

Constitutional patriotism and militant moderation

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Constitutional patriotism is a form of political loyalty combining a commitment to universal principles with a love of a unique object of loyalty, and with a special connection to a constitution. This paper outlines a version of constitutional patriotism with three distinctive characteristics. First, constitutions are not the object of the loyalty, but its most important expression. Second, constitutions are seen as commitments to a certain form of moderate politics. And, finally, constitutional patriotism can be directed toward many different objects of loyalty, but only when it can be simultaneously directed toward a universal civilization. Constitutional patriotism seems to be the best possible form of political loyalty, and hence the form we should adopt. Loyalty is not necessarily always a virtue. But a certain form of loyalty (constitutional patriotism)—to individuals and groups, institutions and causes that deserve loyalty—is a virtue. There are many conceptions of constitutional patriotism; this paper argues in favor of one that expresses a passionate, ambitious, and militant moderation.

The idea of constitutional patriotism is controversial at many levels. It is controversial because it is patriotism, and because it is constitutional. It is also controversial because it usually comes in rather special packaging, as

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Habermas's idea,¹ or, at least, as a German idea.² And people legitimately ask: Why bother with constitutional patriotism? Why not consider, instead, more important matters, such as justice, human welfare, virtue, or universal principles of right action? Or if that seems too idealistic and impractical, why not consider real things (which usually means things that seem real to the cynics): how law and constitutions actually work, or the realities of power and politics, or the narrowness and shortsightedness of human interests, ideas, and visions. Why not just leave constitutional patriotism to the Germans? They have rather special problems; let them deal with them.

But, actually, the Germans' special problems can also be seen as the special problems of modernity, more generally. Germans have had an advantage. They have been forced by circumstances to deal with these problems intensely and directly; they could not blame them all on others. Germans have been on the frontlines of the battle against modern barbarism (as have the many nations that suffered through communism). So it is the German Constitution that opens with the stark and deep confession of faith, that human dignity is inviolable; a confession of faith with echoes all around the world, even in places where Kant is neither read nor appreciated. And it is Germans who elaborated the idea of militant democracy, and the underlying attitude of militant moderation, against the unbalanced destructiveness of those thoroughly modern phenomena—Nazism and communism.

So, perhaps, we should also take seriously another thoroughly German idea, constitutional patriotism, all the while trying to free it from the constraints of what belongs only to Habermas and from the distinctive perspective that is uniquely German. The notion of constitutional patriotism does not belong exclusively to Habermas or even to the Germans. In employing it, we need not be too worried about what Habermas says exactly,³ or what Sternberger said,⁴ or what Jan-Werner Müller says.⁵

How best to define it, then, so that it is still recognizably the same constitutional patriotism that has appeared in discussions so far, yet is nonetheless open to development in truly new directions? How can we give it enough

¹ JÜRGEN HABERMAS, *THE NEW CONSERVATISM* (MIT Press 1989); JÜRGEN HABERMAS, *THE POSTNATIONAL CONSTELLATION* (MIT Press 2001).

² Dolf Sternberger, *Verfassungspatriotismus [Constitutional Patriotism]*, *FRANKFURTER ALLGEMEINE ZEITUNG* (May 23, 1979); DOLF STERNBERGER, *STAATSFREUNDSCHAFT (SCHRIFTEN IV) [FRIENDSHIP TOWARD THE STATE (WRITINGS IV)]* (Suhrkamp 1980); Müller, *On the Origins of Constitutional Patriotism*, *supra* note *.

³ See HABERMAS, *THE NEW CONSERVATISM*, *supra* note 1; HABERMAS, *THE POSTNATIONAL CONSTELLATION*, *supra* note 1.

⁴ Sternberger, *supra* note 2.

