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Barry Stocker

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Review

The Crisis of the European Union: A Response

Jürgen Habermas. Translated by Ciaran Cronin. Cambridge: Polity Press, 2012. 140pp.

Barry Stocker^{*}

A Crisis of the European Union contains the essay “The Crisis of the European Union in Light of a Constitutionalisation of International Law—An Essay on the Constitution for Europe,” the second essay “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” and an appendix “The Europe of the Federal Republic.” The first essay is itself divided into three sections: “Why Europe is Now More than Ever a Constitutional Project”; “The European Union Must Decide between Transnational Democracy and Post-Democratic Executive Federalism,” and “From the International to the Cosmopolitan Community.” The second of these sections is itself divided between five subsections: “Against a Reification of Popular Sovereignty,” “The First Innovation: The Primacy of Supranational Law Over the National Law of the Monopolists on the Means for a Legitimate Use of Force,” “The Second Innovation: The Sharing of Constituting Power between EU Citizens and European Peoples,” “Shared Sovereignty

^{*} **Barry Stocker** holds degrees from the Universities of Warwick and Sussex. Since 2006 he has been teaching philosophy at Istanbul Technical University. Major publications include the monographs, *Derrida on Deconstruction* (2006) and *Kierkegaard on Politics* (2014), the co-authored volume *Rousseau on Language: Two Perspectives* (2014), the edited volumes *Post-Analytic Tractatus* (2004) and *Derrida: Basic Writings* (2007), and the co-edited volume *Nietzsche as Political Philosopher* (2014). His work has evolved from engagements with analytic and continental interfaces and deconstruction to more historical and genealogical approaches, without completely abandoning the earlier interests. His interests now are focused on continental philosophy since Kant, along with related work in early modern philosophy. His research and writings is particularly engaged with themes in political philosophy, ethics, political philosophy, aesthetics and philosophy and literature, as well as more general historical work. Current research includes work on Foucault and liberty, the idea of Europe, virtue ethics, free will and evil, law and legislation, libertarian republicanism, philosophy of the novel, Montaigne as philosopher and writer, along with Enlightenment theories of history, poetics, and civil society.

as the Standard for the Legitimation Requirements of the Union,” and “The Hesitation of the Political Elites at the Threshold to Transnational Democracy.” The Appendix is divided between an interview from the newspaper *Die Zeit* “After the Bankruptcy,” an essay published in *Die Zeit* “The Euro Will Decide the Fate of the European Union,” and an essay published in the newspaper *Süddeutschen Zeitung* “A Pact for or against Europe.” An index is sadly lacking, which is surely a loss to the reader even for a short book of this kind.

The titles and subtitles give a good idea of the scope of the book and the ways that Habermas tries to integrate his philosophical work with commentary on European politics. The composition of this short book is to some degree fragmented and accidental, but it reads as a unified and even continuous piece of writing, with the appendix bringing the more abstract discussions into a more journalistic context. The good side of this is that Habermas develops his thoughts on some themes throughout the book. The relative downside is that there is an element of recapitulating and clarifying what he has already argued, possibly suggesting some immobility in Habermas’ thought regarding the European Union and that his framework of thinking about politics, law, and international community is not the best for thinking about concrete institutions and laws rather than norms.

Habermas’ advocacy of the European Union is one that appears to be an extension of his general advocacy for cosmopolitanism at one end and his particular advocacy for the Federal German constitution at the other end. That is the German constitution as an object of loyalty is juxtaposed to the European Union on the cosmopolitan level, where the level of political entity reflects a hierarchy moving up from national to global through transnational grouping levels. Habermas’ familiar tendency to put loyalty to laws, courts, and constitutions over issues of national belonging and identity, or other forms of belonging and identity, might be considered to leave a gap where there might be a discussion of how individuals come to show some respect and common interest in political institutions at various levels. The issue of belonging enters disguised as narratives about courts, constitutions, and so on, which might be a solution, but only by trying to deal with cannot be fully integrated into Habermas’ own framework.

Habermas’ cosmopolitanism is free of this kind of objection in that cosmopolitan allegiance and respect for the universal as present in human rights law is most obviously due to a global understanding and a universal human community of some

kind, above particularistic loyalties. So cosmopolitanism for Habermas is both the most abstract part of his account and the most concrete as it is both universal and the most strongly grounded form of community in his own terms. It fits well into his tendency to orientate political, legal, and institutional discussions towards pure norms. In a way that Habermas traces back to Immanuel Kant (62), the world state is understood as a United Nations reformed so as to be a transnational minarchist entity solely devoted to preventing violence between states, and the enforcement of human rights (57).

