CP at supranational and national levels, national and social diversity is a requirement respectively for each. The gender diversity of the national (first) level has little impact at the third level. It does, however, add to the resolution of conflicts within a national scope. Diversity adds breath to the social domain. In CP, it will be done in light of reason and rational discourse.

A cosmopolitan attitude emerges in Habermas’s account of moral and legal norms in his reconstructive approach to law. Following from this his account of democracy. Habermas presents the reconstructive approach to law only to have a more elaborate and refined account of the notion of democracy he seeks to develop in BFN. Another piece of writing here which proves his cosmopolitan intentions is the following:

“With moral questions, humanity or a presupposed republic of world citizens constitutes the reference system for justifying regulations that lie in the equal interest of all (...) With ethical-political questions, the form of life of the political community that is ‘in each case our own’ constitutes the reference system for justifying decisions that are supposed to express an authentic, collective self-understanding. In principle, the decisive reasons must be acceptable to all members sharing ‘our’ traditions and strong evaluations” (Habermas, 1998, p.108).

⁴¹ Further research can offer more insight into Wilson’s Fourteen points with regard to CP.

A world federation, or a world citizenry, defines the limits of a universal communication. This universal communication, ought to be interpreted in line with cosmopolitanism, has another component regarding the particularistic attachments: in Habermas' reading, they derive from a specific approach to the ethical-political questions. The form of life of the political community is defined as a form of life, which belongs to the participants in rational discourse. A specific kind of form of life which belongs to the collective self is prioritised over one belongs to the Other or to different political communities. Here, Habermas is having a multifaceted argument: while arguing that all the participants in rational discourse should agree on norms for them to be valid, he is also prioritising a form of life which is closer to home than to another form of life that can be interpreted to be an alien one. What one understands 'home' to be is relative to one's own life experience. It is not clear to whom the preferred form of life belongs here. If all the participants have equal recourse to means of argumentation in order to gain with the force of better argument as he advocates elsewhere in his work, from what does the priority of one tradition come from over another?

Ethical cultural substance is a matter, which requires both observable sociological material as well as an ideal type supporting it. Between Facts and Norms and CP seek to bridge this gap which is only one of the reverberations of is and ought difference (or demarcation line). CP seeks to transfuse boundaries: between private and public identity and autonomy, facts and norms and the distinction between perfection offered by idealism and the politico-social reality. One interpretation using the theory of CP at this point might be that Habermas alludes space to nationalistic or particularistic attachments of different political communities in face of exposure to different life forms embraced by different communities. In this reading, every community would have a right to define its standing point as those of 'its own'. Elsewhere in his work, and again within this chapter, which I will discuss below, Habermas clarifies the importance of a liberal political culture in his notion of rights and democracy. Therefore, in the alternative solution to the issue of the traditions, which are to be prioritised, I argue that the liberal cultural practices superseding the illiberal cultural practices may be the determining foothold of competing value judgements and life forms embraced by different political communities. This applies to illiberal social cultures in Kymlicka's sense in a particular majoritarian culture. Culture is a concept with more emotional resonances than politics. Therefore, it takes a larger part in the identity formations addressed in CP. Transformation of currently existing affect is different from abiding by an externally ascribed form of identity in an illiberal regime through legal political norms. A democratic regime that is not backed by a wholeheartedly embraced liberal social culture is nothing but a transvestite of liberal democracy.⁴²

In this sense, I argue that Habermasian attitude of giving space to different forms of life enriches, but does not limit, a universal process of communication. While expressing

⁴² For further empirical discussion on liberal and illiberal democracies, see Shadi Hamid's "Illiberal Democracy".

themselves in communicative terms, different life forms find space in a universal mosaic of different cultures. The holding glue of this mosaic would be, in my reading, a liberal political culture that eases the cacophony present at a cosmopolitan world federation. Even nation-states would have to embrace one particular attitude when it comes to dealing with different life forms living within its own territories. Implementing any political and moral decisions in the legal sphere requires this stance of making decisions. CP, by relying on liberal political cultures, provides this spectacle with which cultural plurality may be observed. Law seeks to maintain an understanding of the Truth for implementing it in the political social domain. The diversity and complexity found in the social world of everyday ought to be captured in simple(r) terms in jurisprudence. It is only after this legal philosophical positioning that the government (national or supranational) can move forward to implementing law. The tension between legal and moral norms in Habermas ought to address this complexity I offer.

