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Communities in Transition

Problems of Constitutionalism and Narrative Identity in Europe*

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'WE EUROPEANS'

In the wake of the fundamental political and social transformations in Central and Eastern Europe at the end of the eighties, intellectuals and politicians in the region have been struggling to find new foundations for the political and cultural identities of their societies. It seems that despite efforts to revive a common cultural and political tradition at the end of the 20th century, East-Central Europe is little more than a geographical marker. The common cultural heritage of the Austro-Hungarian Monarchy – with its flourishing *fin-de-siècle* intellectual life in the cultural centers of Vienna, Prague, and Budapest – is constructed more from elements of nostalgia and cultural memories than a continuous social and political tradition. The differences among these societies have more to do with contemporary political and economic relations than ideological or cultural traditions, as Austria's anxiety over the possibility of Hungary and the Czech Republic joining NATO and the European Community makes clear.

Authors as diverse as Immanuel Wallerstein, Jenő Szűcs, István Bibó, and Michael Stürmer have grappled with the idea of the cultural and political *Mitte* position, which is based on a geographically demarcated and historically imagined uniqueness of Central Europe (cf. Szűcs 1983, Stürmer 1986). Most descriptions make a simple move from geography to politics and culture: the existence between different cultural traditions calls, in a sense, for acting as a 'bridge'. In this view, the middle position invokes a sympathetic understanding of these cultures: the geographical middle position becomes a cultural middle ground, which is prone to produce 'middle-men' in and for the interaction between the different cultural poles.

In his book *The Civilizing Process*, Norbert Elias interprets the cultural, social, and political differences between the West and the *Mitte* through his description of the notions of *Zivilisation* and *Kultur* (Elias 1982). In his opinion, the 'West' went through a process of *Zivilisation*, establishing clear boundaries of communal and individual identity in countries like France and England. This process served as the cultural basis

* I would like to thank the Netherlands Institute for Advanced Study in Wassenaar for giving me the peace of mind needed for scholarly work while rewriting this paper for publication.

for establishing modern constitutional democracies, while the constitutionally legitimized socio-political authority of the community informed individual and communal narratives of the Western self. In Central and East-Central Europe, however, the German notion of *Kultur* represented this process. This notion was used as a contrast to Western *Zivilisation* and was felt to prove the 'backwardness' of Central European societies. In a recent article on the possibilities of a Central European sociology, Anna Wessely explains how the cultural notions of *Zivilisation* and *Kultur* represent different systems of rationality (Wessely 1996). *Zivilisation* is presentist, expansionist, and goal-oriented; it emphasizes personal responsibility, applies universalizing narratives, and argues in procedural terms. *Kultur* treasures the past, glorifies difference, and is value-oriented; it emphasizes collective determination, applies particularistic discourses, and argues in substantive terms.

It is evident that the boundaries separating Western Europe from Central and Eastern Europe did not diminish with the 'velvet' revolutions. All that was lost is the Cold War discourse, a loss that has left a *vacuum* that needs to be filled with new meanings for the cultural and political 'difference' of 'Central Europeanness'. This vague feeling of 'otherness' often provides the best ground for 'third way ideologies': populist movements that strive to find the alleged 'third road' between individualist, capitalist, Western democracies and collectivist, socialist Eastern totalitarianisms.¹ Also, attempts to revitalize the cultural legacies of post-Monarchy Central Europe, and the decadence of the 'coffeehouse culture', stem from the sentiment that this 'otherness' offers, at least culturally (if not politically and socially), a way to avoid the pitfalls of 'Western' consumerism.

There is a hope, on the part of most Central and Eastern Europeans that there is or will be a united Europe to which *we Europeans* will belong. Many Westerners, however, hesitate to embrace such sentiments, partly because they do not yet have a clear idea of just what this 'we Europeans' might mean. Europe has never existed as a homogeneous historical, social, and cultural whole. There are several, often conflicting, images of the 'Western self' that depend primarily on local traditions and political systems. There are diverse cultural and political traditions among Western societies and the process of European unification has also brought many unresolved historical and political problems to the fore.

Intellectuals in East-Central Europe are active participants in the dialogue about European identity. Since there is no clear meaning, or 'content' to the often-used phrase 'we Europeans', intellectuals who are in need of having one will make it up – whether or not this meaning coincides with the images that Westerners have of themselves. Imagined historical values of 'the West', or the 'original' tradition, are constructed through reversing Eastern European experiences of loss and deprivation. Thus, as a fictional continuity, Western history might be held more firmly in the East than in the West.

