THE EUROPEAN TURN OF ‘CONSTITUTIONAL PATRIOTISM’: FROM POLEMIC TO THEORY...AND BACKWARDS

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Concepts that political theory and philosophy have to handle with are Janus-faced, as is the very notion of ‘political thought’. To put it otherwise, their ‘political’ dimension is unclear.

Concepts produced by theory or philosophy about the political game are defined as theoretical, i.e. characterized by a rigorously constructed meaning, produced by highly specialized professionals supposed to follow rational procedures and scientific purposes. According to the classical weberian distinction between professional politicians and professional scientists, which still works as a generally accepted norm of modern social sciences, scientific purposes require to display the complete neutrality on which the specific legitimacy of science is grounded. In practice, political theorists and political actors are expected to use different procedures and to pursue different goals. Concepts in use in political theory and everyday politics should therefore be carefully distinguished, as belonging to two autonomous spheres (for an illustration of this position, see BOURDIEU: 2001).

However, political concepts do not exactly match these expectations. Being ‘political’ can also refer to the fact that some of them are in use in the games, the vocabulary, the problems which in some way relate to the organization and relations admitted in the city - phenomenon once analyzed in terms of “double hermeneutic” by Anthony Giddens (GIDDENS: 1984). That theoretical political concepts can at the same time be regarded as elements of the everyday political game and of its theoretical study reflects in the empirical observation of their circulation. Conceptual circulation refers to the expansion process of the uses of a concept to new debates, process which constitutes the ‘career’ of a concept. This circulation can be geographical, say from Germany to France; it can be thematic, say from a debate about history to one about democracy; it can be polemic, say from an academic controversy to a political one.

This appears never so strikingly as when theoretical and academic concepts, usually mostly discussed by scholars, abruptly become fashionable in political speeches¹, sometimes in the media, be it for just a short or a long length of time. They can be old ones and surface on very specific occasions (for instance, the political debates associated with national sovereignty, human rights,…), or they can be brand new theoretical concepts immediately praised by political actors² (‘multi-level governance’ for the European Union is the best example: forged in 1994 by a British political scientist, it was made a major issue by the European Commission in a White Book published not later as 2001). Defined this way, political concepts may even play a constitutive role in politics, if we are to agree that “just as certain rules constitute certain

¹ The opposite may of course be true as well: concepts first used by politicians may enter the vocabulary and tools of scholars, although probably not so often. Given the intermediate character and the purpose of this presentation, though, I will only discuss the former case: how it happens that theoretical concepts are sometimes “spoken by politics”. Nevertheless, I precisely hope to point out the complexity and equivocality of the relations between both kinds of discourses.

² Political actors here refers to all the actors involved in the political process, professional politicians, professional observers or ordinary citizens. Nevertheless, the task of investigating the opinions of the citizens would have been out of reach in the given time of this work.
games, in that without these rules certain games cannot possibly be played, so, too, do certain concepts constitute certain beliefs, in that without these concepts, certain beliefs cannot possibly be held" (FARR: 1988). In this sense, political concepts are tools used in the struggle to define how we can interpret the institutional and social order, and, by doing so, they are directly related to its legitimacy (BERGER&LUCKMANN: 1966).

In what follows, I shall argue that paying attention to this 'ordinary' kind of conceptual circulation could prove of great help to understand political thought in its broadest meaning, and especially in the European Union (EU). Focusing on this circulation allows us to scrutinize the border between theoretical and practical concepts and discourses, and then, to deal with the processes by which a political idea gains acceptance, is legitimized, not only in scientific arguments but in everyday political speeches and collective representations. Of course, it requires to suspend any a priori division between first-class technical concepts, on the political theory side, and second hand or wasted ones - ideology and political communication (FREEDEN: 2006), on the side of the political game. This is part of an effort to understand a society's political thought in its broadest meaning.

As I will try to make clear, the concept of 'constitutional patriotism' provides an interesting case for such a study, thanks to the different ways of circulating its career displays. One could nevertheless wonder whether it would not have been a better choice to investigate a much more famous concept – liberalism, democracy,… One reason for this choice is its empirical feasibility: being a key but rather confidential concept, constitutional patriotism allows a precise investigation of its uses and of the debates associated with it. In other words, it provides a 'micro' case of circulation, which is at first sight of lesser range than others, but proves more useful to get detailed insights of the process. A stronger reason for this choice lies in the European context of its discussion. The process of European political building can indeed be analyzed as the uneven and still in the making development of a new political order (VAN MIDDELAAR: 2012 ; WIND: 2000 ; HOFFMANN: 1995). In this broad understanding, it does not only challenge traditional political practices and institutions, but political ideas and theory as well (SMITH &LEQUESNE: 1997). In political theory it goes so far as questioning deeply rooted concepts such as ‘sovereignty’, ‘nation’, ‘identity’, ‘citizenship’… (BELLAMY: 2006). We thus face a process where new ideas are at the very heart of the political debates, be they academic or not. Moreover, a great deal of these ideas are extremely controversial, for they can be traced back to extremely different historical backgrounds (national and disciplinary traditions) and strategic interests (political and scientific projects). European debates therefore mix up a variety of elements, resulting in unexpected and puzzling circulation processes from national and disciplinary arenas to other ones. Consequently, they sometimes appear as an incoherent patchwork randomly mixing concepts from various backgrounds. My general purpose here is to understand the formation and evolution of this patchwork, i.e. to analyze the processes by which certain concepts succeed or fail to become part of these discourses. It should help to provide a better understand how a concept becomes “European”, becomes part of the
vocabulary used to discuss the EU. More specifically, I intend to question the selective character of these circulations. How does it happen, in the EU, that sometimes concepts succeed in circulating, and sometimes fail to do so? How does a concept manage to cross the social and intellectual borders, to gain political force in European political discourses? In which conditions is it possible, and what changes could be involved in the circulating concepts?