A liberal political culture impacts the way Habermas envisages the system of rights in a number of ways:

“The emergence of legitimacy from legality admittedly appears as a paradox only on the premise that the legal system must be imagined as a circular process that recursively feeds back into and legitimates *itself*. This is already contradicted by the evidence that democratic institutions of freedom disintegrate without the initiatives of a population *accustomed* to freedom. Their spontaneity cannot be compelled simply through law; it is regenerated from traditions and preserved in the associations of a liberal political culture.(...) On the one side, the burden of legitimation shifts from citizens’ qualifications to legally institutionalised procedures of discursive opinion-and will-formation. On the other side, the juridification of communicative freedom also means that the law must draw on sources of legitimation that are not at its disposal” (Habermas, 1998, pp.130,131) (Habermas’s italics).

In this reading, democratic institutions do not solely rely on a legalistic imposition of liberal political values. Legal principles are to be supported by a political culture that is inductive to free thinking, reflexive collective attitudes and criticism in the public sphere directed towards the betterment of political and legal institutions. Here, Habermas does not refer to what CP might have to offer in this vein. I would like to push this attitude he has towards a liberal political culture for CP: CP seeks to establish a balance between the emotional aspect implied by the patriotism implied in it, and the constitutional aspect that is so much more legalistic and removed from emotions. The law is a system, which offers a framework for establishing justice. By setting up rights and duties, it defines a setting within which an individual moral agent can navigate between the good and the bad. Patriotism is different from this rational nature of law as it is, unmistakably, an attachment to a country. Mostly to one’s birth country. Rationality and emotions are in interchange in CP.

While having a back and forth between sociology and law, CP can most certainly benefit from this tension Habermas lays in his attitude toward the law. Democratic

institutions of freedom, which are conditional upon a liberal political culture, pave the way for a CP, which knows which path to take in the face of competing life forms and cultural value orientations. The institutions within a democratic regime must rely on a spirit of freedom. Habermas does not exemplify these institutions here. However; the legal structures implementing juridical norms, the body politic seeking to bring justice down to the social realm and the public offices of government can be named as some of the institutions deriving from a political culture of 'freedom'. As every ideal, freedom can be interpreted in several divergent ways. In Habermasian thought, it means an autonomous rational thinking on behalf of all the individual agents participating in a democratic will formation process.⁴³

In this sense, CP builds on Habermas's construction of democracy and a system of rights with its references to a political liberal culture. The latter part of the quote above refers back to another idea, which I developed above in this chapter: the two track models of democracy. Democracy, in the chapter titled Deliberative Politics as well as the current chapter I am analysing here on a Reconstructive Approach to Law both rely on an informal sphere. This informal sphere is to be conceived in contradistinction to, I argue, to the democratic institutions of the public sphere. The informal sphere of opinion and will formation is the domain, which nourishes the patriotic (and emotional) channel of CP. By taking its roots from these informal channels of opinion and will formation, CP seeks to address and modify the emotions of the about towards their collective identities.

Habermas's account of a reconstructive approach to law links into CP with reference to the role it allocates to the nation-states too. Every abstract form of communication and norms, which are moral and legal, are tied down to the real world through the nation-states. Legal norms, in this reading, are different from moral norms in that legal norms require a certain sense of being attached to territorially delimited governmental entities:

"Hence the establishment of a legal code calls for rights that regulate membership in a determinate association of citizens, thus allowing one to differentiate between members and non-members, citizens and aliens. In communities organised as national-states, such rights assume the form of rights that define membership in a state" (Habermas, 1998, p.124).