There is a proposal for cosmopolitan democracy that seems unstable since Habermas both suggests a restricted international nightwatchman function and an elected world assembly. Elected assemblies have historically shown a strong inclination to legislate for matters other than those allowed by strict minarchists, so why should we expect an elected UN assembly (59) to be any different? The minarchist state is a restriction of the state to judicial and security functions, which would be too narrow in scope for all the political energy generated by elections and a standing assembly.

Cosmopolitanism is apparently the place where “utopia” of some kind can be realized, so presumably that is utopia as “eu-topia” rather than “a-topia,” the good place rather than the non-place. It is still a kind of non-place in that what Habermas refers to is the pure formalism of the definition and enforcement of human rights law (65), as if this would have no implication for state sovereignty and state policies other than the application of a non-political consensus of the basic rights we all have as humans.

There cannot be any completely non-political definition of human rights with no implications for policy and laws concerned with the general welfare, though Habermas asserts there can be (65) even if the idea of human rights as something above politics is already widely accepted and often serves some good purpose. Indeed, Habermas’ own discussion a few pages later (86–88) contains an interesting exploration of the ways that particularistic rights become universal formal rights, which then spill over into at least the beginnings of the more substantive issues of public policy. Human rights are going to be defined in ways which are more or less favorable to different visions of distributive justice and individual rights, and these choices must make differences with regard to the more detailed areas of law and the activities of government.

The utopia of cosmopolitan human rights will necessarily be involved in the not so utopian kind of political debates around these issues, and political debates mean broader tradeoffs and alliances around issues, which it is difficult to classify as pure

human rights concerns. The reader may reasonably conclude that Habermas has some views about where human rights discussion tends to lead and that is that it leads towards a kind of post-liberal and post-Marxist society with a very proceduralist democracy with a very flat distribution of economic goods. From Habermas' point of view that should all flow from a properly constituted discussion of norms, rights, and the like, in the hope of political institutions without the less ideal looking parts of politics.

His favored antagonist in this issue is Carl Schmitt, who stands in for the more relativized and conflictual aspects of politics at various points. Schmitt might be considered as an excessively convenient choice of opponent given his appalling political decision to join the Nazis in 1933 and his enduring authoritarian-traditionalist tendencies. Nevertheless, his thought has been taken up productively by those with much more liberal, democratic, and cosmopolitan inclinations, something Habermas overlooks here, and in general Habermas could have taken up less obviously tainted opponents on this issue, such as Hannah Arendt or Michel Foucault, for a more constructive encounter.

Moving to the German national level, Habermas on the detail of his argument does have a bit more than pure austere loyalty to constitutions to offer as a source of allegiance. There is some sense of national narrative that includes the medieval German Empire (the Holy Roman Empire) and nineteenth-century struggles for a Germany both democratic and unified (74), and a hint of national competitiveness with the United States, when he emphasizes that the German constitutional court does not permit any policy of shooting down hijacked passenger planes, for reasons that Habermas presents as distinctly Kantian. There is a distinct air of showing the equivalence and even superiority of Germany's highest legal instance in comparison to the U.S. Supreme Court, with regard to the sanctity of life and general normative commitments.

There is also a distinct air of thinking of the European Union as a larger version of Federal Germany, and the precedents for Federal Germany as in the confederal nature of the old Holy Roman Empire (at least after a decline in the power of the medieval Emperors), as leading the way to the European Union. It would be harsh to say that Habermas consciously promotes the idea of a Europe modelled on Germany, and his emphasis on a transnational democracy that is not a federation is one way of distancing himself from the idea, but nevertheless it could be said that this is a background assumption. To some degree the background assumption is there because it has some reality to it. Charlemagne was known in his own time, and since as "Rex Pater Europae"

and at least during the period when the Holy Roman Empire gave German sovereigns effective rule over significant parts of Italy, the Empire was a kind of mini-Europe.