When certain East-Central European countries become part of the united Europe, and when their societies take part in shaping the content of the phrase 'we Europeans', these societies might wish to return to the imagined tradition of a 'Western' Europe. This will mean a (re)construction of the Enlightenment tradition which will find its legitimation in claims for the return to an unbroken path of history, and will bring about the revival of 18–19th century ideals, simultaneously wearing the masks of modernity and tradition. In

¹ In Hungary, this is evident in the revival of the so-called urbanist-populist debate: the *Kulturkampf* between cosmopolitan intellectuals, who turn toward the West for bourgeois and civic values, and populist intellectuals, who emphasize the uniqueness and importance of national cultural heritage. There are similar attempts in other post-communist societies as well.

the *lacuna* where a new communal identity is to be created at the end of the century, there is a fear surrounding any attempt to revive traditions that once forged temporary unity among different communities. What Etienne Balibar, Immanuel Wallerstein, bell hooks, and Cornel West describe as a renaissance of 19th century nationalism may be seen for some as promising liberation from the oppression of traditional cultural and political hierarchies within Western societies. This liberation advocates the recovery of marginalized voices and may give the false impression that 'we Europeans' can return to innocent origins (Balibar and Wallerstein 1991, hooks and West 1991). The political and cultural discourse of difference and the oppressive nature of cultural traditions call for radical solutions in resolving the conflict between universalism and particularism (Outlaw 1992).

AN UPDATED VERSION OF ENLIGHTENMENT: CONSTITUTIONAL PATRIOTISM

In 1987, the German philosopher Jürgen Habermas, in the midst of the *Historikerstreit* about conflicting images of the German past and German identity, introduced the concept of 'post-traditional identity' (Habermas 1989). Building on the idea of the 'ethical way of life' and the moral understanding of individual identity described in Søren Kierkegaard's *Either/Or*, Habermas spoke of a *Verfassungspatriotism* (constitutional patriotism) that might serve as the basis for a 'post-traditional', Western-oriented German identity that nevertheless does not let go the possibility of working through Germany's troubled past.

In the *Historian's Dispute*, Habermas introduced the idea of *constitutional patriotism* in order to establish a form of communal identity that is less dependent on cultural heritage, tradition, and history than on the identity of the nation-state. For Habermas, the ideology of the nation-state is based on a specifically modern form of collective identity. During the second half of the 19th century, the dissolution of the traditional social order and the transformation of cultural discourse was enacted and supported by the German *Geisteswissenschaften*. And yet, says Habermas, there was a contradiction between the critical nature of the *Geisteswissenschaften* stemming from their claims for truth and the need for establishing a historically based, national identity, in which representations of tradition and meaning production could support the fiction of a homogeneous national population, and serve as a vehicle for social integration. The willingness of *Geisteswissenschaften* historians to put their work into public use led to "a historiography that elevated empathy with what existed to a methodological ideal" (Habermas 1989: 254). The historians resolved the contradiction between the 'reality' of the historical past and the poetic nature of the narrative form by calling for a methodology that employed "objectification to be achieved analytically" and a "subjective appropriation and emphatic reliving (*Nachvollzug*) of past achievements" (Broszat and Friedlander 1990: 104). In Habermas' view Hitler's and Mussolini's nationalisms broached this compromise by releasing nationalist egoism from its ties to universalistic origins. This led to an irreconcilable break in the national past: the continuous national history and the collective identity shaped by nationalism could not be restored by 'narrative healing'. Thus, in order to solve the problem of returning to historical tradition and continuity, and to re-establish the broken compromise within the framework of modernity, Habermas proposed to turn to the concept of constitutional patriotism.

Habermas turns to Kierkegaard not to embrace the generally accepted reading of the Kierkegaardian self as inward-turning individual, existing outside social discourse but to save the communitarianism of his communicative ethics. He understands Kierkegaard as talking about a hermeneutically embedded self that lives as a situated, embodied,