A determinate association of citizens, that is a nation-state, is the domain within which rights are realised. Rights are realisable through citizenship and national deliberation. A thorough analysis of this point came to the fore in the chapter on human rights. There, I analysed human rights as rights, which are inextricably linked with the citizenship status of nation-states. Rights broadly speaking as well as human rights require this concrete component for being realised. This is the territoriality implied in the reconstructive approach to law. Nation-states, in this sense, emerge as important entities, which allow

⁴³ Further research following from my PhD research can address Axel Honneth's notion of freedom.

and facilitate the exercise of rights. They both include and exclude: they render it possible for their members to exercise their rights within their bounds while they exclude those others who live within their territories but are not in the possession of these rights. Not all the participants in rational discourse, in this reading, can exercise their rights in every country in the world. A citizenship status, therefore, is the conceptual hinge linking the morality implied in the dignity of every human being and the legality implied by the exercise of rights within a particular constitutional culture. This is the ultimate tension between moral and legal norms.

Section Three: Habermasian Democracy According to Kenneth Baynes

Habermas's *Between Facts and Norms* has acquired much acclaim in the academic literature. Kenneth Baynes is one of the authors who discussed the notion of democracy in *Between Facts and Norms*. Kenneth Baynes, I argue, has a succinct analysis of the core arguments of the BFN. His re-evaluation covers an area broader than the research of CP in this thesis. His reconstruction of Habermas's approach to democracy revisits some of the notions I have raised in this chapter of this thesis: he emphasises the importance of a two track model of democracy with strong and weak publics, he revisits the role played by nationalism in the way Habermas construes democracy and analyses the notion of neutrality principle of discourse theoretic democracy. A discussion of these notions emerging in Kenneth Baines's account of Habermasian democracy will be useful for the purposes of this chapter as I seek to develop an account of democracy meaningful for the theory of CP. The notions I chose from within Baines's account are constitutive of a notion of democracy, which ties into the broader theory of CP. While the account of Baynes is not limited to these notions I highlight here, a discussion of these aspects of his and of Habermas's work help dispel uncertainty about what can be done with the notion of democracy in the theory of CP.

Baynes interprets the core idea of the BFN as an idea of identity. He calls the skeleton argument of the BFN a "rational collective identity": "One version of the project of radical democracy, which has roots in Rousseau and Marx, has been expressed in the vision of a rational self-organisation of a society or a 'rational collective identity'. Jürgen Habermas has aligned himself with this version in the past and, with some important qualifications, he continues to do so in his new book, *Faktizität und Geltung*" (Baynes, 1995, p.201). Therefore, Baynes situates Habermas's *Facts and Norms* ('*Faktizität und Geltung*' in German) as a continuation of a stance he has taken in the past. The English title of the book offers more clarity to the main aim of the book. This is an advantage provided by the translation process. The significance of the role of identity derives not just from this work of him that was the last one he had published prior to the article Baynes had written about it back in time, but also from other works of him. I would like to add a distinction to the former works of Habermas and BFN: while the BFN is exemplar of his political theory, he has published extensively on issues regarding the Inclusion of The Other and the Time of Transitions, which are less theoretical aspects of his work. The BFN is marked by a theoretical tendency. Baynes is arguing that 'the new book assigns to law and the legal

community generally a more positive and prominent role in the legitimization process' (Baynes, 1995, p.201). While I argue with this interpretation of Baynes, I would like to add a perspective of CP to this account: the legal community, in the theory of CP, takes the form of a political-legal community that is delimited as a nation-state. The twist of nationalism in Habermas's thinking throughout the BFN, therefore, is of utmost importance for deriving the essence of democracy for the theory of CP. Nationalism has been absent in MCCA and the evolution of society. BFN highlights nationalism theoretically and Habermas's political writings resolve around nationalism as a milestone. (This thesis ties all different aspects of his work together to reconstruct his post national project.) By mobilising the individual moral agent for autonomous reflexive reasoning, CP and Habermas both build a form of communicative identity in new terms. Baynes points out to identity without offering the mosaic that I do in this thesis. It is only through this re-settlement of what's already there in Habermas can we have a new idea. This idea is CP.⁴⁴