⁵ See Müller, *On the Origins of Constitutional Patriotism*, *supra* note*; MÜLLER, *CONSTITUTIONAL PATRIOTISM*, *supra* note*; Müller, *A 'Thick' Constitutional Patriotism for the EU?*, *supra* note*; and Müller, *Three Objections to Constitutional Patriotism*, *supra* note*.

sharpness to locate it polemically while allowing for internal debate about its nature? And, above all, how to define it so as to make the idea as attractive as possible? Constitutional patriotism is best seen, I suggest, as a collective label for loyalties that bear a family resemblance to each other (if you will forgive this Wittgensteinian cliché). Their most common or most significant features are:

- (a) Constitutional patriotism is a form of patriotism, and a form of loyalty. Thus, to defend some form of constitutional patriotism is to defend the moral and political significance of loyalty per se against all those who believe only rationally defensible universal ideals (Kantian, contractarian, utilitarian, and so on) are worth defending. In short, when someone like George Kateb attacks patriotism (as he certainly did),⁶ we proponents of constitutional patriotism come to patriotism's defense. In part, we do so by pointing out how Kateb misconstrues patriotism.
- (b) Constitutional patriotism is simultaneously a form of commitment to universal principles of a particular type, associated with modern constitutions and centered on human rights and democracy.
- (c) Constitutional patriotism is not a loyalty limited to a nation or a state. It is especially open to more encompassing units. The possibility of some form of cosmopolitan constitutional patriotism is definitely open. So constitutional patriotism is an alternative to various forms of liberal nationalism and state-centered republicanism (a republicanism for which the *res publica* must be a state). Some conceptions of constitutional patriotism present it as an alternative to state or national patriotism. I am suggesting, here, a more encompassing notion. In fact, the particular version of constitutional patriotism I elaborate and defend can have a broad range of objects, including, in many cases, a *Volksnation*.
- (d) Finally, any conception of constitutional patriotism must have a connection to constitutions sufficient to justify its name. On one reading, constitutions are the objects of constitutional patriotism. On an alternative reading I propose below, constitutional patriotism identifies a form or type of patriotism, closely connected with a certain abstract idea of the constitution. Constitutional patriotism, in the form I advocate, is not a loyalty to a constitution, or even to a constitutional culture. Constitutions and things constitutional are not its object. The connection takes a different form: constitutions are the politically most significant *expressions* of constitutional patriotism, not its object.

In this paper I sketch a particular conception of constitutional patriotism. This conception is based on a complex of ideas and institutions directed against the unbalanced destructiveness of the modern forms of barbarism (communism, Nazism, and radical Islamism, providing the extreme examples).

⁶ George Kateb, *Is Patriotism a Mistake?*, 67 Soc. RES. 901 (2000).

This complex of ideas emerges after World War II, especially in the countries and regions most directly affected by the destructive forces of the twentieth century. The ideas include new forms of constitutional democracy, a commitment to human rights based on the inviolability of human dignity, the idea of militant democracy, a new seriousness toward supranational institutions, the revival and reformulation of the idea of civil or civic society, and Gandhian style self-limiting social movements. It seems best to organize this complex of ideas intellectually under the heading of *militant moderation*—a moderation that is passionate and both politically and intellectually ambitious. Our inherited system of states has not done a good enough job of controlling the barbarism of the last century and neither have less militant forms of moderation, which have tended to produce a middling mediocrity paralyzed by indecisiveness. This alternative path provides the political motivation for the elaboration of a militant form of moderation.

So I propose a two-stage answer to the question: What form of political loyalty ought we to adopt? First, it should be a constitutional patriotism. Second, it should be a militant form of constitutional patriotism. It should be part of what we might call a moderate way of life, but it should be militant in the following sense: it should be passionate, it should be politically and intellectually ambitious, and it should be willing to take risks, make sacrifices, and generally put up a fight for its principles, even if this fight will take a distinctly moderate form.

To fellow advocates of constitutional patriotism I say: its militant form is the strongest and most attractive form. The reasons that brought you to constitutional patriotism ought to bring you also to its militant form, which makes constitutional patriotism more significant and more deserving of intellectual attention. This argument will not work for all, simply because many different reasons bring people to constitutional patriotism. But I hope it will work for many.