gendered, historical, and social individual. "Kierkegaard's individual, like the participant envisioned in moral discourse, requires an intersubjective context," explains Martin Matustik in his reading of Habermas (Matusik 1993: 9). This notion of intersubjectivity emphasizes the individually-constructed moral self in order to save her from dissolving into the social whole; yet because of the hermeneutic nature of moral construction, the self is not an inward-turning 'possessive individual', but one taking part in the social discourse of the community. Thus, the Kierkegaardian-Habermasian individual may avoid absolutizing a Hegelian social ethic (the *Sittlichkeit*, attacked by Kierkegaard), while it saves the Kantian autonomous moral individual (the *Moralität*, accepted by Habermas). Habermas' reading of Kierkegaard makes it possible to escape from dissolving the individual into the higher-level individuality of the Hegelian nation-state as well as from suggesting that the individual should construct her identity as being completely detached from the social discourse of the community. Thus, the historical tradition embedded in social discourse may be saved without losing the self-constructing, conscious individual. In the concept of constitutional patriotism, Kant's individual morals can be united with Hegel's social ethics *via* the spirit of Kierkegaard's existentialism. For Habermas, 'post-traditional identity' thus means turning from narrative collectivity to individual, hermeneutically embedded life-stories as the basis for identity.

For Habermas, the idea of post-traditional identity offers the possibility of returning to the unfinished project of critical modernity with the help of a post-metaphysical, communicative rationality. This means re-establishing continuity with a modern understanding of historical tradition – which is more 'invented' than given (cf. Hobsbawm and Ranger 1983) – without drawing the neo-Aristotelian, neo-Hegelian conclusion that under plural and secular conditions of modernity, embracing a particular historical 'life-form' as normative can be morally justified (Matusik 1993: xix). Post-war Germany is a case in point for elevating the individual construction of the self to a communal, post-traditional level. Yet, how is it possible to re-construct a historically-based social and cultural tradition without falling into the pitfalls of 19th century historicism? It was this historicism that led to a nationalism in which the individual was dissolved in the nation-state and Enlightenment ideals were sacrificed for the higher morality of an imagined community.

Using the idea of constitutional patriotism, Habermas hopes to establish a post-traditional identity that is *not directly* dependent on history. Values of constitutional patriotism rest on the humanistic universals embedded in the post-Enlightenment discourse of civil liberties. For Habermas, it is the constitutional tradition of the West that serves as the content of the phrase 'we Europeans'. The democratic constitutions of Western states, as well as the meta-constitution established by the *Maastricht* treaty of the European Community, contain the Kantian ideas of Enlightenment humanism for the moral individual, the Hegelian legal subject and politically legitimized social ethics, as well as the democratic political tradition from which the German idea of the nation-state took a *Sonderweg* in the late 19th century. It is this constitutional tradition to which post-war democratic Germany turned back to and, following the logic of the argument, to which post-1989 democratic states of Central and Eastern Europe may also adapt. The historical construction of a democratic Europe can serve as a template for the imagined unity of Europe. The narrative of a continuous, democratic history can be the form for which a constitutional interpretation of the phrase 'we Europeans' should be the content. Constitutional patriotism is indeed a compromise that rescues the social ethics of Hegel, the individual morals of Kant, and the social, cultural, political, and moral tradition of the Enlightenment. This tradition, however, is in need of rethinking.

Habermas' vision of democratic and pluralistic society, as Richard Rorty puts it, rests on an updated version of Enlightenment ideals of universalism and rationalism (Rorty

1989: 67). Habermas is willing to accept that there are problems with the Enlightenment tradition but believes that his suggestion for replacing traditional universal rationality and subject-centered rationality with "communicative rationality" will lead to the development of "domination-free communication" and a solution for "the legitimation and cultural crisis of late-capitalism." For Habermas, to complete the unfinished project of modernity would mean a return of modern culture to a tradition in which rational argumentative practices conducted within "expert cultures" would both save something from the "surrealist revolt" and establish a communicative process guaranteeing the triumph of a discursive ethics making claims for universal validity (cf. Habermas 1987).

I agree with Rorty that the ahistorical grounding of universal validity suggests the possibility of morally justifying the adoption of a particular life-form as normative in pluralistic and secular societies (Rorty 1989: 67). The belief in universal validity will always leave open the possibility of claims for one life-form being superior to another. As others have already pointed out, the possibility that 'domination free communication' results in complete pluralism is incompatible with claims for 'universal validity' (cf. Walzer 1990: 188). Moreover, Habermas' *Verfassungspatriotism* is no less historical than any other ideology he challenges. It is a different narrative of the past – that of the evolution of the liberal and democratic 'West' – but nonetheless a history or even a meta-history. It is easy to trace this meta-history back to its Hegelian origins but we can also see that Habermas is attempting to turn the 'public use of history' to his advantage: the historical truth of the constitutional tradition is used to legitimize the 'Westernness' of post-war Germany. The hermeneutic embeddedness of the Kierkegaardian-Habermasian individual – understood as a narrative construction and reconstruction of both the story told and the 'conceptual network' into which it is embedded – challenges this very universalism since the socio-political discourse of the present, the actual 'territory' on which identities are formed, also form part of the discursive field of the political.