On democracy, Baynes singles out one of the most important arguments as the ideal of neutrality. Democracy finds itself in a position of facing a multiplicity of world views and competing cultural value judgements. The section on the Sociological Translation of the Concept of Deliberative Politics in this thesis raises the same issue. Baynes is specifying the ideal of neutrality as one of the most determining arguments of the notion of democracy. In this sense, my approach to democracy is compatible with that of Baynes with respect to the main arguments we have highlighted as the most fundamental ones throughout this piece of work. Baynes summarises the ideal of neutrality succinctly: "Is the claim that the liberal state should not act in ways intended to promote a particular conception of the good defensible when, on the one hand, the diversity of distinct cultures and life-forms is increasingly threatened by global markets and, on the other, the ethical foundations of liberal society are being called into question by non-liberal regimes?" (Baynes, 1995, p.202). The notion of globalisation and economic interdependence which has been highlighted as the push factors towards another level of identification formerly in this thesis here emerge in Baynes's interpretation of neutrality. While Baynes does not dedicate separate space to the economic factors as I do the discussion of Kant, Cosmopolitanism and Human Rights in this thesis, he swiftly categorises the economic factors as factors which directly cause increased contact and an imposed level of standardisation between different cultures. CP, I argue, seeks to find the middle grounds in multiplicity of world views and establish itself as a functional and realistic notion of political identification. Habermas's ideal of liberal neutrality, in this account of democracy, is one of the tools that the CP uses in this direction.

⁴⁴ For the purposes of this thesis, I skip the Philosophical Discourse of Modernity only in this re-evaluation. That work in particular requires more attention for a project bearing CP in mind. Modernity is very important for the individual identity but Habermas leaves a large gap between nationalism and modernity in his account. This distance he placed between nationalism and modernity makes it harder to build CP while including Habermas's currently existing (discourse theoretic model of) modernity.

Baynes chooses to use the term ‘the principle of democracy’ and its relationship with a system of rights. The principle of democracy is the following: “Only those juridical statutes may claim legitimate validity that can meet with the agreement of all legal consecrates in a discursive law-making process that in turn has been legally constituted” (Habermas, 1998, p.141, Baynes, 1995, p.208). Baynes adds that the principle of democracy is not subordinate to a system of rights. He adds that “the system of rights must be developed in a politically autonomous manner by citizens in the context of their own particular traditions and history (Baynes, 1995, p.212). Therefore, the principle of democracy states that the validity of juridical statutes are limited with the legal community which is supporting this legal system in a democratic society. Citizens who are authors of laws are in turn the addressees of laws. Democracy, in this vein, is integral to law and vice versa. While it is the right of the citizens to determine their future collectively in light of reason and reflexive collective thought processes, this right, as part of a system of rights, is co-original with democracy and not superior to it.⁴⁵ In this reading, to simplify the matters for the sake of the argument, the citizens right to deliberate their future stands in equal positioning with their obligation as legal consociates to participate in the democratic process. Their own particular traditions determine the way in which the citizens will shape the system of rights. Their particular traditions, that is the conventional ties of kinship and components of identity formations, tie into the specific interpretation of system of rights. A level of political autonomy, that is having competent participants in the public sphere, is the condition of developing a sui generis collective identity and system of rights. These in turn impact the democratic tradition of a given society. Competent participants living in a regime which is ideal has connotations both for participants in the regime and the regime itself. The system of rights shape the buffer zone, the supporting environment of discourse theoretic democracy. The democratic regime relies on having participants who reached a high level of autonomy allowing them to question the conventional forms of kinship.