1. Moderation

It is sometimes said that modern constitutionalism is applied liberalism. But that does not get the relationship right. Various forms of codification of design principles must be integrated with design; we should have a unity of theory and practice. However, the influence in such unity goes both ways. So liberal theory also attempts to codify constitutionalist practice. And constitutionalist practice could be better served, I believe, by a different form of political theory, a theory of moderation rather than liberalism.

A workable and defensible definition of moderation would include three elements. First, moderation requires some form of moral pluralism. There are multiple good ends, and we should aspire to the most attractive balance among them. Hence moderates are attracted to a variety of metaphors of balance and center (avoiding extremes, choosing the golden mean, and so on). The aim is always to find the most attractive and appropriate balance and, hence, to support the center (the middle, the golden mean) against the unbalanced extremes.

At the heart of constitutionalist practice—whether in constitution making, amending, or deciding cases under the constitution—is balancing and the search for attractive forms of balance.⁷ And despite what is often said, these are to be found not in the balancing of interests, but in the balancing of rights and legitimate interests. Liberal theory, by contrast, allows singling out some principles as supreme, and it often encourages the search for the single principle that can govern the political system, whether it is a unitary principle along the lines of the maximization of utility⁸ or of the maximization of net benefits⁹ or a more complex ordering of principles along the lines of John Rawls' theory of justice.¹⁰

Recently, Isaiah Berlin has been the most influential moral pluralist. Other prominent moral pluralists, before the current popularity of the idea and all with deep twentieth-century roots in the area between the Soviet Union and Nazi Germany, include the émigré Russian Sergei Hessen and the Polish philosopher Leszek Kołakowski, whose pluralist liberal-conservative socialism neatly summarized the political impulses of the glory days of the struggle against communism.¹¹ Utilitarians, net-benefit maximizers, and Rawls in *A Theory of Justice* are good examples of nonpluralist thought.

Moderation requires, second, both a recognition of the pervasive power of destruction and violence and making the defeat of destruction a central goal. Destruction and violence in moderation is not a moderate idea. So the second defining aspect of moderation, as I see it, is the recognition of violence and destruction as the enemy. A moderate aims to destroy destruction, and, failing that, to enslave it by subjecting it to the governance of the complex order of principles. Confucians, constitutionalists, and pacifists take the problem of destruction (and threat of destruction) seriously. Deweyan problem solvers and deliberative democrats typically do not.

A third element of moderation is a commitment to reason, or to rationality, or at least to reasonableness, which gives moderates a fondness for deliberation, for the error-correction mechanisms found in a Popperian open society, for error-preventing commitments and rules, and for choosing actions that can be justified by good reasons.

⁷ See DAVID BEATTY, *THE ULTIMATE RULE OF LAW* (Oxford Univ. Press 2005).

⁸ See JOHN STUART MILL, *Utilitarianism*, in *THE BASIC WRITINGS OF JOHN STUART MILL* (Modern Library 2002); WILL KYMLICKA, *CONTEMPORARY POLITICAL PHILOSOPHY: AN INTRODUCTION* (Oxford Univ. Press 2001).

⁹ See, e.g., ANTHONY BOARDMAN ET AL., *COST-BENEFIT ANALYSIS: CONCEPTS AND PRACTICE* (3d ed., Prentice Hall 2005).

¹⁰ See JOHN RAWLS, *A THEORY OF JUSTICE* (Harvard Univ. Press 1971).

¹¹ See Leszek Kołakowski, *How to be a Conservative-Liberal Socialist*, 51 *ENCOUNTER* 46–47 (1978); Lesław Maleszka (pseudonym: Marek Leszkowski), *Główne Nurtu Solidarności [Main Currents of Solidarity]*, 1(8) *KONTAKT* 7–10 (1982); Andrzej Walicki, *My Łódź Meister and the Pluralism of Values*, 16 *DIALOGUE & UNIVERSALISM* 101 (2006).

The form of constitutional patriotism I outline is a *moderate* loyalty, committed to plural legitimate ends and engaged in a battle against human destructive capacity. But it is, first of all, a loyalty—a form of patriotism.

