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Is democratic transnational sovereignty possible?
An analysis of sovereignty in the context of EU integration.¹

Abstract:

This paper examines how the Eurozone financial crisis of 2011 impacted the possibility of the future of European integration. It examines the reactions of *Europe's political elites to the crisis through the lens of Jürgen Habermas's philosophical work on the subject of transnational democratic sovereignty. More often than not decisions made in Brussels have been made on the basis of the national interest of member states and conducted in a highly undemocratic fashion. This has provoked a backlash in many member states by people unhappy with the constant lack of consultation on crucial matters, leading to fears that the world's first transnational democracy may in fact be giving way to the first 'post-democratic' form of political union.*

Keywords: *Transnational democracy, EU integration, pooled sovereignty, Eurozone crisis.*

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Introduction

The EU has long been considered an unfinished endeavour, however events such as the Eurozone financial crisis of 2011 and Prime Minister David Cameron's promise to hold an in/out referendum on Britain's future membership have prompted increasing scepticism about the viability of 'pooled sovereignty'. In recent years we have seen an increased polarization of popular opinion on the possibility of democratic transnational sovereignty. Some argue that what is required is deeper integration of the federalist kind; others a restoration of powers and decision making authority to member states. What has become apparent is that the current state of the relationship is unsustainable. Cohabitation, in other words, is no longer feasible - either we get married or we break up.

In his most recent work on the subject, Jürgen Habermas draws our attention to the same phenomenon: 'Defenders of the nation state are seeing their worst fears confirmed and are now barricading themselves more than ever behind the facades of state sovereignty... on the other side, the long-mute advocates of the 'United States of Europe' have again found their voice.' (Habermas, 2012, viii-ix). The major problem, however, for those who want to retreat to state sovereignty is that they have lost the support of the business and banking community whose interests are in both the common market and the single currency. The dilemma for those calling for a federal state is that they have not yet achieved the primary task of European integration. Thus their vague federalism becomes an arbitrary self-authorization of the European Council and an intergovernmental undermining of the democracy they claim to promote.

The main problem with the current set up, according to Habermas, is that in order to achieve cohesion in the European Union and prevent a collapse of the eurozone the leaders of the 'core' nations - France and

Germany – have taken it upon themselves to make decisions in an executive and highly undemocratic fashion.² Policy-making by the people and the citizens of Europe is all but non-existent. The reactions of Europe’s political elites to the financial crisis – regardless of whether they have called for repatriation or further denationalisation – has been primarily motivated by national interest and highly undemocratic in its approach. In fact it has often provoked a backlash in the member states by people unhappy with the constant lack of consultation on these matters. Habermas rightly fears that the ‘world’s first transnational democracy’ may be giving way to the first ‘post-democratic’ form of political union (Rabinbach, 2012,1).

The question with which we task ourselves therefore is, is the kind of transnational sovereignty that was envisioned for the EU indeed possible, and if it can be reconciled with democracy or does democratic sovereignty require the vehicle of the nation state?

Transnational Democracy

Habermas’ own proposition is worth extended consideration. He proposes a vision of Europe based not on the current form of ‘executive federalism’ but on ‘transnational democracy’. (Habermas, 2012, 12) He further argues that the EU of the Lisbon Treaty is closer to this model than might be assumed at first blush. And yet, he believes that the financial crisis and the problems besetting the single currency will not be resolved unless there is significant revision of the Treaty, which extends political decision-making capabilities beyond the nation state, and a significant change in mentality.

² ‘the politicians have long become a functional elite. They are no longer prepared for a situation in which the established boundaries have shifted, one which cannot be mastered by the established administrative mechanisms and opinion polls but instead calls for a new mode of politics capable of transforming mentalities.’ (Habermas, 2012, x)

His proposal is alluring. It envisions a Europe which has enough power and legitimacy to make and enforce political decisions but one which is robustly democratic and takes seriously both its citizens and its peoples. Although you would be forgiven for not noticing them due to the typically Habermasian language, there are distinct echoes of the American Founding. The challenge for the delegates of the Philadelphia Convention was to create a government that was both energetic and limited - one that charted a course between the twin perils of ineffectiveness and tyranny.³ The Europeans, in addition to balancing efficiency with freedom, must confront a further difficulty - building a union in which sovereignty is pooled or shared at the transnational level.