This high level of autonomy starts off with seemingly natural attachments to the carers at birth. These attachments, like the place of birth, is arbitrary. One cannot change one’s parents neither the place or the country one is born in. At the end of year one, human infant takes a great step into socialisation through acquisition of language. It is with this tool that the infant navigates through the socialisation process extending to Kohlberg’s stage six. I argue that HR ought to precede democracy in a pure theory of attachment: the sixth stage is universal ethical principle orientation for Habermas and Kohlberg. Universality is offered through HR more so than democracy. Both Human Rights and democracy have cosmopolitan connotations, but democratic participation relies on citizenship status much more than human rights relies on any delimited jurisdiction. In this sense, I would like to hold onto an optimistic reading of history: Human rights are quite a few centuries younger than democracy. It is because the problems about democracy have been critically evaluated by humanity that we (all) moved forward a new *ideal*. Human

⁴⁵ Co-originality: This is a term mostly frequented in translation from German. In translatin, the lack of equivalents in the target language may make target text more source language sounding. ‘Co-originality’ is one of these terms. I suggest ‘co-existence- and ‘interdependence’ as possible alternatives for English usage.

rights are this ideal. In CP, it maintains democracy as its background but only in the discourse theoretic manner. I leave it open to adjust this in empirical implementation.

Baynes is discussing the notion of a two-track model of democracy in his reconstruction of Habermasian democracy. In the previous section of this chapter of this thesis, I have benefited from the distinction Habermas draws between formal and informal publics. Here Baynes clearly defines the weak publics as the informally organised public sphere ranging from private associations to the mass media located in 'civil society' (Baynes, 1995, p.217). The strong public, in his reading, are the parliamentary bodies and other formally organised institutions of the political system (ibid). Therefore, the weak public where the informal process of opinion and will formation takes place is the societal aspect of the two track models of democracy. The channel within which the 'weak' or the 'informal' opinion forms itself is the channel which is removed from the formal structure of the government. I argue that the conventional ties of kinship forming particularistic attachments take place in the weak strand of two track models of democracy. The governmental bodies, on the other hand, can refer only to the legal aspect of a theory of political identification in CP. CP, in this reading, allows the conventional ties of kinship to restructure themselves in a way which seeks to exclude the irrational aspects of identity formation. The idea that people who are immediately surrounding us is the only group of people about whom we should care takes part of this conventional form of identification. Bringing the outermost circle of the self closer to the innermost one, as was discussed previously in this chapter, requires this unconventional and/or post conventional restructuring of the political and the social self in a way which irrationality about the priorities of whom to care about in our political decision making processes is diminished. CP seeks to have an amalgamation of the self and the other, of the national and the cosmopolitan, of the rationally defined universal principles of human rights and democracy together with the particularistic attachments of national and other group identifications. Baynes refers to the exclusion of irrational tendencies as such: "The aim of a deliberative politics is to provide for the transformation of preferences in response to the considered views of others and the 'laundering' or filtering of irrational and/or morally repugnant preferences in ways that are not excessively paternalistic" (Baynes, 1995, p.216). Therefore, the weak public sphere is brought closer to the strong public sphere that is more rational. In the theory of CP, I argue that the strong public sphere is not only the governmental body but also the universalistic and legalistic principles upon which political attachment is restructured upon. CP seeks to have a balance between conventional and unconventional ties of identification. The two track models of democracy allows me to interpret this duality from a point of view of identity. The bureaucratic formations of the strong public sphere, in the theory of CP, represent the ideals which are sought to be realised through discursive processes of opinion and will formation both in the formal and informal channels of democracy. "A rationalised lifeworld needs to meet the wild, anarchic and unrestricted weak public sphere 'halfway'" (Baynes, 1995, p.218).

Mark Warren brings together discourse and the self together. In his work titled 'The Self in Discursive Democracy', he attributes a special role to speech acts. He revisits Habermas's approach to speech acts in Legitimation Crises and focuses on the authority-

generating properties of speech` (White, p.170). Habermas's approach to discourse is closely linked with the setting which have other forms of power and authority at bay. The reassurance provided by experience and action are context bound; and should, therefore, be removed from a universalistic approach to communication. Discourse, in this sense, is inextricably linked with communication. These two together link with democracy. Warren envisages discourse as a matter of creating understandings. Social relations and political relationships differ from one another in that the latter requires negotiation for reaching understandings (White, p.171). In that sense, democratic politics require these explicit negotiations rendered possible through discourse.