In an essay entitled *The Value of Narrativity in the Representation of Reality*, Hayden White, quoting Roland Barthes, refers to narrative as "a solution to a problem of general human concern, namely, the problem of how to translate knowing into telling, the problem of fashioning human experience into a form assimilable to structures of meaning that are generally human rather than culture specific" (White 1987: 1). White thus suggests that narrative is not one code among many to endow experience with meaning, "but a meta-code, a human universal, on the basis of which transcultural messages about the nature of a shared reality can be transmitted" (White 1987: 1). According to a structuralist understanding, narrative is not a form of representation but a manner of speaking about events experienced by the self. This experience, as Barthes understands it, is the substitution of a *copy* of events for the *meaning* of events. Thus, we would find it problematic to use the term 'about events'. It seems that narrative is the *message* of a shared reality; but a message about itself rather than a message *about* reality.² *Pace* Hegel,

2 Basic problems of historical discourse are revealed when one differentiates between the plot and the story elements of narratives. According to White, historical *doxa* claims that the plot of a narrative imposes a meaning on events that make up its story level by revealing a structure that was imminent in the events all along. But, says White, events of the past qualify as historical only if they are susceptible to at least two narrations of their occurrence; this is why the historian takes upon himself the authority of giving the true account of what really happened. "The authority of the historical narrative is the authority of reality itself; the historical account endows this reality with a form and thereby makes it desirable by the imposition upon its processes of the formal coherency that only stories possess" (White 1987: 20–21). As opposed to those forms of historical representation that contain only the plot of the past, annals and chronicles, historical narrative 'speaks itself', it reveals to us a world that is putatively finished but not yet dissolved. In this world, reality wears the mask of meaning, it presents a completeness and fullness that we can only imagine but never experience. "Insofar as historical stories can be completed, can be given narrative closure, can be shown to have had a plot all along, they give reality the odor of the ideal" (White 1987: 23).

White observes that if it is impossible to narrativize without presupposing "a system of law in relation to which a specifically legal subject could be constituted, then historical self-consciousness, the kind of consciousness capable of imagining the need to represent reality as history, is conceivable only in terms of its interest in law, legality, legitimacy" (White 1987: 23). Historical narrative is 'endowed with meaning' through the socio-political construction of community, law, legality, and legitimacy. This construction of the community, the authority of the present, serves as the basis for the moralizing nature of historical narratives; and this makes them distinct from chronicles and annals.

White's ideas can also be applied to the narrative construction of the self. Human action (understood as being hermeneutically embedded in the 'conceptual network' of social discourse) constructs the narrative of the self, while the adjustment of 'reality' to fit the story of the self in turn constantly 're-constructs' the network which endows the narrative with meaning. The interplay between the authority of the self and the authority of the system of law establishes narrative as both the condition and consequence of social existence. This is the hermeneutic circle of narrativizing the self as individual and communal being. Thus, the *territory* in which individual identities are formed can not be separated from the *construction* of those identities. Not only is the individual self constantly rewriting its own history; but by this rewriting, the 'territory' (the system of law and legality) is also modified. It is not possible to step out of the hermeneutic circle and evoke the authority of the past by pointing to the constitutional tradition as 'historically given' as representing the essence of universal morality. The authority of the past is established by the narrativizing subject, and the past, contrary to what is believed, does not have an authority of its own. Such authority can be established by constant reference to the past as 'always already there waiting to be unearthed', but this is an act of legitimation which falls within the realm of the political. This is the 'invention of the tradition'; and this invention happens every moment a story is told about the past. Referring to the constitutional tradition as being ahistorical introduces an authority which is metaphysical. Challenging this authority may mean doing away with morality and then, we are often reminded, 'anything goes' (White 1987: 227).