2. Patriotism

Patriotism and loyalty are controversial ideas. Consider, by way of example, George Kateb's attack on the idea, originally published in 2000 in *Social Research*,¹² having evolved from a review of Maurizio Viroli's book, *For Love of Country*.¹³ Kateb's extraordinary piece is best read, it seems to me, not just as a passionate attack on patriotism as a "grave moral error" emerging from "mental confusion." It is, more broadly, an expression of hostility toward passion. For Kateb (and many others, for whom I am making Kateb speak), passions appear to be the enemy; passions cause people to kill other people. The characteristic feature of patriotism is that it makes people willing to die and to kill for an abstraction. Part of what makes Kateb's article so interesting is its passion, the lack of restraint in its expression of hostility toward the enemy, which is passion.

I am not sure what exactly is the source of Kateb's immoderate anger against patriotism (the case against patriotism could be expressed calmly, after all); however, I do see it as part of a larger tendency of contemporary political thought, centered on the conviction—often, as here, a very passionate conviction—that passion as well as intellectual and political ambition, and especially their combination, are incompatible with moderation. They are, therefore, dangerous and to be fought with all means available. The most important lesson of the great disasters of twentieth-century politics, according to this view—the first lesson to be learned from our experience with Lenin, Stalin, and Hitler—is that passion is profoundly dangerous, as are intellectual and political ambition.

This mental and intellectual tendency seems to me not merely wrong but importantly wrong. A passionate and ambitious moderation is possible, and it constitutes a most promising path toward a better world, to put the matter a bit too concisely. If this path is widely seen as not possible, it will not be taken.

All across modern culture we have a fight between a strict rationalism, which sees itself as the inheritor of the Enlightenment tradition, and various forms of attack on rationalism. The rationalism takes the form of utilitarianism (or, even better, cost-benefit analysis), Kantian categorical imperative, and contractarianism in ethics or the Bauhaus School, and the "matchbox architecture" of the International Style in architecture (to give two very different examples). The antirationalists can now be labeled, collectively, as post-modern, whether they inhabit moral theory or architecture.

The alternative school of modernity, which wishes to take modern science and rationalism seriously but without eliminating passions, has tended to be

¹² Kateb, *supra* note 6.

¹³ MAURIZIO VIROLI, *FOR LOVE OF COUNTRY* (Clarendon Press 1995).

neglected. The relevant category is missing in most people's minds, so they have trouble seeing it even when it is right in front of them. In architecture, the classic representative of this school is Charles Édouard Le Corbusier, whose efforts to preserve historical continuity in new forms, to pay attention to beauty and poetry, often remain unseen because of his modernism and the caricatures people bring to their analyses of modernism. The idea of constitutional patriotism belongs to the same category of efforts, which seek to establish a form of modernism not of the stark Bauhaus kind, based (like an axiomatic system) on simple principles grounded in reason and unrelated to history and profoundly indifferent to human passions. In the sphere of political and legal thought, constitutional patriotism attempts to work the same ground that Le Corbusier—especially the late Le Corbusier of the Chapel at Ronchamps or the Open Hand—worked in the sphere of architecture.¹⁴

This sphere recognizes the importance of both rationality and emotions. Thus, we adopt a distinctive conception of the moral point of view. It is an impartial point of view. But the moral ideals we adopt, looking at the world from this point of view, must be attractive to both heart and mind.¹⁵ So we do not accept the contract metaphor and the contract model so dear to the contractarians, both because agreement is not in itself morally significant, and because we need to distinguish consent of the mind alone from the sort of consent of the mind and the heart combined that is expressed in loyalty, in the willingness to sacrifice, and even to die, for an ideal. Only that kind of ideal can give meaning to the short lives of mortal men and women.

