



# Introduction

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Jürgen Habermas has turned 90 this year. To mark the occasion, the *European Law Journal* solicited a number of papers that more or less closely address a key idea that he introduced in order to designate historical transitions that have left their mark in the course of both globalisation and Europeanisation. The idea is captured in the concept of the “postnational constellation”, which is the title of the core essay that was published in the book bearing the same name in 1998.<sup>1</sup>

The use of the term “constellation” indicates the legacy of the Frankfurt School of critical theory. Adorno developed it in conversations with Walter Benjamin and used the astronomical metaphor in order to account for a loose and historically contingent connection of elements inherent in a situation.<sup>2</sup> Accounting of a constellation, thus understood, entails abstaining from synthesising a manifold into the unity of a coherent whole. Habermas chose this metaphor aptly for his essay, which discusses a whole range of issues before it turns to the central question of what might become of democracy and solidarity once social integration moves beyond the nation state. Against the backdrop of the idea that societies are capable of directing themselves democratically, the postnational constellation confronted everyone with overwhelming complexity giving rise to widespread cluelessness.<sup>3</sup> Both the constraints faced by nation states finding themselves exposed to the economic forces of international competition, and the waning faith in the legitimacy of isolated national self-determination that creates externalities for outsiders, raised the question of which set of institutions might restore a type of democratic control that can be *both* effective and legitimate. On both counts, Habermas realised, the nation state required re-embedding into a broader trans- or supranational context.

When he was writing *The Postnational Constellation*, European integration was believed to provide a model for the step that had to be taken in order to establish inclusive supranational political control. Even though at that time the European Union was at the top of its game and, in a sense, booming, Habermas was already then aware of shortcomings that were to play out only later. Nevertheless, for years to come, Habermas remained a highly sympathetic and critical observer of the European Union and wrote a number of influential essays concerning its constitution.<sup>4</sup> Only recently has he grown ever more sceptical of the “executive federalism” showing its authoritarian face in cases of crisis management and more pessimistic in the face of the Union's inability to rein in centrifugal nationalist forces.

We thought that it would be fitting, 20-odd years on, to revisit Habermas's ideas. Given the stature of Habermas as a public intellectual, it should not come as a surprise that the contributions concern themselves with the overall political and social situation of our time.

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<sup>1</sup>See Jürgen Habermas, *Die postnationale Konstellation: Politische Essays* (Suhrkamp, 1998), 91–169; The English version was published by MIT Press in 2001. The full title of the essays reads “The postnational constellation and the future of democracy”.

<sup>2</sup>See Theodor W. Adorno, *Negative Dialektik* (Suhrkamp, 1966), 162.

<sup>3</sup>Habermas, above, n. 1 (German edition), 95.

<sup>4</sup>See, for example, Jürgen Habermas, *Europe: The Faltering Project* (Polity, 2009); Jürgen Habermas, *The Future of the European Union: A Response* (Polity, 2013).

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**Christian Marxen** reminds readers of the original ethos of discourse theory. Its core contention is that any practice of communication is implicitly committed to the idea that truth or moral correctness can be determined in processes of deliberation that are free of relations of domination (*herrschaftsfrei*). In marked contrast to the pessimistic perspectives of the first generation of the Frankfurt School, Habermas, from the beginning of his philosophical project, offered a positive alternative to the often-gloomy diagnosis of late capitalist society. More inclusive, self-reflexive and undominated processes of communication were supposed to be the institutional antidote to the pressures of economic adaptation and administrative system rationality. Only gradually, however, was Habermas able to warm to the idea that communicative rationality is not only at home in the public sphere where people resist the alleged necessities of economic and political imperatives ("TINA"), but also an essential component of the legal and political system itself. In his major work on legal philosophy, *Between Facts and Norms*,<sup>5</sup> Habermas sketched an ideal process that is able to generate legitimate law. It involves a division of labour between representative bodies and the public sphere. Since the anarchical nature of undominated communication is more perfectly realised in the public sphere, Habermas accords the "communicative power" that originates from free-floating debates and spontaneous protests, a key role for the generation of legitimate law. Marxen concludes his paper with the observation that the recent rise of populist movements may cast into doubt Habermas's faith in the emancipatory potential of communicative power.

**Van Aaken and Vasel** address Habermas's sketch of the postnational constellation directly, in particular his view that while traditional loyalties will not completely disappear, effective democratic control will require the development of a "global domestic policy" (*Weltinnenpolitik*). While Habermas anticipated that a "hardening" of national identity might occur as a result of the competitive pressures unleashed in a globalised setting, he nonetheless believed that the nation state is not going to regain its old strength. The heightened interdependence of societies would make this appear unlikely and, more to the point, imprudent.