Now, how shall we convert this questions into methodological guidelines for investigation? First, we need to basically consider that concepts are expressed by words, which are empirically available in texts and speeches. Investigating the career of a concept then starts with tracking down its occurrences. On the one hand, basing on GoogleNgram data (according to its developer, it represents several millions of books, nearly 4% of all books ever published; see MICHEL: 2011) I worked to build a chronology of the frequency and evolution of uses of the words “constitutional patriotism” (fig. 2), to define how often and on which occasions the expression was used. On the other hand, I gathered 198 articles using the concept from the beginning (1988) to present days and the enforcement of the Lisbon Treaty (2008). Articles were selected both in scientific reviews regularly using the concept in different disciplines (philosophy, political science, history and sociology) and in generalist reviews addressing a wider public (Esprit, Merkur). Given my research focus, they were mostly French and German. Besides reading them, these articles were analyzed using a discursive-analysis software (Alceste) in order to reveal most frequent words and issues discussed - how it was used.

Secondly, to use a concept is to say some words not only carrying a meaning but also taking place in a context where they are produced and received (AUSTIN: 1962). In the case of political thought, the relevant context to be studied is a complex one, mixing ideational, political, social and personal stakes. Thus, understanding this context requires to pay attention to the academic debates on the occasion of which the concept is used, attacked or defended. But it also requires to examine the social and political debates prevailing at a given time in a given arena, in using second-hand historical documents and newspaper articles. In other words, it implies to relate the occurrences of the concept to the different moments and places where it was used.

Finally, the concepts used in these changing historical contexts do not move by themselves in the light air of ideas. After all, to be used, a concept needs a user. That’s to say that this investigation has to be actor-centered as well, and gather sociological material on the actors involved, be they individual or institutional. Their role can be obviously argumentative, in the case of actors often and decisively discussing the concept. But it can also be more discrete, in the case of actors who do not appear to be major thinkers nor politicians, but who nevertheless play a pivotal role in connecting others together, or shaping their discussions by institutional or editorial activities.

Birth of a concept:

What does “constitutional patriotism” mean? “The expression will sound in many ears like a contradiction in terms”, acknowledges Jan-Werner Müller in the opening sentence of his book on this topic (MÜLLER: 2007). First, the concepts of “patriotism” and “constitution”, even when considered separately, lack clarity. Patriotism can be thought as a vertical relationship of community members (usually in modern times, citizens) to their community as a whole (usually a Nation-state). And yet, patriotism
refers to an additional horizontal dimension, implied by the fact that patriotism is supposed to be a shared feeling, often thought as relying on a common identity. In short, patriotism binds citizen to the nation-state, on the one hand, and all together, on the other. The concept of constitution has two dimensions as well: it is first a legal and political text playing a foundational role in modern states and defining the organization of the state and its relationship to citizens. In this sense, it has a given content, or, to put it differently, it is an historical result stating how things are and should be in a given political community. But it also is the process of building such a state, the dynamic construction of a political entity. Both concepts can thus be stressed in very different ways, from a fixed statist view (combination of vertical dimension of patriotism with substantial definition of the Constitution), to one more concerned by the citizens (the combination of horizontal dimension of patriotism with the procedural meaning of Constitution).

Secondly, there is something uncomfortable in thinking of the association of a feeling of belonging to a community (patriotism) and the political and legal concept of constitution. In ‘constitutional patriotism’, the strong feeling of patriotism is thus connected to a rational law, and not to more emotionally moving objects such as nations. Defined in this way, “constitutional patriotism” is very close to the oxymoron contained in the idea of “rational feeling” developed by Kantian tradition about the concept of respect. To that extent, it exposes to the same critics, especially that of contradicting in terms and of lacking any possible empirical experience. The concept therefore is theoretically far from self-speaking, and empirically doubtful.

Facing this conceptual difficulties, we might expect to find some help in considering its original meaning. The concept of constitutional patriotism was made famous by the German philosopher and social theorist Jürgen Habermas during the heated public controversy known as the Historikerstreit (‘historian’s quarrel’), which lasted from 1986 to 1988 in Germany. However, strictly speaking, Habermas was not the “father” of the concept, since it had been first coined by the German political scientist Dolf Sternberger in 1979, in a short newspaper article celebrating the 30th anniversary of the German Constitution (Grundgesetz) of 1949. Although he was a renown political scientist, one of the fathers of German post-war political science, his concept had hardly an echo until it was used by Habermas. Significantly, it was not before 1990, once the Historikerstreit was over, that he published a book entitled Verfassungspatriotismus (Constitutional Patriotism), composed of a collection of articles on the issue.