Every moment the narratives of the self are re-told, there is a need for reinforcing the choice of either/or. The Habermasian concept of constitutional patriotism, however, presupposes a socio-political system which is stable and constant, the matrix of which is clear and unchangeable. Culturally, it is the discourse of the Enlightenment, politically, it is the discourse of the French Revolution, and socially, it is the discourse of post-Marxist socialism. Constitutional patriotism is more Hegelian than Kantian or Kierkegaardian; and in line with Francis Fukuyama's arguments, liberal democracies are thus understood as the end of Universal History, reaching the balance between rational desire and rational recognition on the highest level of the liberal and democratic state.

THE POLITICAL UNDERSTANDING OF SELF: REVOLUTIONARY CONSTITUTIONALISM

Constitutional patriotism, however, is a problematic concept I suggest to modify. In the following, I introduce a new term that remains open to historical change and accommodates the process in which established discourses that form our communal and individual identities are radically changed: the concept of *revolutionary constitutionalism*. By *constitutionalism*, I denote those parts of the constitutional tradition that are represented in the evolution of our ideas of human rights. These ideas reflect a conception of the individual that may be seen as paradigmatically modern. In

calling attention to the problem of constitutionalism, it can be shown that identities – the meaning of selves and their actions – are informed and constituted by already existing frames of reference or discourses. It is important to note that none of these frames of reference lie outside the terrain of the political. For centuries, and especially after the French Revolution and the enactment of the American Constitution, constitutionalism has been thought of as establishing rules of conduct that represent the essential moral condition of 'civilized men and women'. Because of its slow process of evolution, we are inclined to think that the constitutional tradition lies somehow outside the realm of the political, or instead, that it informs and regulates political life from the outside in the development of humankind.

While in many ways constitutionalism is seen as a historical phenomenon, at the same time it is perceived as being metaphysical in the sense that it reflects universal moral ideas that guides 'men of reason' in their everyday lives, 'in the world of appearances' (see below). The conventional understanding of constitutionalism, thus, implies a modern concept of the philosophy of history; history as both *res gestae* and *historia rerum gestarum*, both development and the 'discourse of the real', void of political contingencies. Historical discourse always contains an irreducible element of relativism, a relativism that is the result of the "sublimation of the politics of interpretation" (Braun 1994: 173; cf. White 1987: 58–82).

Constitutionalism, to my mind, is a serious obstacle to fair conduct since it is understood as existing outside the political, and can thus be used for metaphysical claims of legitimation. Moreover, 'claims of legitimation' occur in more subtle ways than we can imagine. I would argue that any universal grounding of constitutionalism, as Habermas would have it, is deeply problematic, since it is inevitably tied to particular political and historical traditions. In this respect I believe that Habermas' attempt to ground post-traditional identity *via* the concept of 'constitutional patriotism' in the human universals of the Enlightenment is based on a misguided attempt to save universal claims of validity from the contingencies of 'history'.

I use the word political in the broadest possible sense to denote an orientation that endows the self with meaning. Meaning is produced through interpersonal and *intrapersonal* relations constructed *via* social discourse. The self is constructed in a metaphorically understood territory of the political and the legal. This territory may be defined as the space of the political in the broadest sense: as the whole of the 'world of appearances'. And this 'world of appearances' has a double significance for it is both a 'physical, objective reality' and the space where the specificity of human identity is constructed.³ Taking this a step further, we can say the metaphorical nature of the 'web of human relationships' is the narrative construction of reality. Selves, just like the 'territory' between them, are constructed in the process of meaning production, which is narrative in nature. Thus we can speak of the *narrative construction of identity* (cf. Ricoeur 1991: 71–79).

³ "Action and speech go on between men, as they are directed toward them, and they retain an agent-revealing capacity even if their content is exclusively 'objective', concerned with the matters of the world of things in which men move, which physically lies between them and out of which arise their specific, objective, worldly interests. These interests constitute, in the word's most literal significance, something *inter-est*, which lies between people and therefore can relate and bring them together. Most action and speech is concerned with this in-between, which varies with each group of people, so that most words and deeds are *about* some worldly objective reality in addition to being a disclosure of the acting and speaking agent [...] But for all its intangibility, this in-between is no less real than the world of things we visibly have in common. We call this reality the 'web' of human relationships, indicating by the metaphors its somewhat intangible quality" (Arendt 1958: 182–183).