Transnational, at least as Habermas uses this term, ought to be distinguished from international, multinational or multicultural. Multinational or multicultural refers to people of different nationalities, ethnicities or cultures occupying the same space - i.e. city or state - but typically under a dominant mainstream culture or overarching national identity. America is a prime example of such a phenomenon. International, in this context, denotes cooperation between two or more states in a joint endeavour but without a sense of common identity. Here one may think of the United Nations or NATO. The essential feature of transnationalism however, is that it goes beyond the purview of the nation state; citizens deliberate on political decisions from a cosmopolitan standpoint or, at least, a 'europolitan' one.⁴

³ For more on this see Federalist Papers No. 10, No.51 and No. 47. In the general introduction to *The Federalist* Alexander Hamilton argues that the greatest problem the new United States were facing was their lack of efficacy, so great, in fact, that it threatened the Union's existence. 'After an unequivocal experience of the inefficacy of the subsisting federal government, [the people] are called upon to deliberate on a new Constitution of the United States of America.' Hamilton (2003, 27)

⁴ The full implications of a transnationalism are never explicitly stated by Habermas but one feature that is quite evident is that under this new political arrangement the conceptions and praxis for the distribution of state authority would be in the tradition of Kant's Federation of Free States as set out in *Perpetual Peace*. Kant (1996, 102)

Despite the financial crisis and the reactions of the political elites towards it, Habermas affirms his commitment to a cosmopolitan Europe, a democratic government that is uncoupled from the nation-state (Habermas, 2012, 14). Although it would require some significant alteration from its current form, the EU could still become a prototype for a 'constitutionally sanctioned cosmopolitan order.' (Rabinbach, 2012, 4) Moreover Habermas assures us that this is not a dream of a utopian visionary, but the credible proposal of a realist.⁵ But what is this cosmopolitan vision precisely?

Its most salient feature is that the order it wishes to build is based on international law, which is constructed on the foundation of universal values respecting human dignity and the upholding of human rights.⁶ This rule of law takes priority over any other interests or attachments. What does this mean for the European Constitutional Project? Habermas is enough of an idealist to imagine the incarnation of a cosmopolitan Europe as more than just a loose confederation of states or a restrained common market, but he is also enough of a realist to appreciate that the ambitious project of a unified Europe cannot take the form of a simple federal state.⁷ Some measure of autonomy is due to the member states, but it is afforded them quite reluctantly. According to Habermas the principle of subsidiarity would safeguard state autonomy but it would do so 'for the sake of protecting their historically shaped socio-cultural and regional distinctness' and not 'because these entities are needed as the guarantors of the equal freedom of citizens'. (Habermas, 2012, 42).

⁵ Habermas adds the important point that this uncoupling is not only possible, but it is increasingly necessary because of the systemic constraints on nations. In other words, issues such as finance, the environment and technology can no longer be dealt with at the level of the nation state. See Habermas (2012, 35).

⁶ The hallmarks of Kant's *Perpetual Peace* are unmistakable here. For Habermas' most sustained discussion on the issue see Chap. *The Concept of Human Dignity*. Habermas (2012, 71-100).

⁷ Habermas is the first to admit that member-states, and not populations, have been the drivers of the constitutional treaty. Moreover given the acute awareness of the different cultures and histories of the member states, the actualization of the cosmopolitan vision in Europe requires their continued autonomy.

Ultimately, Habermas envisions the EU as a stepping-stone, a necessary intermediate institution, to true cosmopolitanism – i.e. world citizenship. Given the ‘realistic’ nature of his utopianism, he admits that a world government would be very different from any other kind of union in that it would be necessarily non-delimitating. Its all-inclusive nature would necessarily limit the scope of its activity, but, he nevertheless assigns it with the following viable tasks: maintaining international peace and internal order within states, the enforcement of human rights and the carrying out of humanitarian interventions. (Habermas 2012, 63 and Habermas 2009, 109-129).