The structure of the Holy Roman Empire, after the central power of the Emperors was eroded, was something like a multi-national confederacy. Even the constitution of the Second Empire had some aspects of such a structure in a territory covering parts of what is now France, Belgium, Denmark, Poland, Russia, Lithuania, and the Czech Republic, as well as the current German state. The idea of a pan-European political structure has other sources, but the most obvious one is the idea of a universal French monarchy which has roots in the Frankish Charlemagne. The medieval German “Holy Roman” Empire was itself a kind of revival of the pan-European sovereignty represented in approximate manner by the Roman Empire.

Habermas is not engaged in a general history of Germany and Europe, so there is no expectation that he should cover this kind of history. The problem is that he does on occasion allude to it without being able to integrate it into his account of a European political project. The answer to questions about this issue is likely to be that of norms, given practical significance by some European legal decisions (25–26) that Habermas emphasizes have superseded the issue of Germany’s role, or at least show the way to superseding Germany’s role. Habermas gives enough importance to the role of Germany in Europe to criticize Angela Merkel (52) for an apparent lack of vision in reaction to the crisis of the Eurozone, but she could only achieve the necessary vision either through reducing Germany’s capacity to lead through a more federalized (in the sense of centralized) management of the Euro, and associated fiscal issues, which in effect is Habermas’ preferred option or through a more explicitly German led Europe, which is not what Habermas argues for, but might be taken as necessary in the foreseeable future in any activist response of the EU to the Eurozone crisis, or any other issue.

Habermas prefers to talk about transnational democracy (ix) rather than federalism with regard to the European Union, but transnational democracy recognizing both citizens as individuals and peoples as collective entities, looks very much like what most would describe as federalism, in that sovereignty is shared between constituting entities and an overarching entity. The phrase “transnational democracy” is very much in danger of looking like an evasion of the issue of how to legitimate some passing of sovereignty to the transnational structures mentioned.

The question of Europe is from the beginning of the book a question of

Germany, as Habermas' preface suggests a crisis of the "ordoliberal" model of economic stability (vii) during the recent Euro crisis and associated international Great Recession. The "ordoliberal" model refers to the economic policies adopted by the founders of the Federal Republic, which mix a market oriented economy with strong welfare commitments. The nature of this has changed over time, but it is still recognizably part of a German consensus which has so far survived the Euro crisis. To some degree it must be objectionable to Habermas, since it does not correspond to his desire for a radical lessening of economic inequality and unregulated economic activity, in what is approximately speaking a program for Marxist goals through liberal means. The problem for Habermas is that his assumptions about the normative ideals present in discourse, and the impact that their ideal expression in human rights laws will have are not fulfilled as the norms in Germany have remained broadly "ordoliberal" despite the commitment to human rights and constitutionalism emphasized by Habermas, and the impact of crises in the financial markets.

The writing in the book is formed by a suspicion or hope that the Euro crisis of 2009, particularly in the context of the American centered, but global crisis of 2007, would destabilize the German-European consensus around welfarist regulatory capitalism and the persistence of an inter-state aspect to the structure of the European Union. The suspicion for Habermas is that a populist right will push sovereigntist and protectionist impulses in ways that will produce a Europe with a weakened EU composed of mutually suspicious nationalist states. The hope is that forces to the left of the existing consensus, untainted by the most illiberal aspects of Marxism will produce an egalitarian, democratic, federalist Europe of nations willing to reduce or give up sovereign powers.

Perhaps the real issue for Habermas is a move away from the hope of 1989, at least from Habermas' point of view, with regard to the end of communism and the prospect of a Europe transformed by integration of ex-communist countries into the EU on a liberal democratic, legalistic, and welfarist basis, which respects the authority of human rights and transnational institutions. In that respect, Habermas's book was and is timely.

Habermas' place in these tensions with regard to the European project is thoroughly ambiguous in that he is both hoping for tensions to appear that will be resolved by a kind of radicalization of left-liberalism and transnational integration, while also hoping for the endurance of current embedded institutions and policies to protect

what there is in the way of democracy, welfarism, and supranational institutions. *A Crisis of the European Union* shows some of the greatness of Habermas' intellectual achievements as far as is possible in the approachable kind of writing gathered here, and its usefulness in thinking about current political situations, while also betraying uncertainty about how to respond to recent events, how far they can be analyzed from his own rationalist-consensualist point of view, and how far his own political interpretation of that framework is likely to prevail. A good book for thinking about the strengths and limits of Habermas' achievements in a concise contained way.