I believe that the Habermasian concept of 'constitutional patriotism' as a solution for post-traditional identity falls short of guaranteeing that, as theorists of the modern liberal polity have claimed, we can avoid the moral justification of one particular historical life-form as normative. 'Revolutionary constitutionalism', on the other hand, offers just that possibility. By recognizing the contingency and constant interplay of a narratively constructed 'world of appearances' and narratively constructed selves, the concept of 'revolutionary constitutionalism' addresses metaphysical claims for legitimation of these narrative constructions. This formulation of 'revolutionary' owes much to the work of Hannah Arendt. She claims that Thomas Jefferson's famous words, "We hold these truths to be self evident", are an example of a truly political speech act. They reflect the relative, self-referential, performative, and foundational nature of the act of constituting: creating a community and the identity of that community at the same time (Arendt 1965:191-196).

Revolutionary constitutionalism would drive the constitutional tradition back into the sphere of the political. The revolutionary nature of constitutionalism would guarantee that the constitutional understanding of human rights become part of the discursive sphere of the political, and disavow any metaphysical claims for their universal validity. Revolutionary constitutionalism retains the elements of its historical development but, unlike in the case of constitutional patriotism, these elements can be challenged by any group or individual that feels excluded from the constitutional tradition. By renouncing all universalist claims, the constitution can become more what it really should be: a temporary agreement for democratic rules of conduct. It would thus not float above the Arendtian 'territory' of political discourse but become an integral part of its composition, inevitably renegotiated and reconceptualized over time.

Post-Enlightenment modernity has assumed that the key elements of the human condition are fixed. Revolutionary constitutionalism would re-open the debate and show that the meta-narrative of Western constitutionalism is no less problematic than the victory of the Hegelian Absolute Spirit embodied in the nation-state. It seems to me that initiating a discussion about such social and political issues as euthanasia, sexual rights, and problems of the family would reveal the pre-modern foundations of modern conceptions concerning the individual and the self (Habermas 1987: 139). The history of modern political thought attempts to establish the political as a meta-discourse legitimized by ontological, historical, and moral values. The modern discourse of the individual centers around values that are essential for the definition of the liberal human condition. The modern human condition is defined by such key ideas as liberty and the equality of the individual and form the basis of communal values in a pluralistic, multicultural society. Problems often arise, however, with attempts to legitimate claims that stem from liberty and equality in a pluralist community. How can one make validity claims for certain values without some metaphysical grounding, without the belief in some kind of universal validity of its foundations?⁴

4 The same problem arises in Michael Sandel's criticism of Isaiah Berlin's view as presented in his *Four Essays on Liberty*. Berlin claims that the wish to ground the eternity and certainty of our values in an objective heaven results in a deep and incurable metaphysical need, and quotes Joseph Schumpeter for support (Berlin 1969, cf. Sandel 1984: 8). Schumpeter's opinion that "to realize the relative validity of one's convictions and yet stand by them unflinchingly, is what distinguishes a civilized man from a barbarian" is translated by Rorty into the "claim that the liberal societies of our century have produced more and more people who are able to recognize the contingency of the vocabulary in which they state their highest hopes - the contingency of their own contingencies - and yet remained faithful to those contingencies" (Rorty 1989: 46). In Sandel's opinion Berlin, by supporting Schumpeter, "comes perilously close to foundering on the relativist predicament" (Sandel 1984: 9).

How, then, is it possible to be freed from this deep metaphysical need without losing the possibility of making validity claims? How is it possible to stand by certain values unflinchingly within a relativistic framework? What, in the end, will happen if freedom, the most important value grounding philosophies of liberalism, has no primacy over other values? In constitutional terms, these questions are dealt with under the category of basic civil liberties. The theoretical legitimation for these problems are cast within the political-philosophical framework of the Enlightenment, and draw from the ideals of liberty and human dignity. The modern human condition, however, masks the metaphysical grounding of its basic principles by displacing these problem onto the level of the political, while leaving the metaphysical grounding intact. The issue, then, is how to sublimate the metaphysical grounding of these ideas and maintain the legitimacy of the system of law and legality in a politically organized community. How, then, is it possible to "stand by certain values unflinchingly" and maintain the position that a politically organized community is made up of persons with diverse cultural and moral ideals?