This contested ‘fatherhood’ is more than purely anecdotal, inasmuch Sternberger and Habermas hold totally different, rather opposite, definitions of the concept. According to the explanations Sternberger later provided, ‘constitutional patriotism’ was to be understood as a wide-range descriptive notion: “Patriotism in its European tradition had always and essentially something to do with the Constitution of the State, which means that patriotism is always and essentially a constitutional patriotism” (STERNBberger: 1990). In this descriptive sense, the concept was supposed to point out the hidden connection between a feeling of belonging to a community and the institutions of this community. That’s to say that the main issue in patriotism should not be its national dimension, which leads to nationalism, but its relationship to the State embodied by the basic law. This attempt to praise anew the “tradition of European patriotism” before the age of nations was then “to be understood as a return to pre-national patriotism” (MÜLLER: 2007). For Habermas, ‘constitutional patriotism’ distinguishes from nationalism and conventional national identity as well - but, contrary to Sternberger, only if associated to a post-national conception of political belonging.
refusing cultural or traditional ties. Where Sternberger intended to make a case for a pre-national patriotism, Habermas pleaded for a post-national one. It should be underlined here that, in both cases, these definitions were hardly given at the time of the first use: Sternberger waited until a conference in 1987 to display the meaning of his concept, while Habermas only mentioned it in the last lines of a polemic article (AUGSTEIN: 1988). Unlike many theoretical concepts, which may always be sent back to the precise definition they were once given, constitutional patriotism was from the beginning ill-defined.

Finally, as was already suggested, the context of the debates was undoubtedly a very specific one: in 1979 as in 1988, the debates were about German past and, explicitly, its relation to WW2. The Historikerstreit, during which the concept was reborn, was a public controversy opposing historians, quickly joined by other intellectuals, on the interpretation of the Nazi past. It was launched in July 1986 when the historian Ernst Nolte published in the Frankfurter Allgemeine Zeitung a seminal article pleading for an “historicisation” of the Final Solution. He claimed that a full scientific understanding of the events would require to stop considering them sui generis, and, especially, would require to think the causal role of the USSR over. This polemical statement started a violent and long controversy on the historical meaning of Nazism, on the German past and identity. Several historians fiercely replied to him, denouncing an attempt to reduce the exceptionality of Nazism. They were soon joined by an experienced actor of public debates, Jürgen Habermas. It was not long before he became the representative of the “discontinuity” thesis against the partisans of historical “continuity” thesis defended by Nolte. All this was all the more controversial than this apparently strictly academic debate drew on a tensed political background. For the 1985 commemoration of the end of WW2, the then chancellor Helmut Kohl and his American fellow Ronald Reagan visited the cemetery of Bitburg, where former SS are buried beside American soldiers. This was followed by the launching of a program aiming at redefining the politics of memory in the Federal Republic, especially by building a new museum in Berlin. Nolte and his supports were known to be close to the conservative government (as was Sternberger), particularly Michael Stürmer who was then H. Kohl’s speechwriter. Habermas being a distinguished representative of the second generation of the Frankfurt School, and having a Marxist background, his friends were likely to be found in the SPD or the Greens, i.e. in the opposition: political affinities paralleled academic ones.

The specific character of the debates where “constitutional patriotism” was first used can now be defined: it was first formulated in a German academic and political debate originating in German history and concerning the very private issue of national memory. Habermas’ thesis was actually that “constitutional patriotism” was the only way left for Germany to live with its past. To put it abruptly, the concept was designed for German intellectual and political context.

If we consider that its birth certificate is disputed, its initial definition unclear, to say the least, and the context of its first introduction, very specific, it turns out that, at the very beginning, to bet that “constitutional patriotism” would become a key concept of many theoretical European debates would have been quite daring. The concept lacked theoretical and logical clarity, was highly politicized and had no obvious empirical match. It was unlikely to be defined as a theoretical concept: much more, it had many features of a muddy ideological word. However, it happened to be increasingly used by a great number of political theorists, German or not (fig. 2); it also happened to be used in non-German political debates, in France and in the European Union most of all, where it
became a kind of an ideal view of the expected relationship of citizens to political institutions (MÜLLER: 2007b; RAMBOUR: 2004). It escaped Germany and entered European debates. How are we to understand these moves?

Circulations, contexts and legitimization

I will sketch out three major moves which departed the concept from its initial context and gave it a theoretical legitimacy, on the one hand, and a European political legitimacy, on the other. These processes will actually prove to be tightly connected.

From past to future: German history

The first act took place in Germany, shortly after the end of the Historikerstreit. It occurred on the occasion of the Reunification debate, in the years surrounding the fall of the Berlin wall (1988-1993). At this point, the historical question of dealing with German past was turned into the legal question of grounding Germany's future.

The Reunification debate was, for our concern here, mainly a political and legal one. The questions raised by the prospect of a German unification, although complex, developed around the question of the Constitution, for the 1949 Constitution had been from the beginning on supposed to be provisional, valid only as long as the country was divided. With the end of the Cold War and the prospect of Reunification, a constitutional change should have been expected. However, many voices claimed for an emergency Reunification, modeled on the integration process of the former Allied-occupied parts of FRG (article 23 of German Grundgesetz). In doing so, East-Germany was to be blended in West-Germany, and to adopt its political organization and rules. But, for Habermas, this

3 Source: GoogleNgram.
solution involved a major risk, for in avoiding a constitutional debate, it failed to address the question of loyalty of East-Germans to the institutions of the Federal Republic. In his words, it sounded to him like an annexation (Anschluss) of sad memory. Using the authority gained throughout many public debates, he then once more publicly made a case for a “constitutional patriotism” that would be the ground of a shared sense of belonging in both parts of Germany. Two weeks after the fall of the Wall, he exposed his thesis to his academic friends in a short text on “national feeling” and to the public opinion in a series of articles in Die Zeit, a leading liberal newspaper (SPECTER: 2010). Given the difficulty of legitimating reunification on a shared national past, he pointed at the risk of a nationalist revival, and of an increasing hate of democracy, in the East as in the West. This puzzle could only be solved if promoting and adopting constitutional patriotism as a civic norm, on the occasion of the debate on the new Constitution. According to Habermas, to overcome their past and prepare their reunified future, Germans needed to go beyond the nation, and this could only be achieved by praising democracy in place of nation – and the corresponding feeling of belonging of such a post-national democracy, ‘constitutional patriotism’. The object of this new patriotism was not a particular substantial quality any more, it was the universal democratic values embodied in the Constitution. ‘Constitutional patriotism’ was here closely associated with a reflection on the foundational and integrative role of democracy.