In light of Habermas' rather prescient diagnosis of our global society, van Aaken and Vasel observe that we are currently "witness[ing] a fierce backlash" that is manifest in "demultilateralisation" and a reinvigoration of national loyalties. Rather than engaging critically with Habermas, who had taken the possibility of these developments into account—though perhaps in less drastic form, the authors address present manifestations, in particular in the case of the foreign policy of the United States, and offer an explanation for why voters are now more likely than 20 years ago to retreat to the national domain. They draw on cognitive psychology in order to explain why voters tend to ignore rational arguments as to the desirability of more, rather than less, international cooperation. Among the factors explaining this behaviour, loss aversion, hawkish biases and overconfidence figure prominently. Their impact seems to have its root in the fact that the Western European middle class did not benefit from globalisation and feels rather threatened by it, in particular by developments such as international migration and the ascendancy of new powers, such as China. They point out, in strong terms, that this development is detrimental to European society as it leads people to make the wrong political choices.

**Azmanova and Dakwar** also get to the heart of the "postnational constellation" directly. Habermas conjectured that with the lack of capacity on the part of nation states to influence their environment and the increasing interdependence of nationally bounded societies, the focus of collective identity would shift from national cultures to the foundational values of the constitution. This shift was supposed to replace an irrational source of social cohesion with rational recognition of universal norms. He thought that constitutional patriotism would provide a major social medium of integration. It would mediate universal values and national histories. Each nation could look to its own culturally specific project, however, by putting it in a larger, more cosmopolitan context of a group of peer countries. No longer would patriotism be nativist and exclusionary with regard to others. Rather, the focus would shift from a national heritage to the practice of citizens exercising their rights to participation and communication. National traditions would lose their politically integrated function and retain a merely cultural significance—a hope that Habermas, by the way, shares with neoliberals.<sup>6</sup>

<sup>5</sup>Jürgen Habermas, *Between Facts and Norms* (MIT Press, 1998).

<sup>6</sup>See Quinn Slobodian, *Globalists* (Harvard University Press, 2018).

On the surface, this belief appears to have been naïvely optimistic. The recrudescence of nationalism in the garb of populist movements owes its success to a firm anti-immigration stance. It seems as though such movements are the attractor of those who appear to be the losers of economic globalisation, such as white, not so well educated, middle aged men. And it seems as though these movements threaten to undo the postnational constellation (as not least van Aaken and Vassel suggest).

Azmanova and Dakwar claim, however, that upon closer inspection, it turns out that these movements give us merely an “inverted” perspective of the postnational constellation. While they retain the attachment to universal values, such as democracy and the rule of law, they confine them to a national setting. The “inverted postnationalism [...] is created through a territorial and ethnic appropriation (and ergo, de-nationalisation and de-transcendentalisation) of universal political values.” Some populist movements—and the authors mention the identitarian movement—pledge allegiance to the same values that figure prominently in the context of the constitutional patriotism, such as democracy, the rule of law or the welfare state. Simultaneously, however, they eliminate the spirit of postnationalism and insist on viewing these values and achievements as “ours”. The perspective of progressive inclusion and the de-nationalisation of the constitution disappear. The irrational integrating factor of national identity returns with a vengeance, not least because national solidarity promises to shelter people against the socially corrosive forces of the global economy.

Habermas's work appears, in their view, unable to account for such a transformation, for it does not pay heed to the economic context under which modern democratic politics works. And this is the context of capitalism. In their view, Habermas's elaboration of the postnational constellation has too little room for critique of capitalism. They conclude with the reminder, hence, that more democracy is hardly a substitute for less capitalism.

**Flatscher and Seitz** also offer a very useful reconstruction of the challenge that Habermas perceives to arise in the postnational constellation, namely, the challenge to dissociate democracy from national solidarity and to recreate the conditions of democratic deliberation and solidarity at the trans- or supranational level. As mentioned above, the idea of “constitutional patriotism” takes centre state in this context, signifying the severing of both democracy and solidarity from the national context.