The solution may be to give up the need for a metaphysical grounding of the political altogether. I would like to suggest, via the concept of a post-traditional, narrative identity, that it is possible to give up the need for a metaphysical grounding and thus the understanding of the political as a meta-discourse. The metaphysical grounding of the political is reflected in the claims that the constitutional tradition is an authoritative representation of the universal ideals of moral conduct. This grounding involves the articulation of an ontology that can function as a foundation for the moral self and thus offer a solution to coping with the contingencies experienced in both individual and communal forms of life. The search for legitimation, however, should not focus on finding its sources outside of the political. Revolutionary constitutionalism can serve as a guarantee that validity claims are made within the political realm, without evoking an authority outside of the political. In the end, I would like to suggest a political understanding of the self devoid of any metaphysical grounding, save its hermeneutic embeddedness in social discourse. The narrative construction of the individual and communal self, embedded in a social discourse that is shaped by the ideas of revolutionary constitutionalism, offers this opportunity.

CONSTITUTIONS IN TIMES OF TRANSITION

One question still needs to be answered. What justifies connecting the 'real' place and time of transition in East-Central Europe with the possibility of arriving at a different *concept* of post-traditional identity? Once again let me refer to Hannah Arendt. As Arendt claims, the expression "We hold" not only marked a transition from one political system to another, but also showed a unique, albeit dim, awareness of the possibility of shifting from "one spiritual order to another." The performative quality of the statement is attributed by Arendt to this dim awareness, an awareness that it was a fallacy to believe universal laws can be the laws of a community. Otherwise Jefferson "would not have indulged in the somewhat incongruous phrase 'We hold these truths to be self evident' but would have said: These truths are self evident, namely, they possess a power to compel which is as irresistible as despotic power, they are not held by us, but held by them; they stand in no need of agreement" (Arendt 1965: 194). Times of transition may allow for such dim awareness, and it would surely be a mistake not to take advantage of the possibility of coupling the "world of the real" with the world of ideas (cf. Villa 1993: 100).

By accepting the idea of revolutionary constitutionalism, the constitution would serve as another element within the formation of the narrative of the self and not, as it seems

to be the case today, as a pre-condition for setting the rules of narrativity. If we are inclined to accept that no life-form is more morally justifiable than another, then no narrative of the self can be more morally acceptable than any other.

Let me try to illustrate this with a few examples. It seems clear that, in one form or another, the 'right to live' should be part of all democratic constitutions. This problem has come up in constitutional debates concerning capital punishment in East-Central European countries. In these countries, opponents of capital punishment have gained a major victory: capital punishment is now illegal. The application of this basic right as a justification for other legal decisions, however, becomes problematic in other cases, such as discussions over the legalization of euthanasia. In the Hungarian Constitution, as the decision of the Constitutional Court on capital punishment made clear, the 'right to live' is inseparably connected to the idea of 'human dignity'.⁵ The practice of euthanasia, which assumes that 'human dignity' can be understood in certain cases as separate from human life, cannot be solved within accepted constitutional norms. It is not hard to trace the foundations of the connection between human life and dignity to pre-modern, religious origins. I believe that ideas resting on these origins, valuable as they may be, are incompatible with the notion of supporting relativistic ideals. As the foundation and guardian of the legal system, the constitution should be morally value-free; it should avoid justifying one life-form (a 'web of interlocutions' for meaning endowment) as more morally desirable than another.

The problem is even more explicit in the case of 'sexual rights' as embedded in the problem of the constitutional defense of 'families'. In constitutional terms, 'the family', as a social nucleus, is defined in terms of biological reproduction: it is an alliance for producing further members of society. Marriage as an equal alliance of 'men and women' (as in the constitutions of Bulgaria and Lithuania) is defined in connection with parental rights and is thus inseparably connected to biological reproduction. Other constitutions define the family through parenthood (as in the Charter of Basic and Human Rights in the Czech Republic, and the Lithuanian, Slovakian and Slovenian constitutions) or motherhood (as in the Polish Constitution). The family may be understood as the nucleus of society: a minimal alliance based on the mutual consent of adults to be defended by the state. This, however, does not necessarily have anything to do with the sexual orientation of those consenting adults. The alliance is to be defended because there are legal, economical, and social advantages to such formations for both the individuals involved and the society. People may wish to create a 'space' in which they can do whatever they want. In this 'space', individuals may invent a discourse complementary to that of society in general; one that produces a narrative totality for those taking part in it. The willingness to accept the rules of 'family relationships' offers the basis for identification with the narrative and its meaning created 'on the way'. In the case of identity with the 'family', the moral precondition for the narrative to possess meaning (the narrative content members of the family identify with) is the members' will (accepting that there is moral authority) and ability (sharing the conceptual network) to accept the moral authority of the narrative constructed by them. The alliance, however, is not to be connected with the number of people involved (the couple) or with their sexual orientation. Once again it seems that the democratic constitutional tradition makes moral choices between different forms of lives.