And we recognize, as is often said, a commitment to the universal—basic principles of justice, say, or the fundamental idea of the inviolability of human dignity—as well as to the particular, as in the patriotic commitment to whatever constitutes a particular *patria*; it need not be a nation or a state or a country. But presenting this contrast in terms of a difference between the universal and the particular is not as informative as one might wish. The particular gives rise to emotional attachments not simply because it is particular. A particular instance of a triangle is no more lovable than the general idea of a triangle. Metaphors of thickness and thinness are not helpful either.

It is uniqueness and depth (rather than “thickness”), and not simply particularity, that make an object or a person potentially lovable. Uniqueness and

¹⁴ See, e.g., LE CORBUSIER (H. Allen Brooks ed., Princeton Univ. Press 1987).

¹⁵ There is a very varied literature on emotions and ethics. On “neosentimentalism” in contemporary ethics, see: Justin D’Arms & Daniel Jacobson, *Sentiment and Value*, 110 ETHICS 722 (2000); Justin D’Arms, *Two Arguments for Sentimentalism*, 15 PHIL. ISSUES 1 (2005). On the basis of ethical judgments in brain physiology, see Michael Koenigs et al., *Damage to the Prefrontal Cortex Increases Utilitarian Moral Judgments*, 446 NATURE 908 (2007). On an alternative to rationalism in psychology, see Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCH. REV. 814 (2001).

depth make an object unlike any other and difficult to understand—difficult to capture in our categories and concepts. It is, in some sense, mysterious. Our loved ones are always mysterious and complex. They have a long half-forgotten but dramatic history. (Even when they are young they have a long and half-forgotten history; Freud helps here, but is not strictly necessary.) Persons, of course, have the requisite depth, uniqueness, and half-forgotten history, but so do regions, localities, nations, states, and institutions of many kinds.

The shift in our understanding of sources of lovability from particularity to uniqueness and depth makes a big difference, as we will see. While usually only the particular can be unique and mysterious, this is not always so. A universal civilization is both universal and completely unlike any other possible object of loyalty. It is unique and has a dramatic history, a history of the efforts to take steps toward its creation. A militant moderation can have ambitious goals and multiple loyalties, big as well as small. It should be loyal, I suggest, to universal civilization.

3. Civic loyalty and the battle against destructiveness

Constitutional patriotism is a special kind of patriotism in at least two ways, each posing an intellectual puzzle. First, it combines a commitment to the unique and deep with a commitment to the universal. It combines the two in a way a parent might, to form something we might call civic loyalty. But it also insists on what I will call a double loyalty test: a loyalty to a person, an institution, or a cause must be also a loyalty to universal civilization.

Second, it is constitutional. For some that requires a loyalty to a constitution, in some sense. I suggest, alternatively, that it requires a commitment to moderation. We can say, broadly, that moderation recognizes the pervasiveness and power of the human destructive capacity and treats it as an enemy. But we can also say it more pointedly. The destructive capacity is reinforced by civic loyalty. The best in human beings supports the worst. The selfish and the lazy are less dangerous to those around them than the idealistic citizen willing to sacrifice. Thus, the idealistic citizen has a special obligation to adopt a moderate stance because civic loyalty can reinforce destructiveness. And constitutional patriotism is the name for such a stance; it is civic loyalty made more complete and, hence, also safer. To elaborate, let me discuss civic loyalty first and the constitutional connection next.

4. Civic loyalty

Constitutional patriotism contains within it a civic form of loyalty, whose model is a parent's love for a child. You can think of it as a way of taking seriously the Confucian tradition, which centers on filial piety,¹⁶ but changing the family

¹⁶ See, e.g., BENJAMIN SCHWARTZ, *THE WORLD OF THOUGHT IN ANCIENT CHINA* (Harvard Univ. Press 1985); XINZHONG YAO, *AN INTRODUCTION TO CONFUCIANISM* (Cambridge Univ. Press 2000).

relationship that serves as the central model. A parent's love for a child is certainly committed to preserving and enhancing a particular child's uniqueness; it is committed to protecting the child from any damage and harm. But in the model of parental love relevant to constitutional patriotism (however it may be in reality) it is also committed to improving the child, to making the child a better person. Doing so requires, simultaneously, a commitment to universal principles that tell us what will count as an improvement. In this form of loyalty, it makes no sense to ask which commitment is stronger, or which takes priority. Both commitments are equally necessary (literally so) for this loyalty to take the form it does.