Practical considerations aside – and these are not insignificant – there are serious questions about the desirability of such an arrangement. The cosmopolitan vision as presented above works on the assumption of the universality of human rights. It repudiates cultural exceptionalism.⁸ But whilst it is clear that many countries simply use the concept of national sovereignty as a shield behind which to hide their abuse of human rights, equally, one cannot deny the number of moral issues over which there is no consensus, and over which supporters on both sides have a reasonable claim to be defending human rights.⁹ *Pace* Habermas there is a very strong reluctance amongst philosophers in defending human rights claims in terms of cross-cultural moral absolutes – more common is the Rawlsian position that there can be reasonable disagreement on the moral matters, or the Rortyan position that they are culturally contingent. However this lack of philosophical justification is coupled with an ever-growing list of rights demanding codification in the international law and its protection.¹⁰

The fact is that what counts as a human right – even the most basic ones like the right to live and to maintain the body integrity – is hugely contested.

⁸ For more on this issue, see Franck (2001).

⁹ Even leaving aside more controversial cross-national differences, one can think here of the highly contentious ‘culture war’ issues that divide co-nationals such as abortion, euthanasia and gay marriage.

¹⁰ For a critical analysis of this see, Mary Ann Glendon (1991).

And it is disingenuous to assume that a world parliament could straightforwardly be charged with the enforcement of these rights. Firstly, because there is significant disagreement about them. But secondly because it is difficult to imagine how the requisite public deliberation on these contentious issues could occur in a transnational context. Many rightly fear that for the sake of efficiency the democratic process would be by-passed and the matters would be solved by elites. And it is not difficult to imagine how this decision-making and enforcement could become the source of grave injustice itself. Indeed this is precisely the *modus operandi* that we see in practice in the EU at the moment and of which Habermas is so critical. This prompts the deeper question: is transnational sovereignty compatible with democracy or are the two mutually exclusive?

Shared National Culture Revisited

Leaving aside the larger issue of a world parliament - is it behoves us to consider whether transnational sovereignty can be democratic even in the more limited European context. Reaching consensus in a global context, even on the most basic norms and beliefs, is fraught with difficulty. Perhaps something as basic as protecting innocent human life could be agreed, but as the number of rights and norms elevates the number of citizens engaged in democratic deliberation on them, it seems, must reduce it (unless of course we are willing to dispense with the democratic element).

To determine whether transnational democracy - rather than empire, federation or commonwealth - is possible, it requires a return to the debate taking place a decade ago. That debate focused on whether European-wide democracy presupposed a shared cultural identity, understood as a common ethnicity, religion, language, history and/or set of traditions. The debate between liberal nationalists and cosmopolitans is not confined to the European context; the issue of global justice - what we owe and are owed by those who

are not our co-nationals – is of continued global significance.¹¹ However, it was undoubtedly precipitated and intensified by practical considerations concerning European enlargement at the end of the 1990's. And whilst it is beyond our present concern to address the entirety of this debate, it befits us to respond to the following question: is the forming of a common European identity necessary for the success of the EU project, and if so, how can that task be achieved?

In 2002 Arash Abizadeh criticized four major arguments of liberal nationalists regarding the necessity of a shared national culture. He claimed that this repudiation showed that 'Europe's democratic deficit is not the inevitable concomitant of national heterogeneity' (Abizadeh, 2002, 508). Like Habermas he does not deny a democratic deficit, but it does not imply the fact that a transnational form of government can only function efficiently on a 'bureaucratic-gubernatorial model' (Habermas, 2012, 20). Or, to put it inversely, it is not the case that democratic sovereignty can only work where there is a shared national culture.

