

**Verfassungspatriotismus**  
**Wrong Concept, Right Country**  
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Only a postwar West German – in this case the political scientist Dolf Sternberger – could have invented the idea of *Verfassungspatriotismus*, “constitutional patriotism.” And why? A quick answer is given by another German thinker, Max Horkheimer on the why and wherefore of this unwieldy (at least in English) concept: “No civilized country,” he opined in 1959, “has as little reason to celebrate patriotism as does Germany, and nowhere have its citizens questioned patriotism less than in Germany, where it has caused the very worst. German patriotism is so dreadful because it is so unjustified.”<sup>2</sup>

This was West Germany’s founding myth, at least from a left-liberal perspective. The past was sheer evil, and the evil had fed on patriotism/nationalism gone mad – to the extremes of chauvinism, racism and annihilationism. Note how, structurally, this founding myth resembles the American one: The past also had been evil, an endless string of oppression, injustice and tyranny. But it would be transcended in America where free citizens praying unhindered to their God would turn their back on a corrupt past and build a “cittie uppon a hill” or a “New Jerusalem,” two terms that both denote the same, an ideal community. Note how the theme of the Pilgrims replicates another one, an ur-myth of humanity (at least of its Judeo-Christian part): revolt against Pharaonic slavery, Exodus, freedom regained, redemption in the Promised Land.

The common denominator of all three founding myths is transcendence: the passage from an insufferable yesterday to a bright and shiny tomorrow. In the German case, though, the evil to be overcome had a very special quality: It was not done *to* the Germans, as it was done to the Israelites and Puritans by wicked Pharaohs both ancient and modern. It was done *by* the Germans. This is the implicit message of the Horkheimer quote, and it emerges, much more faintly, in Sternberger’s original essay on *Verfassungspatriotismus*: “Our sense of nationhood (“Nationalgefühl”) remains wounded, we don’t live in a Germany that is whole. But we live in a constitution that is whole, and this is in itself a kind of a Fatherland.”<sup>3</sup> Another inkling the evil

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<sup>2</sup> Max Horkheimer, „Hinter der Fassade“ in Bundeszentrale für politische Bildung, ed., *Nation Nationalismus, Nationale Identität* (Bonn: Bundeszentrale für politische Bildung, 1988), p. (German: „Nirgendwo in zivilisierten Ländern ist sowenig Grund zum Patriotismus wie in Deutschland, und nirgendwo wird von den Bürgern weniger Kritik am Patriotismus geübt als hier, wo er das Schlimmste vollbracht hat...Der Patriotismus in Deutschland ist so furchbar weil er grundlos ist.“

<sup>3</sup> “Verfassungspatriotismus,” *Frankfurter Allgemeine Zeitung*, 23 May 1979, p. 1. (written on the occasion of the 30th anniversary of the West German Basic Law). The term was first used in a previous article in the *FAZ*, on 27 January 1970, and it re-emerged in much longer piece, also named “Verfassungspatriotismus,” in the *FAZ* of 31 August 1982, a reproduction of Sternberger’s address in the Bayerischer Landtag on 29 June 1982. This piece from which all subsequent quotes are taken, will be cited as “Verfassungspatriotismus II.”

wrought by Nazism can be found in an aphorism from La Bruyère, whom Sternberger quotes approvingly: “There is no fatherland in despotism.” Sternberger adds: “Once the air of liberty has been sucked out, the voice of the fatherland can no longer be heard.”<sup>4</sup>

So *Verfassungspatriotismus*, hereafter abbreviated VP, is above all a reactive concept, lodged in a specific time and place, namely postwar Germany. The reactive component, though it is limned softly, if not shamefully by Sternberger, is not hard to explain. Those normal elements that go into the making of a national identity/consciousness were tainted with the blood of millions and so thoroughly discredited in the case of postwar Germany

Race or ethnicity – the *volk*? No way, not after the orgy of racist nationalism unleashed by the Nazis. Place – the German lands, on which so much of the idea of Deutschland was grounded? West Germany was but a sliver of the original Reich. Gone was practically half the former country – absorbed by the Soviets, by the Poles and by Bonn’s communist counter-state, the German Democratic Republic. History? That, too, was hardly a source of pride from the vantage point of a post-war West German.

Which history was there to celebrate? Hitler’s Twelve Year Reich was a secular Anti-Christ, and thus absolutely no object of emotional attachment. The Weimar Republic? Weimar was a nice try at democracy, but it had failed miserably both as democracy and economy and thus provided a spring board for Nazi totalitarianism. The *Kaiserreich*? No so great either, this haven of authoritarianism, racism and expansionism – especially not after the Empire had lost World War I and then collapsed into chaos and revolutionary mayhem. It is hard to love a loser, especially since in the left-liberal imagination the Wilhelmine Empire was practically a precursor of the Third Reich, as vitriolically satirized in the highly influential novel *Der Untertan*, “The Subject,” by Heinrich Mann.