Any discussion ought to have a critical approach toward the validity claims asserted by the participants in any given collective discourse. In the interpretation of Constitutional Patriotism, the discourse can have both micro and macro levels. The national, supranational and cosmopolitan levels of constitutional patriotism help to define the discursive structure. Engaging in discourse has a psychological dimension too. Warren refers to the therapeutic nature of talking for the individual health: he argues that the aim of the therapist is to encourage the patient to have a conversation with himself, not to prescribe a cure (White, p.192). Discourse evolves at different contexts of communication. The individual and the collective levels of communication require different theorisation for talking, I argue. Emotions at different levels of intimacy would manifest challenges or repressions at varying degrees. The observation of this is part of the communicative process.

Bibliography:

Arendt, H. (1976) *Origins of Totalitarianism*. London: A Harcourt Book.

Appiah, K. A. (2005) *The Ethics of Identity*. New Jersey : Princeton University Press.

- Asmus, R.D. (1991) *German Unification and Its Ramifications*. Santa Monica: Rand.
- Bion, W.(1989) *Learning From Experience*. New York: Other Press LLC.
- Brown, W. (2008) *Regulating Aversion*. New Jersey: Princeton University Press.
- Cronin, C. (2003) 'Democracy and Collective Identity: In Defence of Constitutional Patriotism' *European Journal of Philosophy*, 11 (1).
- Crouch, C. (2013) *Post-Democracy*. Cambridge: Polity.
- Crouch, C. (2017) *Can Neoliberalism Be Saved From Itself?* London: Social Europe Edition.
- Dahl, R. A. (2002) *How Democratic Is The American Constitution?* New Haven: Yale University Press.
- Descartes, R. (1997) *Key Philosophical Writings*. Hertfordshire: Wordsworth Editions Limited.
- Delanty, G. (2000) *Citizenship in a Global Age*. Berkshire: Open University Press.
- Delanty, G. (2003) *Community*. London: Routledge.
- Delanty, G., Rumford, C. (2005) *Rethinking Europe*. London: Routledge.
- Deleuze, G., Guattari, F. (2005) *Qu'est-ce que la Philosophie?* Paris: Minuit
- Descombes, V. (2013) *Les Embarras de l'Identité*. Paris: Gallimard.
- Elliot, T.S. (2009) *Selected Works*. London: Faber Faber.
- Fleury, L. (2009) *Habermas et La Chute du Mur du Berlin*. Editions Kimé.
- Grimm, D. *Integration by Constitution*.(2005) *International Journal of Constitutional Theory*. Oxford University Press and New York School of Law: Oxford and New York
- Giddens, Anthony. 1972. *Emile Durkheim*. Cambridge: Cambridge University Press.
- Gaudreault-Des Biens, Jean-François, *The Fetishism of Formal Law and the Fate of Constitutional Patriotism in Communities of Comfort: A Canadian Perspective* (March 9, 2009). *TIES THAT BIND. ACCOMODATING DIVERSITY IN CANADA AND THE EUROPEAN UNION*, pp. 301-330, J.E. Fossum, P. Magnette, & J.Poirier, eds., P.I.E. Peter Lang, 2009.
- Fanon, F. (1961) *The Wretched of the Earth*. Harmondsworth: Penguin.
- Fine, R. and Smith, W. (2003) 'Jürgen Habermas's Theory of Cosmopolitanism' *Constellations* 10 (4).
- Fine, R. (2007) *Cosmopolitanism*. London: Routledge.