5 For two judges of the Hungarian Constitutional Court, Judge Lábady and Judge Tersztyánszky, "human being and human dignity are inseparable. Both are inalienable, immanent, essential parts thereof. [...] Human life and human dignity cannot be dealt with separately."

Re-working the constitutional systems in Eastern and Central Europe may enhance the dialogues about law, legality, and authority. Although different constitutional solutions may be given for the problems arising in these societies, entering into a public dialogue about the new constitutions may stimulate the political discourse of communal identity in new ways. This, in turn, may force public philosophers to re-think the problem of claims for universal validity and the bases of moral justification in a plural and democratic society. This may involve applying some of the ideas expressed by John Rawls in his *Political Liberalism* about the political conception of a person. According to Rawls, the political person, behind the veil of ignorance, cannot presuppose a metaphysical doctrine which serves as the basis of goodness that enabling her to enter the system of co-operation in a fair society. Rawls' idea is based on a concept of good understood in Kierkegaardian terms, which involves having the moral power to possess a conception of the good that may change over time (Rawls 1993: 29–35). This ability of 'having the moral power to' may be understood as the ability of making the choice of either-or, as a self endowed with meaning by the moral authority of the present. Even more, claims for universal validity may be substituted with claims for temporal political validity, understood as claims made by parties for a conception of good that can be brought to consensus within the given legal system. This means that the moral justification for one life-form over another in a pluralistic society would be substituted with the idea of overlapping consensus based on a political conception of justice. Thus, the idea of overlapping consensus does not require moral justification of one life form over another, but only requires political justification within a fair system of social co-operation (Rawls 1993: 135–172).

Connecting the ideal of Rawlsian *justice-as-fairness* and the concept of overlapping consensus with debates about identity and constitutionalism in East-Central Europe is not to say that constitutional systems in these countries are heading in this direction. On the contrary, when examining the new or forming constitutions of East-Central Europe, it seems that the spirit of constitutional patriotism as a modern alternative is stronger than the appeal for radical change, and that nationalism and the discourse of *Kultur* are gaining new ground within these societies. Debates about the new constitutions may, however, offer a unique possibility for suggesting ways to translate these ideals into legal practice, whether or not they are accepted by lawmakers.

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Coping with Displacement

The Multiple Identities and Strategies of the Russian-Speaking Population in Estonia

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INTRODUCTION: THE PROBLEMATIC SITUATION OF THE RUSSIAN SPEAKERS IN ESTONIA

In August 1991, in the midst of the failed coup in Moscow, the Estonian Soviet Republic declared its independence after four years of political struggle. The new state restored the Estonian Republic as it existed between the world wars, and great emphasis was put on this continuity. But the Soviet period had brought enormous changes that could not be ignored, perhaps the most important being the fate of the large proportion of non-Estonians living in the country. Most of this minority use Russian as their primary means of communication, and as a group, the non-Estonians are generally referred to as Russian speakers both by Estonians and themselves. In the first free elections in independent Estonia, no parties represented the Russian speakers, and in the 101-member parliament elected in September 1992 there were no Russian-speaking representatives. In the second parliamentary elections, held in March 1995, two parties representing the Russian-speaking population formed a joint list, and gained six seats. Thus, a third of the population was not represented in the first parliament, and seriously underrepresented in the second.

The new situation challenged the inhabitants of the new state with important questions: Which nationality do I belong to? Which state do I owe my allegiance to? What are my political goals, and how shall I try to attain them? For ethnic Estonians the answers to the first questions were simple, and support for the new state was close to unanimous. For the non-Estonian, mainly Russian-speaking group, the questions were more problematic. Should they accept and adapt to the new situation, learn Estonian and integrate into Estonian society, or should they resist instead, keeping their own language and culture and offering their allegiance to the new Russian state? These are the questions that guide the present article, in which I will try to cast light on the Russian speakers' problems concerning identity. In addition, I will discuss the connection between identity and strategies: What kind of goals did the Russian speakers set for themselves, and how have they tried to achieve them? The underlying assumption is that clear and unproblematic identities may provide a strong basis for the formulation of clear goals and focused strategies, while multiple, uncertain, or ambiguous identities correlate with unclear or divided goals and strategies. In the limited space of this article, my focus is narrowed down to *organized political action*, although some other tendencies will be commented on.