But, as an observer put it as early as 1988, things had changed in Germany:

"Jürgen Habermas, has argued that German identity must consist of "constitutional patriotism" (Verfassungspatriotismus), Willms [a political scientist belonging to the 'New German Right'] responds: "Identity lies in the nation, not in the constitution."" Quite early in the debate on the national question, Willms recognized that the political climate was changing and that this might open new opportunities for the right. [...] He observed that the nation could be discussed in a way which had been impossible a few years before. The "political-intellectual spectrum" had moved. What once had been dismissed as extreme rightist had shifted to the right."

In this context, Habermas’ argument was defeated and Germany reunified without voting a new Constitution. Constitutional patriotism had failed to be generally accepted as the new legitimate civic norm of the old Federal Republic.

Nevertheless, the philosopher's stress on Constitution was not only of political significance. More subtly, it allowed Habermas to push its concept forward in the arena of legal experts, where it was, for the first time, given a sort of academic legitimacy. This was made possible both by the special relationship between Habermas and legal experts, and by the intellectual cleavages amongst them. The philosopher, although considered a member of the Frankfurt School, had rather bad relations with Max Horkheimer, one of the leading figure of this school, so that his habilitation work on public space was directed by Wolfgang Abendroth, who was a representative of a minor trend in German legal thought - the "left-wing constitutionalists" (SPECTER: 2010). These legal thinkers opposed the traditional mainstream legal ideas in Germany, for they focused on the Constitution as a process more than the State as a tool for integration (GRIMM: 2005). As a consequence of opposing the dominant picture and disciplines of the German “Staatsrechtslehre”, these constitutionalists held an uncomfortable and minor position in German legal academic space. But Habermas kept in touch with these legal debates long after the end of his habilitation work, and animated seminars on legal theory during the 80’s, with renown theorists of Constitution such as Ingeborg Maus. That’s to say that the small community of German
constitutionalists was familiar with the philosopher and his ideas. Moreover, since they were equally interested in defending the major role of the Constitution, they strongly supported his public insistence on the civic role of Constitution, and on constitutional patriotism. For instance, major legal figures such as Helmut Simon, a former judge in the German Constitutional Court or Ulrich Preuss, involved in the technical negotiations with East Germany, publicly claimed for a new Constitution and a “constitutional patriotism”. But this was not enough. A group of about hundred mainstream jurists, led by Josef Isensee and close to the ruling CDU, attacked and outnumbered the constitutionalist position, arguing that there was no time for such an uncertain experiment, considering political imperatives of the time. The lack of possible empirical evidence proving the possibility and effectiveness of ‘constitutional patriotism’ heavily weighted in Habermas’ dismissal.

Two observations can be drawn from this debate. First, constitutional patriotism remains an highly controversial concept, at this point more used in political arguments in the newspapers than in academic ones. However, thanks to personal connections, to Habermas academic training, and to a common interest in the Constitution, it found academic support by the constitutionalists: the concept was associated with a tradition of legal thinking in Germany, and related to a minor tradition but a major cleavage within it. The political Reunification debate provided “constitutional patriotism” some legal support. Secondly, a major move had then been accomplished, by extending its relevance to a new controversy not only focused on the past, but dealing in the first place with the future. To put it otherwise, if the continuity between the Historikerstreit and the Reunification is quite clear, in the latter “constitutional patriotism” does not aim at solving a past problem, but at building the future. This apparently slight difference shouldn’t be underestimated for it proves possible for “constitutional patriotism” to be thought apart from its initial context, and then, to circulate in completely different debates.

**From polemic to theory…and backwards: French and German nations**

Once removed from its initial context, memory of Nazism, it nevertheless remains that “constitutional patriotism” was at first place designed for German debates. Some authors found here sufficient ground to jump to the conclusion that European success of the concept simply reflects the domination of German conceptions of Europe in the European debates (TURNER: 2004). As we shall see, this idea is far from accurately matching the complex processes at work.

In fact, constitutional patriotism has obviously become a concept used to think about European issues. The more blatant illustration of this “European turn” took place in France and Germany in 2000, when the then German Minister of Foreign Affairs, Joschka Fischer, held a famous speech on the future of European Union – and launched a controversy with the French Minister of Domestic Affairs, Jean-Pierre Chevènement. In a highly symbolic discourse, held few days after the 50th anniversary of the seminal Schuman declaration of the 09/05/1950, Fischer made the case for a renewal of European construction, and argued for a “federation of Nation-States”. Fischer did not use the concept of “constitutional patriotism” nor cite Habermas: but J. P. Chevènement did, in a violent answer blaming Fischer’s speech and its “typically German view of Europe”, analyzed as an “escape [from the past] in post-nationalism” and fear of nation5.