- Freud, S. (1933) *New Introductory Lectures*. London: The Hogarth Press and the Institute of Psychoanalysis.
- Freud, S. (2006) *The Psychology of Love*. London: Penguin.
- Freud, S. (2010) *Civilization and Its Discontents*. CT: Martino Publishing.
- Furet, F., Richet, D. (2010) *La Revolution Française*. Paris: Pluriel.
- Held, D. (2008) *Global Covenant*. Cambridge: Polity Press.
- Habermas, J. (1984) *The Theory of Communicative Action: Reason and the Rationalization of Society*. Cambridge: Polity Press.
- Habermas, J. (1989) *The New Conservatism*. MA: MIT Press.
- Habermas, J. (1989) *The Structural Transformation of The Public Sphere*. Cambridge: Polity.
- Habermas, J. (1990) *Moral Consciousness and Communicative Action*. Cambridge: Polity Press.
- Habermas, J. (1991) *Communication and The Evolution of Society*. Cambridge: Polity Press.
- Habermas, J. (1992) *Postmetaphysical Thinking*. Cambridge: Polity Press.
- Habermas, J. (1993) *Justification and Application*. Cambridge: Polity Press.
- Habermas, J. (1994) *Knowledge and Human Interests*. Cambridge: Polity Press.
- Habermas, J. (1997) *A Berlin Republic*. Nebraska: University of Nebraska Press.
- Habermas, J. (1998) *Between Facts and Norms*. Oxford: Blackwell Publishers.
- Habermas, J. (2005) 'Concluding Comments on Empirical Approaches to Deliberative Politics' *Acta Politica* 40 (384).
- Habermas, J. (2009) *Europe: The Faltering Project*. Cambridge: Polity.
- Habermas, J. (2010) 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' *Metaphilosophy* 41(4)
- Habermas, J. (2012) 'The Crises of the European Union' Cambridge: Polity.
- Hunt, L. (1996) *The French Revolution and Human Rights*: Massachusetts: Bedford/St. Martins.
- Hunt, L. (2007) *Inventing Human Rights*. New York : Norton.
- Jung, Carl. (2001) *Dreams*. Routledge: London
- Jung, Carl. (1968) *Man and His Symbols*. Turtleback books: St. Louis

- Kant, I. (1795) *Perpetual Peace*. Filiquarian Publishing.
- Kateb, G. (2010) *Patriotism and Other Mistakes*. New Haven: Yale University Press.
- Klein, Melanie. (1998) *Love, Guilt and Reparation*. London: Vintage Classics
- Klein, Melanie. (1998) *Love, Guilt and Reparation*. London: Vintage Classics
- Kleingeld, Pauline. (2013) *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship*. Cambridge: Cambridge University Press.
- Kohlberg, L. (1981) *The Philosophy of Moral Development*. New York: Harper and Row.
- Lordon, F. (2013) *La société des affects: Pour un structuralism des passions*. Paris: Seuil.
- Lordon, F. (2010) *Capitalisme, désir et servitude*. Paris: La Fabrique éditions.
- Marx, K. (1991) *Capital*. London: Penguin Classics.
- Mead, G.H. (1934) *Mind, Self and Society*. London: University of Chicago Press.
- Mendelsohn, J. (1990) German Unification and European Security. *Arms Control Today*, Vol. 20, NO.2. pp. 24-26.
- Montefiore, A. (2011) *A Philosophical Retrospective: Facts, Values and Jewish Identity*. Columbia: Columbia University Press.
- Mouffe, C. (1999) *The Challenge of Carl Schmitt*. London:Verso.
- Mouffe, C. (2013) *Agonistics*. London: Verso.
- Muller, J.-W. (2000) *Another Country*. New Haven and London: Yale University Press.
- Muller, J.W. (2007) *Constitutional Patriotism*. New Jersey : Princeton University Press.
- Muller, J.W. 2007. 'Three Objections to Constitutional Patriotism' *Constellations* 14 (2).
- Muller, J.W. (2008) 'A General Theory of Constitutional Patriotism', *International Journal of Constitutional Law* 6 (1).
- Muller, J.W. (2013) *Contesting Democracy*. New Haven: Yale University Press.
- Mushaben, J.M. (2017) *Becoming Madam Chancellor*. Cambridge: Cambridge University Press.
- Neuburger, Robert. (2014) *Exister*. Paris: Payoff
- Nussbaum, M. (2002) *For Love of Country: Debating the Limits of Patriotism*. MA: Beacon Press.
- Nussbaum, M. (1990) *Love's Knowledge*. Oxford: Oxford University Press.
- Noiriel, G. (2007) *A Quoi Sert L'Identité Nationale?* Paris: Broché