Bismarck? He was a national hero, having unified 25 states and mini-states into the Second Reich. But Bismarck was also tainted – this authoritarian Junker who had suppressed the liberties of the rising middle classes while propping up imperial and aristocratic power. Prussia? Though past generations had learned to venerate the Hohenzollerns, especially Frederick the Great, Prussia was suddenly a broken mirror. It had been abolished by the four victorious powers of World War II as ur-source of all evil. Besides, as German kids would soon learn from their post-Nazi teachers, Prussia was the scourge of liberty, having suppressed the revolutions of 1830 and 1848. History, in short, was no solace either.

What was left? Culture, of course. Beethoven and Brahms, Hölderlin and Händel, Goethe and Lessing, Heine and Börne, Einstein and Planck, Thomas Mann and all those greats who had written the first chapter of the cinematographic canon: Papst, Lang, Billy Wilder... But wait a minute: Einstein was a Jew, and he had been driven out. Heine and Börne were Jews, too, though Heine had converted. These avatars of coming modernity weren’t quite, how shall we put it, *German*. Freud and Wittgenstein, Germans in the wider sense of a culture that encompassed Vienna and Prague, had made their mark not in German, but in Anglo lands. Thomas Mann? As German as it gets, but an ambivalent one, what with his anti-democratic leanings after World War I and his conversion to liberal democracy during his American exile. The film makers? Gone to Hollywood.

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<sup>4</sup> “Verfassungspatriotismus II.”

There were too many broken strands of too many hues in the tangled web of German culture to deliver a firm foundation for a new national identity. So it was arguably pre-ordained that somebody like Sternberger, and later Jürgen Habermas, would bestride the stage. They came with a precious gift in hand: a patriotism, or collective identity, unsullied by all those ingredients of nationhood and nationalism like space, ethnicity and culture, that defined national identity and pride in other countries, but had become tainted, if not radioactive in the German case.

Constitutional Patriotism had such a nice ring to it because it lacked all traces of toxicity. It was as immaculate as a freshly wiped blackboard and it was practically a-historical. It invoked the transcendence of a new beginning like the Promised Land bequeathed to the Puritans and Israelites. An additional advantage, according to Jürgen Habermas (who stood way to the left of Sternberger), was that VP made for a cozy relationship with three of the four World War II victors, who had suddenly turned protectors and parole officers: “Constitutional Patriotism is the only patriotism that will not alienate from the West.”<sup>5</sup> Look, America, Britain, and France – we are like you.

In short, VP offered a postnational and posttraditional identity. But what did it all mean? Sternberger, the inventor of VP, remained sibylline. He keeps quoting Thomas Abbt, a young author of the 18<sup>th</sup> century, e.g.:

“If I join a state by dint of birth or voluntary decision, whose salutary laws I accept, I shall call it Fatherland – on condition that these laws do not take more from my liberty than necessary for the good of the State.”<sup>6</sup>

So here we have a key element of VP: obligation to the state as long as it maximizes freedom. Very nice, absolutely no debate. What else? Sternberger avers that by “constitution” he does not mean a “juridical document as such,” like the West German Basic Law with its (then) 146 articles. Rather, he means the “liberal-democratic order” as “object of attachment or loyalty.” This “order,” would “exclude all arbitrary or coercive rule” while including the “Rechtsstaat” (more or less: rule of law), self-determination and majority rule bounded by the principles of freedom and equality. Then he runs down the list: individual freedoms, representative institutions, checks and balances, independent judiciary, rules-bound alternation in power, civic participation, civil society.

Having enumerated these mainstays of the liberal-democratic state, Sternberger asks the obvious: “Can such an entity elicit attachment, affections and patriotism?” His answer: “Actually, this is a rhetorical question. History has answered it long ago, though in other regions than in our own.” He lists the two obvious examples. One is Switzerland, which “is not a nation, but held together by her constitution.” No. 2 is the United States, of course. “She is unified by nothing but her constitution and the patriotic feelings, which are bestowed on this constitution.”

So the constitution is the object of identification, affections and, one supposes, obligation. There is some truth to this, but hardly the whole truth. The truth is that Swiss and American patriotism today does not rest on a common ethnicity, let alone race, or religion or even on language (in the case of the quadrilingual Swiss). It is also true that American nationhood is defined in terms of documents like the Declaration of Independence, the Constitution and the Gettysburg Address. By signing on to them, so to

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<sup>5</sup> Jürgen Habermas, „*Apologetische Tendenzen*,“ in *idem*, *Eine Art Schadensabwicklung* (Frankfurt: Suhrkamp, 1987), p. 123.