Many of Abizadeh's arguments are convincing. Examples of multi-cultural states such as Canada or Switzerland not only show that democracy can function where there are different identities – indeed even Miller is willing to concede this – but that these different identities do not need to share norms or beliefs to motivate non-strategic action. It is enough that each group has some norm or belief to motivate their actions, these do not have to be shared or overlap. What is necessary, in other words, is compatibility not consensus (Abizadeh, 2002, 500). Indeed he agrees with Habermas' notion of 'Constitutional Patriotism' according to which ethnicity and nationality can be by-passed altogether; citizens can identify with their polity thanks to what they

¹¹ The thesis that liberal democracy is only viable against the background of a single cultural nation finds its classic statement in Miller (1995) and Barry (1991, chap. 6)

take to be the rationally defensible principles its institutions embody (Habermas, 1998).

The paradigmatic example of constitutional patriotism would seem to be the United States. And yet there are some important differences between it and the European Union:

- i) In the case of the United States there was an external enemy – Britain – which acted as a unifying force for the former colonies, and
- ii) Patriotism required its own myth-making around the Constitution. It was not just about rationally defensible principles but the employment of the traditional state-building apparatus of heraldry, holidays, hymns and heroes.

In this sense Miller is right that you cannot have a successful democratic sovereignty unless citizens do exhibit *some* of their affection for the country or political organization. It does not entail that you cannot have multi-ethnic nations or cultural diversity, but as Rabinbach puts it:

‘Citizens do not have to ‘feel’ that they belong together culturally or ethnically to act in a democratic manner and experience solidarity with their neighbours, especially beyond their borders. It is enough that they share a common set of ethical and civic values and participate in a set of institutions that enable them to communicate and debate’ (Rabinbach, 2012, 4).

Assuming he is correct, we are still left with two unanswered questions. First, do Europeans share enough of a common set of ethical and civil values; second, can they communicate and debate sufficiently well in order to participate in a common set of institutions in order for transnational sovereignty to work? Let us address the second question first. Language and communication pose a significant challenge in the European context. Abizadeh is correct that it is not insurmountable – people can and do communicate with one another successfully especially at the elite level. But, there is a high cost in terms of time and resources and much still gets lost in translation. Moreover

although all 23 official languages of the EU are accepted as working languages, in practice only three are used: English, French, and German. Of these, English is the most common (European Commission, 2006).

Although Abizadeh rightly argues that it is not unreasonable to require people to be fluent in more than one language, the fact remains that one is always most competent in his or her mother tongue – and learning 23 languages – even at a basic level of fluency is, frankly, too much to ask of anyone. The result therefore is that there are only three procedural languages in the EU, of which English is the foremost. Others are therefore required either to learn or to translate into that language. This goes to the heart of whether equal communication between citizens is possible if they do not speak the same mother tongue.

In *English: Meaning and Culture* linguist Anna Wierzbicka makes the compelling case that the English language is itself highly culturally specific and not the neutral carrier of information we often think it is. There are terms which are used universally such as ‘good’ ‘rational’ and ‘just’ whilst certain other concepts are highly culturally specific and are not even found in other European languages which after all share a similar intellectual history. For example the concepts of ‘right and wrong’, ‘reasonableness’ and ‘fairness’ – all central to contemporary liberal theory – do not appear in any language other than English! (Wierzbicka, 2006.) The ‘procedural’ languages in other words, impose their own worldview on others who do not share it and may not even fully understand it.

This is not to suggest that we should revive Esperanto, but the problem of the primacy and cultural dominance of certain languages and cultures in the EU needs to be addressed. This cannot be done solely via regulation – for example by requiring every European Member of Parliament to speak a non-core EU language in addition to the procedural ones. However both the mass

media, as well as cultural and educational institutions could do much more to facilitate public debate in the native languages of EU members and the voices of these debates could be represented in the EU Parliament and Commission.