The authors, however, perceive a bourgeois bias inherent in Habermas's conception of postnational democracy. It is manifest in kicking the institutional forms and correlative attitudes of modern constitutional democracy upstairs to a level “beyond” the nation state. But this “beyond” does not reconcile us with our social existence; it is, to put it in theological terms, not the kingdom to come. This explains why Habermas's vision cannot really persuade. It does not persuade because the folks on the ground do not experience this move to the higher level as a process of emancipation. They cannot view it as such because it leaves the basic neoliberal rift between an increasing global economic space and the reaction that it triggers in place. The reactions conjure up national loyalties or draw on racist mutual sympathies. Globalisation and the revolt against it are part of one and the same social imaginary. The deliberating bourgeois citizen with an open-minded attitude towards free movement, and the reactionary supporters of right-wing parties preferring a shut-down of national borders, are integral to the same social imaginary. The bourgeois citizenry is thus only concerned with containing those others who would like to close all borders (and it is indeed surprising that we have not seen demands to restrict the suffrage of the uneducated or property-less classes).

Flatscher and Seitz remind us, quite intriguingly, that Habermas's account of the postnational constellation does not offer us any guidance when it comes to transcending such a reified account of social structures, in which each social political agent is accorded its predetermined role and identity. Drawing on Jacques Rancière's analysis of the historical role of the “plebeian”, they point out that only if the disadvantaged dare disidentify with their ascribed social identity can they alter the structure of political participation. Rancière himself explains this by pointing out that the 1960 migrants still counted as workers and were hence seen to be part of a transnational proletariat. This has disappeared now that migrants have become just migrants and are merely perceived as a threat. By contrast, in order to experience the postnational as an opportunity for emancipation, those whose voices are dismissed as ill-founded or morally appalling need to find a way to construct an alternative form of political subjectivity that would counter-balance the hegemonic bourgeois conception of citizenship.

In a contribution that traces Habermas's writings on European integration, **Neil Walker** sketches three positions that Habermas implicitly adopted over the years vis-à-vis the European constitutional project. Habermas initially believed that a constitution might serve as a catalyst spurring European democracy, for it would "help irrigate a European public sphere". Since, as Walker explains, the failure of the Convention on the Future of Europe "exposed the fallacy of this gambit", Habermas recalibrated his perspective and turned to reconstructing the existing constitutional settlement. The result of this effort is the "double sovereign thesis", according to which the constituent power of the Union is shared between the entire citizenry of Europe, on the one hand, and the various citizenries of the Member States, on the other (see also the contribution by Perju below). This implies that European citizens would ideally conceive of themselves as members of already constituted states and as members of European Union that is in the process of creating a more perfect union. Moreover, dual sovereignty avoids the unappealing alternative between a fully-fledged European federation and a Europe of nation states. Yet, as Walker points out, dual sovereignty merely signifies that questions of authority remain unsettled in the European Union. It does not help to resolve any. This explains why the "catalytic potential of an actual constitution-making process" remains an attractive option. Refounding, however, appears to be the path that Habermas has become too pessimistic to take. By contrast, in conclusion Walker points out that "there is today more of a sense of a context 'ripe' for change".

From a slightly different angle, **Vlad Perju** takes issue with Habermas's more recent perspective on the European constitution, more precisely, with his view that the authority of the European Union lends expression to a *pouvoir constituant mixte*. As already mentioned, according to Habermas, a double authority constitutes the Union: the citizens of nation states and the citizens of a future EU. While such a view is not unfamiliar, Perju contends that the two types of citizens are not positioned symmetrically in Habermas's account. Rather, Perju identifies three asymmetries in the relation of the national and the supranational citizens.

First, there is an asymmetry of normative expectations, as a result of which the national citizens wish to retain the accomplishments of national constitutional regimes and do not expect any similar accomplishments from the Union. Such an asymmetry is particularly implausible, Perju objects, in light of the bitter experiences that Europeans have had with their nation states in the twentieth century.

Second, Perju perceives an asymmetry of function that concerns sustaining states as sites where the operation of public authority supposedly gives expression to a shared understanding of justice and freedom. In this context, Habermas tends to accord the EU an ancillary role only in that it is supposed to enable states to fulfil their function. Such a view, however, disfavours and effectively undermines more ambitious perspectives on the EU. The supranational half of the citizens becomes, in a sense, the servant of his national half.

Finally, the "asymmetry of origin" puts the Western European social welfare state in the position of the polity that is indispensable to guarantee equal rights for all citizens. Doing so, Perju contends, not only idealises the welfare state in a manner that is inconsistent with Habermas's earlier critical analyses of bureaucratisation and normalisation, it also systematically discourages the elaboration or pursuit of a more ambitious project of European integration. Perju concludes that, unwittingly, Habermas's interpretation of his double sovereignty thesis is bound to "legitimise a state of political limbo that the forces of dark nationalism are bound to exploit." A supranationalism that accords priority to and idealises national accomplishments is thus prone to be hoist by its own petard.

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