A parent's love for a child in this idealized form serves as the model, but the loyalty in question can have multiple objects, and, depending on the object, it will need to be adjusted in its details and may be given a different name. Loyalty is willingness to sacrifice, including, in the extreme, the willingness to sacrifice one's life. The civic form of loyalty combines willingness to sacrifice in order to protect and maintain the object of loyalty, with the willingness to sacrifice in order to improve it. A very concrete model is the loyalty of a parent to a child, with its twin goals of protection and development. People can be loyal in this way even to the most fleeting and small-scale objects, say, a negotiation between two persons; but they can also be loyal to a variety of organizations, to nations and states, to humanity, or to an emerging universal civilization.

In a two-person negotiation, civic loyalty takes the form of something like what Roger Fisher and William Ury call principled bargaining, in which both sides treat the negotiation as a "shared problem" to be solved as impartially as possible. At the other extreme, we can imagine a cosmopolitan or global loyalty that incorporates both human civilization and the global ecosystem. Such loyalty could take the form, for example, of a willingness to sacrifice for the development of a universal civilization that is also a responsible steward of nature.

When Justice Louis Brandeis writes about the need to act as if one were "counsel to the situation," he is urging such loyalty.¹⁷ We find a similar position in Mary Parker Follett's writings on administration and management. She writes:

One *person* should not give orders to another *person*, but both should agree to take their orders from the situation. Our job is not how to get people to obey orders, but how to devise methods by which we can best *discover* the order integral to a given situation. When that is found the employee can issue it to the employer, as well as ... [the other way around].¹⁸

In the spirit of Aristotle's definition of a citizen as one who both is ruled and rules,¹⁹ civic loyalty requires both that we be ruled by the commands and

¹⁷ See ALPHEUS THOMAS MASON, *BRANDEIS: A FREE MAN'S LIFE* 232–237 (Viking 1956).

¹⁸ HENRY METCALF & L. URWICK, *DYNAMIC ADMINISTRATION: THE COLLECTED PAPERS OF MARY PARKER FOLLETT* 59 (Harper & Row 1942).

¹⁹ See ARISTOTLE, *POLITICS* (Carnes Lord trans., Univ. Chicago Press 1984), Book III.

purposes of a situation and that we be willing to remake and improve them. We are both made by a situation and the makers of it. We both follow the rules and make them. What I call here civic loyalty is characteristic of what Selznick²⁰ calls governance, which he contrasts with management. It is also characteristic of what he calls responsive law,²¹ contrasting that with autonomous law.

To promote civic loyalty means to strengthen civic society, or civil society, as it is more commonly known. This is, perhaps, not obvious if civil society, as some prominent accounts would have it,²² is a kind of society simply characterized by the large number and strength of nongovernmental, nonprofit, and extrafamilial organizations (neither state nor market nor kinship group). The connection becomes clearer, however, if we think of civil society as characterized, rather, by the strength of a certain kind of attitude (civic loyalty) and of actions that reflect that attitude. There can be civic loyalty toward the state, toward market organizations, or toward families. But a good indicator of the strength of civiness is the number and vibrancy of those organizations in which civic loyalty is not reinforced by fear and coercion (as in the state) or by greed (as in the market) or by family ties and shared genes (as in kinship groups). So strength of nongovernment-, nonprofit-, and non-kin-based organizations is usually a good indicator of the strength of civiness in a society.

The idea of promoting civic loyalty and, hence, this form of civic society seems attractive for a number of reasons. It combats selfishness and narrow interests, and it does so while recognizing the need both to preserve and manage what we have inherited and to improve it. It does so, furthermore, in a way that allows for the diversity of loyalties that human beings are capable of, as well as for the diversity of good causes and good things that are worth sacrificing for. In this way, it is neither entirely state centered nor nation centered, neither exclusively local nor cosmopolitan.