As for the question of ethical and civic values – there is much evidence that Europeans do indeed share many of them despite other cultural differences. This is true both at the level of citizens and elites (Risse, 2010, 41-61). More precisely, Risse argues that there are two competing versions of what constitutes European ethical and civic values but these are increasingly being drawn around ideological lines – conservative and liberal – rather than national ones.¹² In this sense Abizadeh is justified in dismissing a simplistic version of liberal nationalism, which demands a shared culture or nationality as a prerequisite to ‘nonstrategic social action’ (Abizadeh, 2002, 499).

All political organization is ultimately regulated by the will of its participants, and as such, nothing about it is inevitable or impossible. In other words, there is no *a priori* reason why democratic sovereignty needs to be restricted to the nation state. Historically, liberal democracies have arisen in the setting of the nation state whilst transnational forms of government – empire, commonwealth, federation or totalitarian regime – have been non-democratic.¹³ But in principle there is no reason why democratic institutions can only work successfully on the level of the nation-state. But what is also clear is that *something* is needed to bind people together. Something is needed to prompt people to organize themselves into a particular political union and to provide them with a sense of identity that can motivate civic participation.

¹² Although it is worth noting that Risse’s framing of the cleavage as being between i) secular, modern, liberal Europe and ii) xenophobic and nationalist Europe is far too simplistic a division, and itself an ideologically charged one. For more on this see especially (Risse, 2010, 6-10, 50-53, and 228-242).

¹³ One might point at the United States as an exception being from its inception a form of political organization that combined liberal democracy with federation. However the federalism of the United States is something of a misnomer (to which those familiar with the federalist-anti-federalist papers can attest). The fact is, that although there was power-sharing between the states and the federal government; there is no question that America, like other modern democratic countries fits firmly into the nation-state model.

In the final analysis the cosmopolitan-liberal nationalist debate has focused on the entirely wrong question. Instead of wondering whether democracy necessitates a shared national culture, they should have been asking what can act as a binding agent, the one that is sufficiently strong to motivate individuals to act even against their own immediate self-interest. More specifically, which factor can Europeans unify around in order to create a long-lasting, prosperous and just political order? ¹⁴

Binding agents

First of all it must be stated that union is not the same as integration, a distinction which both theorists and politicians often fail to recognise. Union is about creating something new, something that is not simply subsumed into one organism. but which has been enriched with new features. The best unions are the ones which do not destroy what was formally there but which raise their component parts to a higher pitch of existence. This is a challenge that faces political unions. In the case of a supranational structure like the EU the objective for the members states is to retain their sovereignty and yet be wed into a single entity. Political unions, like all human relationships, can simply be a result of mutual egoism. The parties can agree to enter the relationship as a way of receiving advantage and furthering their own material self-interest, but that kind of unity it seems has a tendency to unravel when the circumstances become difficult.

This exact mechanism can be observed in the reactions of German and Greek populations after the financial crisis – when things started to go wrong it

¹⁴ There is also the more practical question of the actual model European unification should follow. Two prominent examples examined by Jan Zielonka are i) Europe as a superstate of the Westphalian kind and ii) Europe according to a neo-medieval paradigm – polycentric government, fuzzy borders, cultural and economic heterogeneity and divided sovereignty. (Zielonka, 2006.) These cannot be considered at present, but it is worth noting that the question of identity alone does not solve the practical issue of the precise form European integration. should take – although nuances in identity may indicate what should be taken into account when considering form.

was clear that the motivation for entering into the eurozone was primarily one of self-interest and the hope of comparative advantage. The harmony between the nations lasts for as long as the mutual benefit, now that it seems to be over, many are wondering whether there is anything worth saving. If they are trying to salvage the euro, it comes only out of fear that they will have more to lose without it, than out of a concern for the common good. The point is, if the overriding 'unifying' factor of EU countries is simply the promise greater economic prosperity, or even greater prominence on the world stage, then there is nothing to hold these nations together in the long run or in times of crisis. Mutual instrumentalism can be profitable, even for an extended period, but even in the most favourable of circumstances it creates an atmosphere of fear and insecurity. Weaker nations fear that they will be taken advantage of, stronger ones that they will be inconvenienced. If circumstances change, not to mention if either of the parties acts irresponsibly, each will go their separate way.