<sup>6</sup> *Verfassungspatriotismus II.*”

speak, anybody, whatever his color, creed or bloodline, can become an American citizen. “Signing on” is done by pronouncing an oath of naturalization:

“I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign ... state... of which I have heretofore been a... citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States... and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.”<sup>7</sup>

All true, and yet this conception ignores some basics which, as we shall see, collide with the all too abstract idea of “documentary” patriotism. One is an obvious logical conundrum. In a world with more than one liberal-democratic order, VP cannot deliver a reason for attachment to a particular country, let alone for obligation to that state. Unless one believes in national polygamy – that a person can love many countries and encounter no conflict between these attachments – VP becomes meaningless. Since Germany, Britain or America are all liberal democracies, why should I prefer one to the other? Why should I feel obligated to one or the other? “Patriotism” comes from “patria.” So why this rather than that “patria,” which is Latin for “fatherland?”

VP, to put it unfairly, is a permit for PP – “Promiscuous Patriotism.” Now, there is nothing wrong with “rootless cosmopolitanism” (which Russians still use to accuse Jews of lacking allegiance to the *rodina*), if you are a committed cosmopolitan or “one-worlder.” In that case, you simply don’t believe in the nation-state. But, by definition, you cannot be a patriot, which implies selective loyalties and allegiances. So a patriot must choose to whom to accord his feelings, and logically, that cannot be done in terms of a political order shared by many countries.

There is also a historical problem with the “documentary” conception of patriotism/national identity when applied to the United States: It does not hold water. While Americans define their national identity in terms of a “creed,” that creed does not come out of nowhere; it is not just a pallid broth cooked up by Locke, Montesquieu, Hutcheson and Hume that any country could ingest. Samuel Huntington explains why this isn’t so:

“America is a founded society created by seventeenth- and eighteenth century settlers almost all of them came from the British Isles. Their values, institutions and culture provided the foundation for and shaped the development of America in the following centuries. They initially defined America in terms of race, ethnicity, culture, and most importantly religion. Then, in the 18<sup>th</sup> century, they also had to define America ideologically to justify their independence from [Britain].... By the latter years of that century, the ethnic component had been broadened to include Germans, Irish and Scandinavians. By World War II and the assimilation of Southern Southern and Eastern immigrants, ethnicity virtually disappeared as defining component of national identity. So did race [after the civil rights legislation of the 1960s]. As a result, by the 1970s, American identity was defined in terms of culture and the Creed.”<sup>8</sup>

True, America was founded on the basis of the “Creed”, consisting of liberty, equal-

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<sup>7</sup> 8 U.S. Code 1448.

<sup>8</sup> Samuel P. Huntington, *Who Are We? The Challenges to American Identity* (New York: Simon and Schuster, 2004), p. 38.

ity, democracy, individualism, rights, rule of law and private property. These were the bricks, so to speak. But the mortar that held the American nation-state together was Anglo-American Protestant nationalism that was racial, ethnic, religious and ideological. That mortar was unique and separate, and not a kind of universal constitutionalism. Over time, America has become a “universal” nation in the sense that it embraces many religions, cultures and ethnicities. But it remains “exceptional” in the sense that there is a peculiarly *American* political culture, ethos and sense of history passed down from the earlier Americans to successive immigrant groups.<sup>9</sup> These have shaped an identity that proclaims “We are Americans,” and not “we are constitutional patriots.”

From all this flows a sense of obligation that makes Americans fight in wars and share their wealth with fellow-Americans, and not with others (Americans give about \$ 350 billion in charity). This is why fire stations fly oversized American flags and policemen sew a replica on their sleeves. The flag does stand for the Constitution, but surely in a remote and abstract way. The far more immediate and dominant message, refers to powerful and inchoate feelings of affection and pride, of “we” and community. What about the Swiss who are bound by neither language, nor ethnicity nor religion? To begin with, one should never generalize from small countries on the periphery of the drama of nations. But at least one item is as obvious as it is in the American case: a fierce sense of nationalism and exceptionalism that is not based on constitutional principles alone.

Constitutional Patriotism is not a theory of allegiance, but almost a contradiction in terms. Hence, Jürgen Habermas’ attempt to salvage VP from logical ruin does not really work. He writes: “Contrary to widespread misunderstanding, VP means that citizens do not accept the principles of the constitution simply on the basis of abstract content, but in the context of their peculiar national history.”<sup>10</sup> Behind this convolution lurks a simple insight: people do not draw their identity from universal values and procedures, but from specialness deriving from the usual suspects of national consciousness: history, culture and difference.

And yet. Writing about nationhood, national identity and nationalism at the beginning of the 21<sup>st</sup> century, at least in the democratic West, has a very different flavor than it had during the Age of Nationalism, circa 1789-1945. There is a strong whiff of post-nationalism in the air. What has changed?