- Okin, S.M. (1999) *Is Multiculturalism Bad for Women?* New Jersey: Princeton University Press.
- Orwell, G. (1984) *Why I Write*. London: Penguin.
- Pasquino, P. (1998) *Sièyes et L'Invention de la Constitution en France*. Paris: Editions Odile Jacob.
- Pensky, M. in White, S.K. (1995) *Cambridge Companion to Habermas*. Cambridge: Cambridge University Press.
- Piaget, J. Inhelder, B. (1974) *La Psychologie de l'Enfant*. Paris: PUF.
- Power, F.C., Higgins, A., Kohlberg, L. (1989) *Lawrence Kohlberg's Approach to Moral Education*. New York: Columbia University Press.
- Rawls, J. (2002) *The Law of Peoples*. Cambridge : Harvard University Press.
- Rawls, J. (2011) *Political Liberalism*. Columbia: Columbia University Press
- Rawls, J. (1998) *A Theory of Justice*. Massachusetts: Harvard University Press
- Renan, E. (1997) *Qu'est-ce Qu'une Nation?* Paris : Mille et Une Nuit.
- Robyn, R. (2005) *The Changing Face of European Identity*. Oxon:Routledge
- Rousseau, J.J. (1762) *The Social Contract*. Hertfordshire: Wordsworth Editions Limited.
- Sartre, Jean-Paul. (1983) *La Nausée*. Gallimard: Paris.
- Scharpf, F.W. (2014) *After The Crash*. Max Planck Institute for the Study of Societies: Cologne.
- Schwartz, A. (2011) 'Patriotism or Integrity? Constitutional Patriotism in Divided Societies' *Oxford Journal of Legal Studies*, 31 (3).
- Sewell, W.H. (1994) *A Rhetoric of Bourgeois Revolution*. Durham and London: Duke University Press.
- Solomon, Robert. (2006) *About Love*. Hackett Publishing: USA.
- Specter, M. (2010) *Habermas*. New York: Cambridge University Press.
- Streeck, W. (2016) *How Will Capitalism End*. London: Verso.
- Taylor, C. (1994) *Multiculturalism*. New Jersey: Princeton University Press.
- Taylor, C. (1992) *Sources of The Self: The Making of The Modern Identity*. Cambridge: Harvard University Press.
- Taylor, C. (ed.) 1994. *Multiculturalism*. Princeton University Press: New Jersey .
- Taylor, Charles. (1989) *Sources of the Self*. Cambridge : Cambridge University Press.

Touraine, A. (2000) Can We Live Together? Oxford :Polity.

White, S. (1995) The Cambridge Companion to Habermas. Cambridge: Cambridge University Press

Winnicott, D.W. (1972) The Maturation Processes and The Facilitating Environment. Redwood Press: Wiltshire.

Winnicott, D.W. (1990) Home is Where You Start From. London: Penguin

Winnicott, D.W. (2005) Playing and Reality. London: Routledge

Winnicott, D.W. (1991) The Child, The Family and the Outside World. Middlesex: Penguin.

Varoufakis, Y. (2016) And The Weak Must Suffer What They Must? London: Vintage.

Viroli, M. (1993) For Love of Country: An Essay on Patriotism and Nationalism. Oxford: Oxford University Press.

Zizek, S. (1991) For They Know Not What They Do. London: Verso.

<https://www.centerforsecuritypolicy.org/1990/11/09/reunified-germany-the-new-europe-opportunities-and-challenges-2/>