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4 Taz, 03/03/1990.
As a consequence, “constitutional patriotism” was characterized as a case of abstraction lacking any possible ground and reality outside Germany. Interestingly enough, J. P. Chevènement challenged the concept in the name of nation, but in the very specific sense of “national-sovereignism” (LACROIX: 2003). This political conception argues that there is an historically constituted but now indivisible tie between nation and Republic, forged during the French Revolutionary events. The Republican patriotism has to be a national one. On the contrary, Fischer answer depicts himself as a “French revolutionary”, in the sense that he suggests a “constitutional revolution”, which could lead to build anew the European Union6. J. P. Chevènement refers to the Republican tradition, as in constant opposition with German political thought, while Fischer grounds his point on the Revolutionary moment as a foundational point of great interest in German present situation. In other words, although using the same historical references and type of arguments, they are considering different temporalities – tradition for the French Minister, post-reunification situation for the German one.

This controversy made clear that constitutional patriotism was relevant not only to German debates, but also to European ones. Nevertheless, as we shall see now, this debate is better understood as the crossroads of two national politicizations than as the “Europeanization” of the concept.

Actually, the “Europeanization under German influence” thesis overlooks a major step in the concept’s career: its introduction in France. A brief examination of the articles using the concept in France at this time (1988-1993) reveals a curious fact. Although “constitutional patriotism” was mainly used in political controversies in Germany, more than half of French uses are to be found in philosophical or theoretical articles. Moreover, even when they deal with problems similar to those encountered in Germany (nation, identity, community), they are neither very concerned with the German case nor with legal debates. In other words, in crossing the border, the concept seems to have lost its German political and academic context. How such an allegedly German concept would have managed such a resettlement?

In the late 80’s, Habermas was far from unknown in France. Partly translated since the early 70’s, he had given a series of lectures at the prestigious Collège de France in 1983-1984, where he had met Foucault and other famous French intellectuals. However, his plea for a new German Constitution and “constitutional patriotism” wasn’t really echoed in France, where the general intellectual mood was suspicious about the reunification of the powerful neighbor (BOUCHINDHOMME: 2005). The introduction of the concept was thus mainly academic, thanks to the work of a small group of French scholars and translators of Habermas’ work. Four names particularly deserve to be mentioned: Habermas’ two main translators, Rainer Rochlitz and Christian Bouchindhomme, and two of his main French editors, Jean-Marc Ferry and Heinz Wismann. All of them had been trained as philosophers in the hermeneutic tradition of Gadamer and Ricoeur. Except Wismann, who was older, they were at the very beginning of their career: to introduce Habermas’ work, already famous but not a classic in France yet, was an opportunity to be associated with him, to use his name as a resource of legitimization in their domestic academic debates. They could all rely on familiarity with German debates (actually, Rochlitz and Wismann were born German) and on personal knowledge of Habermas - especially Ferry who, in 1989, worked with him as research assistant. Finally, it is of great consequence to insist that they were closely connected

together, with Wismann playing the pivotal role as editorial director of a small but active collection ("Passages") he had founded in 1986, and where Habermas’ books are published at this time. This network assumed the major role of framing the reception of Habermassian thought from the early 80’s on. Some of them became “spokesmen” of constitutional patriotism, i.e. publicly and lastingly used and defended it.

Compared to Germany, three major moves in its understanding can be drawn back to their role. First, in the editorial forewords they produced to Habermas’ French editions, it’s striking to notice that they almost completely turned away from Habermas’ Marxist past. Assuming that it was then no more relevant, and coming themselves from very different traditions (Ricoeur was their French master), they played down its relationship with the Frankfurt School in a way strongly contrasting with the previous ones. For instance, whereas in 1973 he was said to “inherit the Frankfurt School”, we are told in 1986 that “he owes nothing to the Frankfurt School” and works “alone”. Secondly, the genealogy of “constitutional patriotism” itself is rebuilt, especially by Ferry. Although he of course describes the concept as related to its first use during the Historikerstreit, he clearly states that “constitutional patriotism” was already implied by the French Republican tradition as early as 1791 (FERRY: 1991). It would in fact have been the “true” revolutionary patriotism – which is of much value in France. Doing so, he translates the concept in a French mainstream vocabulary and intellectual tradition, and tears it away from its German origins. Even more: it suggests an empirical case of effective “constitutional patriotism” and thus answer a critic regularly made to the concept. Thirdly, these philosophers gave an obvious theoretical turn to the concept. In a 1990 article, Ferry justifies his use of the concept as resulting of a “more systematic, more theoretical” questioning on what a nation is, what it involves concerning national identity” (FERRY: 1990). Constitutional patriotism is defined “from a systematic point of view” as follows: “This concept is clear: [...] it means that political identity, from now on different from national identity, is grounded on universalist principles (in understanding) and thus transnational (in extension)” (FERRY: 1990). This definition of constitutional patriotism as civic belonging is very close to Habermas’. Nevertheless, it constitutes a blatant case of a theorization process (STRANG, MEYER: 1993), i.e. of interpretation of a contextual notion in terms of abstract categories, which makes it virtually available for universal use. Moreover, the universalist principles the concept conceals are explicitly made equivalent to its transnational dimension, that’s to say, its ability to circulate.

These three processes resulted in distancing the concept from its original context and in strengthening its definition. One the one hand, they made it acceptable in French context, by giving a proper genealogy to the author and the concept. On the other hand, the theorization process gave him philosophical legitimacy, and firmly rooted “constitutional patriotism” in long-term debates – be they national or, as implied by the universalistic dimension it’s given, transnational.

The concept was made theoretical, universalist, out of time. However, it would be oversimplifying to hold that it was not given any relevance in early 90’s political debates: ‘constitutional patriotism’ was at the same time linked to a new political issue: the European process.