One, the fires of nationalism that used to drive millions into the trenches have burned out; mass-based bloodthirstiness is no longer part of the Western ethos. Second, the intelligentsia, once the ideological engine of nationalism, has sputtered and then reversed directions: intellectuals today are anti-nationalists. Third, the very idea of “Americanness” or “Germanitude” has weakened – to the point where significant segments of the political class will feel reluctant, if not ashamed, to wave such a flag (*Leitkultur*, “dominant culture,” is the latest German moniker) as driver of assimilation. An endless debate in the West, including the United States, revolves around the extent to which immigrants should be forced to accept the cultural mores, even the language, of their new homelands. (In Germany, the word “immigrant” – *Einwanderer* - is now shunned in favor of *Migranten*, meaning wanderers who may, or may not, stay and

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<sup>9</sup> Here is a parallel here with the Jewish „creed.“ Each year at Passover, which celebrates the Exodus, historical memory is passed on to the children during the seder, the festive meal. This is how we suffered, how we escaped, how we became a people....

<sup>10</sup> „Vorpolitische Grundlagen des demokratischen Rechtsstaates?“, idem, *Zwischen Naturalismus und Religion* (Frankfurt: Suhrkamp, 2005), p. 111-

should thus not be asked to relinquish their cultural identity.)

Fourth, the postmodern reluctance to keep the admissions price of membership high goes hand in glove with a larger distaste for “Westernism” or “Europeanism.” Hence, the epithet “Eurocentrism,” a term that evokes a long and murderous history of colonization, racism and oppression. Finally, the postmodern or postnational state tends to emphasize rights and entitlements over obligations and sacrifice. Political rhetoric is now dominated by the language of disbursement – to groups and individuals (subsidies, tax credits, and claims enforceable in court). The language of sacrifice was probably heard last in wartime Britain, as uttered by Winston Churchill (“blood, sweat and tears”).

In the Western world that stretches from Berlin to Berkeley, the integralism that today dominates, say, the Muslim world, is gone and passé. Does this mean that we are all constitutional patriots now? No, that has not come to pass.

First, some Western nations are more nationalist than others. Two come to mind immediately: America and Israel, strangely two countries whose nationality is totally multiethnic and firmly based on documents – be it the Constitution or the Hebrew Bible. (The latter should not be confused with religion as glue of nationhood as the majority of Israelis is secular.) To sharpen the paradox: The less a nation defines itself in terms of ethnicity, race or bloodline, and the more it does so in terms of a “Creed,” the stronger its sense of identity and nationalism

Second, the longer a nation has had its nationality repressed, the stronger its nationalism. This pertains to Europe’s former East Bloc members, as well as the states and statelets that have emerged from imperial domination by the Soviet Union and Yugoslavia. This is what Isaiah Berlin calls “bent-twig” nationalism.

Third, where nationalism re-emerges, it is not the “Deutschland über alles” type - aggressive and expansionist - , but *defensive*. Defensive nationalism is a feature of rich countries which act as a magnets for poor or persecuted foreigners who seek to secure their livelihood or their lives. These are resented as aliens who threaten the host countries identity and resources. Defensive nationalism is also directed against abstract enemies: outsourcing, off-shoring and imports, in short, against globalization.

This said, it is still clear that the Age of Nationalism is over in the West, and hence this peculiarly German idea of VP ironically may have been ahead of the times. The first significant straw in the wind was *Afroyim v. Rusk*, where the Supreme Court in 1968 held that the government cannot take citizenship from a naturalized American just because he has voted in a foreign election, served in a foreign army or even held high office in another country. And this in spite of the exclusivist naturalization oath cited above on p. 4.

Since then, nationality laws in Western countries have been successively loosened and diluted – to the point where even total blood-line countries like Germany now bestow naturalization as result of mere residence (plus a simple citizenship test). Dual-nationality, once a non-no, is not quite routine, but expanding. The trend has been well-described by Stanford scholars Gerhard Casper and Stephen Krasner: “Individuals may hold multiple passports. Their affection may be torn among a number of different polities. In a globalized society, however, the most skilled with gravitate toward public spaces in which they can exercise their talents.”

This is the essence of postmodernity: Anything goes, anybody can go anywhere because talent beats territory. And because Western states can no longer demand exclusive allegiance from their inhabitants. What shall we call this? Certainly not constitutional, but conditional patriotism. Having argued postnationalistically, the two authors close on an ambivalent note, which is actually quite fitting: “Over time those who stay will internalize at least core American values, individualism, democracy, and a free market – values that will have served their own individual self-interest as well.”

So, it is “core American values” – distinct and separate? Or is it the oldest definition of patriotism on the books, variously ascribed to Aristophanes and Cicero: *Ubi bene, ibid patria* – my fatherland is where I am doing well. If so, say ‘hello’ to the postnational (Western) state and to opportunistic, rather than constitutional patriotism.