But if a stable union requires commitment, what basis can that commitment be made on? What is it about Europe that can encourage its citizens to care about the good of the other member states and the good of the whole in a non-instrumental fashion? This leads us back to the question of identity. Only once we see ourselves as parts of a greater whole – like a family or a nation – when we can commit ourselves to a union that may even call for self-renunciation. Only then we can truly speak of transnational sovereignty. What is such an identity for Europeans? Again it appears that we have to contend with two competing visions.

The first is afforded by Habermas. Political and national identities often command authority due to their alleged naturalness when in fact, he says, they are invented. A European identity, he further argues, should be constructed in the cold hard light of day. This 'construction' would then not suffer from the stigma of randomness or arbitrary choice but would be the rational and self-conscious appropriation of a multiplicity of historical experiences. (Habermas,

2003, 295). To put it simply – we can create a European identity by selecting from the array of historically available candidates. And of the potential aspirants Habermas chooses secularism and the welfare state.

Although there may be causes to regret the personal decline of faith or its privatization in other respects, Habermas maintains that the state's neutrality regarding worldviews (especially the religious ones) is not only a cause for celebration but it is also one of the factors that can consolidate European identity. Similarly, the idea of a welfare state, which guarantees social security and regulates on the basis of solidarity, is one of the most successful features of Europe. The notion of a welfare state is a response to the conflict between different social groups and an institutionalization of tolerance and a 'reciprocal acknowledgement of the Other' (Habermas, 2003 294).

A different vision of European identity is discernable in the writings of Czech dissident, playwright and politician Vaclav Havel. Havel believes that the only sensible task for Europe in the upcoming century is not to create a new identity, or to impart its culture to the rest of the world, but to 'be itself at its best, which means to revive its finest traditions' (Havel, 1996). And what are these traditions, these shared values? They are not as difficult to discern as it may appear at first: respect for the dignity of every human being, for democracy and political pluralism, for a market economy, the principles of civil society and the rule of law (Havel 1997, 128). These values, he contends, are the result of Europe's intellectual and spiritual heritage – itself it is the product of classical antiquity, Judaism and Christianity as well as 'thousands of years of coexistence, the intermingling of traditions and vast historical experience, both good and bad.' (Havel 1997, 128).

For all the surface similarities, the grounding of a European identity advocated by Habermas and Havel could not be more divergent.¹⁵ Habermas approaches European history like a pick and mix out of which an identity can

¹⁵ For an argument similar to the one made by Havel see Reale (2003).

be created by selecting the most desirable elements. For Havel, European identity is already given – it is a totality comprised of both good and bad. Where Habermas speaks of rational construction, Havel prefers the notion of cultivation. Cultivation requires a certain acceptance of the ‘given’, the organic and the non-arbitrary chemistry between certain elements, but at the same time it allows ample scope for free, rational activity – nurturing the good; rooting out the bad.

The bad, according to him, is the old Herderian idea of the nation-state as the highest expression of national life. Today we don’t see that nationalism played out in the desire for territorial expansion, but the propensity for petty, self-interest – certainly. The good is ‘national autonomy within the framework of a broad civil society created by the super national community’. (Havel, 1997, 130).

Conclusion

How does this relate to the question of whether transnational sovereignty is possible? It seems that both Havel and Habermas think that it is, and I am inclined to agree, but only if one very important condition is met – namely that there are strong, lasting and non-instrumental values which bind the agents – or in this case European citizens – together. This condition is very difficult to meet. More difficult than in case of building sovereign nation states. This is not to say that it is impossible, but certainly the Havelian route seems a firmer direction – to this author at least – than the Habermasian one. However until some form of consensus is reached it is difficult to imagine a successful form of transnational sovereignty in the European context. The true verification of this will come in times of crisis – financial or otherwise – to see whether Europeans wish to stay bound together in union when their national interests seem to pull them in the direction of separation.

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