French debates on Europe have proved, at least since Maastricht, very heated academically as well as politically. They revolved around the national question. In 1992, two lines appeared which didn’t follow the traditional political borders. They opposed those who dismissed the Treaty in the name of different pictures of nation, from
extreme-right to extreme-left and even amongst traditional pro-European, and those who saw the Treaty as a decisive step for European integration. The patriotic question surfaced in this context: for instance, Pierre Bérégovoy, speaker of the National Assembly, started one of his 1992 speeches by praising the “daring patriotism” of the Maastricht’s defenders. Another MP and future vice-chairman of the European Commission, Jacques Barrot, also pleaded for a “European patriotism” which were to combine with the national ones. Not very surprisingly then, the “European turn” of constitutional patriotism appears to have occurred in France before Germany, although the concept was still much more used in the latter. Its French spokesmen were indeed strongly involved not only in theoretical work, but also in public debates on Europe, and were especially connected with the old, left-liberal catholic and traditionally pro-European review *Esprit*. Ferry, again, had been a member of its editorial board since 1988, and frequently published articles on post-nationalism inspired by the work of Habermas. In 1992, at the very heart of the Maastricht ratification process, he was a co-editor of a book, edited by *Esprit*, discussing European future, where he and Habermas defended constitutional patriotism. It was explicitly stated that, “in this view, European identity reduces to what Habermas calls ‘constitutional patriotism’” (LENOBLE: 1992).

Similarly, a philosopher and fellow member of the board of *Esprit*, Joël Roman, published in 1992 one of the first French daily press articles using “constitutional patriotism”, entitled “Europe has to be post-national”. No more than six years after Habermas’ first use, the concept had been completely shifted into European issues in French debates.

But while in France the issue attached to constitutional patriotism was the place and integration of the French nation to Europe, the question at stake in Germany was the place and integration of citizens to the German nation.

On the one hand, in Germany, it was a while before the concept was imported into European issues. Habermas’ attempts to impose “constitutional patriotism” in European debates almost completely failed until the mid-90’s. Until there, less than 10% of the German articles using constitutional patriotism mentioned European construction, and generally to explain how difficult it is to think of a European patriotism. A reason for that is to be found in the context of European debates in Germany at this time: the general consent of German intellectuals on the benefits of European integration for Germany has sometimes been described as reflecting a “European fundamentalism” (DAHRENDORF in MÜLLER: 2000), lacking of actual contestation. Another reason lies in the discomfort that many left-minded intellectuals felt towards Europe, perceived as both economically too liberal and politically dangerous for it made the German feel less guilty of their past (MÜLLER: 2000). Given the difficulty to challenge the general consensus, it was long before those intellectuals enter the European debates, and thus debates remained rather weak. Finally, “constitutional patriotism” had been so strongly tied with German domestic problem that it could sound strange for Germans to use it about Europe.

On the other hand, an interesting polemic which developed between 1998 and 2001, reveals how the concept was used in Germany: the “*Leitkultur*” (dominant culture) debate. This concept, first forged by the political scientist Bassam Tibi in 1998 aimed at summarizing the major features of European democratic and enlightened culture, to defend it against the then ruling multiculturalism. But it was very quickly associated to and criticized as a case of empty “constitutional patriotism” by several conservatives political figures (the first was Jörg Schönbohm, CDU, and then Minister of the Land of Brandenburg). Their argument was that so defined *Leitkultur*, and constitutional
patriotism, lacked any historical, cultural, substantial, ground and meaning\textsuperscript{7}. It was thus held for impossible to build a shared feeling of belonging on such weak and a-historical bases. Here, the argument goes along the same lines that J. P. Chevènement would follow in 2000. But the issue was rather different of the French debates, which revolved around the question of integrating French citizens to the new European Union, rather than integrating people of different cultures to the nation.

Two points are to be made on these remarks. First, if the argument are quite similar in both countries, they are used in very different political contexts and debates, so that it reveals difficult to consider these debates as proofs of a transnational discussion of constitutional patriotism. It appears more accurate to underline the different politicizations the concept received than the apparently shared aspects of the polemics. Secondly, the “European turn” of the concept, its uses about Europe, seems to have first occurred in France, rather than in Germany, so that considering constitutional patriotism as a mere Europe-wide extension of a German idea, resulting of German activism or influence, completely ignores the shaping accomplished by the French scholars who introduced the concept.

From national polemics to European watchword: European democracy

“Constitutional patriotism” has proved a contested political and theoretical concept. It has been discussed in a variety of debates of great significance not only for Germany, but also for Europe. Nevertheless, I want to turn now to a remarkable move we observe in debates on the European Constitutional treaty: the peculiar decontestation (i.e. appearance of a consensus, although, as we shall see, it does not necessarily mean a conceptual clarification) of the concept, both in academic and political discourses at the European level.

The academic debates of the mid-2000’s (2004-2008) saw the development of a new descriptive, uncritical, way of using of the concept. I mean here that authors ceased to discuss its precise meaning, its validity or its past background, and just used it as given, as obvious, \textit{as an already accepted category}. These uses are in Germany mostly located in the legal debates. We here find an echo of the initial enrolment of legal controversies by Habermas. But more precisely, these uses are to be found in the writings of European Union legal specialists: it is the case in 60% of the articles focusing on European law and using the concept. In France, we face the same phenomenon, but on the side of political scientists: 50% of the uses they made of the concept are neutral, and most of these uses are made by specialized Europeanists. Although from different national and disciplinary origins, those French and German actors share common properties. First, German legal experts and French political scientists using “constitutional patriotism” in a neutral way are specialized in the European questions, which is to say that they belong to recent and still in some way contested disciplines in national academic arenas. Secondly, they are familiar with European academic institutions, such as the EUI in Florence, or the Collège of Europe in Bruges. Amongst the authors I’ve studied, 60% of the French ones who have once worked in or for this kind of institutions were political scientists ; in Germany, half were jurists. It seems therefore possible to suggest that the more authors are familiar with European institutions, procedures or funding, the more they use “constitutional patriotism” in an uncritical way.

\textsuperscript{7} SCHÖNBOHM J., \textit{Berliner Zeitung}, 22/06/1998.
How can we understand this curious phenomenon, considering the heat of past debates about Europe? First, a new generation of political philosophers, slightly reinterpreted the concept in a more liberal and cosmopolitan meaning more fitted to actual European political debates. Contrary to the late Habermassian meaning - according to them increasingly turning into a more substantial view and weighting identity more than he used to (see HABERMAS: 2003) - this group of authors, often located in Brussels (around J. M. Ferry, Justine Lacroix and Paul Magnette) and former students of J. M. Ferry, constituted a second-generation interpretation of the concept (but see also Jan-Werner Müller). “Constitutional patriotism deepest meaning is not to be found in an effective identification [...] but in a practice or an habit resisting any identification” (LACROIX: 2003). Such a practice means an involvement of the citizens in political affairs creating and strengthening a shared feeling of belonging to a common polity, i.e. it doesn’t imply the substantial legal view of Constitution but its procedural meaning. These authors saw it as a way back: constitutional patriotism in its original meaning was nothing substantial, but a mere civic process. It can’t thus be defined by one given property or legal text but only as an open process never bound to a specific form or historical tradition. To put it differently, for them, the point in the concept is not only to put aside nation, it also has to make for democracy. The debate is therefore more closely related to democracy, and to European ‘democratic deficit’ than to nation and legal Constitution – which was, as it finally appeared, an highly sensitive issue in European debates.

Besides this new framing, we also note at this time an increasing effort of spokesmen of the concept to cross the national and disciplinary borders, and to improve the circulation of their theses. Geographical circulation was favored by the already mentioned fact that far from making career in French or German academic institutions, they were located in Brussels, and closely connected to European institutions. Considering disciplinary circulation, it’s worth noting that they coordinated interdisciplinary projects, as was made possible at the Free University of Brussels where J. M. Ferry and his former students (Justine Lacroix, Paul Magnette) ruled a Center for Political Theory. It’s especially true of the relationship of these French (or Belgians) scholars with legal studies: J. M. Ferry has led a private doctoral seminary since 1999 which purpose was to make students of law and political theory meet ; he also entered the editorial board of a review called Penser le droit in 2005, while J. Lacroix held lectures in a French institute on legal studies between 2006 and 2008. In doing so, these scholars build bridges between their initial specialty, political philosophy, and others disciplines involved in thinking the European process. More: in turning to the community of French legal specialists, they help transnational circulation, for as was said, in Germany the concept was from the beginning strongly tied to legal debates.

The interplay and familiarity due to common frequentation of European academic issues and institutions, on the one side, and the efforts of these scholars to find new audiences, to bridge the gaps between different disciplines help academic conceptual circulation. Indeed, the scholars promoting the concept position in a “borderland” (VAUCHEZ: 2010) where scholars of different national and professional backgrounds meet, debate, and tend to use a common language, for they deal with shared European issues and need mutual understanding. Through the mediating action of its defenders, “constitutional patriotism”, becomes part of this language shared by European specialists.
But what about its neutralization, its uncritical uses? Even if connected, scholars with so many different backgrounds could be expected to deeply disagree on the meaning of the concepts they use, or at least to make a polemical use of it – all the more since ‘constitutional patriotism’ has proved open to a great deal of different interpretations, or, to say it differently, its precise meaning has been highly contestable. I will argue here that an important factor explaining this neutralization lies in the political uses of the concept at the European level, which gives it a kind of legitimacy, of incontestability in academic debates.

The new generation of users of the concept was not too far from the framing process of European political issues. Many of them were also involved in political European expertise: if they rather rarely hold academic and partisan charges at the same time (though it was the case of one prominent Belgian political scientist, Paul Magnette), they very commonly advised politicians, or European institutions. It might be directly (Kalypso Nicolaïdis, close to Justine Lacroix, and chairwoman of the International Group of Expert Advisors on the Convention for the Future of Europe and the Greek 2003 Presidency) or more informally, through meetings and reports organized by think tanks, such as Notre Europe, created by Jacques Delors, where Justine Lacroix started her career. K. Nicolaïdis and J. M. Ferry have since become members of the Spinelli Group, a militant political association for a “federal and post-national Europe”, which also counts J. Delors and J. Fischer amongst its members. As advisers or experts, they are advising political or technocratic institutions in need for technical tools. It requires an awareness of and sensibility to the current political problems, and ability to propose precise recommendations (ROBERT: 2012). The reframing of “constitutional patriotism” in terms of democracy can then be understood as to some extent reflecting the general concern of European institutions and their experts for democratic legitimacy since the 2000’s (ZIMMERMANN: 2004). But, more important, this expert roles favor the circulation of the concept from academic papers to political discourses, which they enter as technical opinions of qualified experts.

This is thus not surprisingly linked to an increased acceptance in political discourses. To take the European Parliament as an example, the concept is used five times in European parliamentary debates between 2001 and 2004 – which is not much, except that it had never been before. One of these occurrences may be found in a resolution proposal of 2003, signed “in the name of the EPP [the majority European party]” by its German representative at the European Convention, Elmar Brok (CDU), member of the federalist Spinelli Group. It requires the European governments “to set an example on European constitutional patriotism during the final IGC negotiations” (BROK: 2003), instead of defending narrowly national interests. “Constitutional patriotism” is not displayed here as a contested theoretical concept, but as a required norm of European political behavior which should be adopted by ‘truly’ European leaders. “Constitutional patriotism” becomes a political watchword.

Academic defenders of the concept underline this entrance into legitimate political discourse for it in turn strengthens their claim in proving its relevance:

In public justifications, but even more so in state practice - countries in Western Europe are now converging on a notion of membership and political attachment that is best theorized in terms of the category of constitutional patriotism. In other words, what once appeared as a highly idiosyncratic construct for the very specific situation of post-war West Germany is now becoming an accepted norm and practice across at least Western Europe. (MÜLLER: 2007b)
This “convergence” would not be found in academic discourses, but in effective practice, which would only be described by the descriptive concept of “constitutional patriotism”: in this view, the concept has to be taken seriously because it matches real practices and political norms.

From a normative controversial one, “constitutional patriotism” gradually turned into a descriptive technical concept in European academic uses. Politically however, the national polemical concept turned into a watchword in the very non-national context of European institutions. It all happens as if political requirements of “constitutional patriotism” were now grounded on theoretical literature mediated by experts advices; conversely, theoretical arguments feel comforted by the political uses (WAGNER: 2004).

All this points out two different ways for a theoretical concept to “turn political”, i.e. to be used in political games, as summed up below.

<table>
<thead>
<tr>
<th>Type of circulation</th>
<th>Contestation</th>
<th>Decontestation</th>
</tr>
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<tbody>
<tr>
<td>From an academic arena to another one</td>
<td>From an academic arena to a national political one</td>
<td>From an academic arena to European political one</td>
</tr>
<tr>
<td>Illustration</td>
<td>Introduction in France</td>
<td>« European turn », Fischer-Chevènement controversy</td>
</tr>
<tr>
<td>Shaping</td>
<td>Theorization</td>
<td>Politicization</td>
</tr>
<tr>
<td>Legitimacy</td>
<td>Scientific</td>
<td>Practical</td>
</tr>
<tr>
<td>Mediation arenas</td>
<td>Academic institutions</td>
<td>General reviews, newspaper</td>
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<tr>
<td>Concept as...</td>
<td>Password</td>
<td>Keyword</td>
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</tbody>
</table>

Types of circulation processes in the career of ‘constitutional patriotism’ (fig. 4)

On the one hand, it should be noticed that it would not be hardly possible to understand how the concept came to be politically discussed in France without looking at the way it was academically introduced and theorized. But, on the other hand, the concept also entered politics in a totally different way at the European level. The relevant process here is one of decontestation, of technicization and neutralization by European legal and political experts which allows the concept to become part of the technical style of European political discourse. Although they took place in different places and times, it should nevertheless be clear that these two processes are intimately interconnected and inherit from each other – especially because certain mediating actors (the spokesmen of the concept) introduce and carry it from one debate to the other.
Conclusion

How the originally loosely defined German concept of constitutional patriotism happened to be used and, to some extent, widely accepted in the EU? This brief study points out two main work hypotheses.

Conceptual change in the European Union is neither linear nor unequivocal. The process of acceptation and shaping of constitutional patriotism involves very different logics: theoretical and political (or, more precisely ‘practical’), on the one hand, national and transnational, on the other. First, conceptual innovation in the EU, the shaping of concepts fitted to this constantly evolving political object, appears as the combination of scientific and political processes. This brief overview strongly supports the idea that it’s hardly possible to draw a precise border between theoretical concepts and discourses, and everyday political ones. More precisely, it suggests that both kind of “political discourses” build in close relationship to each other. I’ve tried to highlight the constant argumentative, institutional or personal connections between academic debates and political controversies involving the concept. These connections are decisively shaped by actors articulating academic and political debates. This was most of all observed at the European level, where political actors need concepts to think and legitimize the political process, whereas scholars need both political support for their work, and legitimacy given by the political uses of their concepts. Then, the “European turn” of the concept, its uses about Europe, seems to have first occurred in France, rather than in Germany, so that considering constitutional patriotism as a mere Europe-wide extension of a German idea, resulting of German activism or influence, completely ignores the shaping accomplished by the French scholars who introduced the concept.

Constitutional patriotism should then be regarded, when applied to the EU, as a transnational rather than national concept.

The other result suggested here is the progressive constitution of a network of European scholars, an ‘epistemic community’8, whose weight in European conceptual making looms large, given their privileged access to European institutions and politicians. But entering this European sphere of debate involves that the concept is notably ‘neutralized’, or decontested. All this finally suggests a kind of growing specificity of the conceptual clusters used about and in the EU, which raises some methodological concerns.

Indeed, during this study, we had to face a great variety of scenes, debate areas and contexts. The career of a political idea appears as a guideline providing insights to understand the articulation of different levels of discussion (national and European), political traditions (German past and French Republicanism), disciplinary cleavages, political stakes and personal strategies. It draws a network of actors, scenes and stakes at first sight not related at all and whose diversity can only be taken into account by investigating the connections between these different levels. In other words, given their complexity, understanding these processes require a multi-level investigation.

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