Take an example suggested by Putnam's famous book on Italian regional governments.²³ We establish, maintain, and improve our choral society, not because it makes democracy more effective but simply because by singing and listening more people will be able to experience beautiful music. Civic loyalty helps preserve the world and to make it better in many different ways, political, musical, and otherwise.

Civic loyalty is, finally, crucial if we want to approach rationally the task of improving the world. This is a difficult task, and such tasks require a division of labor both into subtasks and into stages. Adam Smith gave the classic description

²⁰ PHILIP SELZNICK, *THE MORAL COMMONWEALTH* (Univ. Calif. Press 1992).

²¹ PHILIPPE NONET & PHILIP SELZNICK, *LAW AND SOCIETY IN TRANSITION* (Harper & Row 1978).

²² ERNEST GELLNER, *CONDITIONS OF LIBERTY* (Penguin 1994).

²³ ROBERT PUTNAM ET AL., *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (Princeton Univ. Press 1994).

of how division of labor into tasks can make the world better by allowing specialization. The division of labor into stages is equally important. You may recall that when you write a book, you write multiple drafts. The current stage of creation can build on the previous stage only on the basis of something like civic loyalty: what we do now preserves, builds on, and improves what has been done before.

5. Human destructive capacity

So civic loyalty is a good thing. But it can also be dangerous. It can appear to justify violence and destruction in at least three ways, which I will call: the logic of fear, the logic of optimistic ambitions, and the logic of moral outrage.

Civic loyalty aims to protect its object, and this can lead toward violence, based on a “logic of fear.”²⁴ The logic of fear begins operating when the perceived first-strike advantage in a conflict is sufficiently strong. This logic will occur only in settings where the underlying conflict is serious enough so that there would be much to gain from a war. And, finally, the strategic situation—the distribution of resources—is such that there is an advantage to striking first. One party then will attack first in order to defend itself. Fear produces a preemptive or preventive war. This logic is dramatically expressed by an old woman in Sarajevo in the midst of the post-Yugoslav wars: “The Serbs will kill us all, we need to slaughter them first.”²⁵ Following the logic of fear, destruction and violence are justified as forms of defense necessary to survival.

Civic loyalty also aims to improve its object, and this can lead to violence, based on a “logic of optimistic ambitions.” We find this logic, for example, in political movements confident they are on the verge of creating a Heaven on Earth. The prize is so worthy that for these movements even the most extreme sacrifices are worth imposing on others and on themselves. Where the typical example of the logic of fear will be found in ethnic wars, a typical example of this logic will be found in ideological wars, with revolutionary movements aiming at a deep transformation not just in the political system but in economics and society at large. But ambitious ethnic groups (Greater Serbia) or self-aggrandizing thugs (Charles Taylor in Liberia) can also add up their costs and expected benefits and conclude in favor of war. Following the logic of optimistic ambitions, destruction and violence are justified in order to make the world better: to make an omelet you have to break some eggs first. Bigger omelets require more eggs.

Finally, moral outrage is the great motivator for making the world better. But moral outrage is not always our friend. It is a product of injury or humiliation,

²⁴ Barry Weingast, *Constructing Trust: The Political and Economic Roots of Ethnic and Regional Conflict*, in *INSTITUTIONS AND SOCIAL ORDER* 163 (Karol Edward Sołtan et al. eds, Univ. Mich. Press 1998); Jack Snyder & Robert Jervis, *Civil War and the Security Dilemma*, in *CIVIL WARS, INSECURITY AND INTERVENTION* 15 (Barbara Walter & Jack Snyder eds., Columbia Univ. Press 1999).

²⁵ ERIK MELANDER, *ANARCHY WITHIN* 192 (Uppsala Univ., report no. 52, 1999).

which can be channeled and given satisfaction in a variety of ways. It can be an engine of large-scale social reform on behalf of innocent victims, and it can give rise to criminal prosecutions and truth and reconciliation commissions. But it can also fuel powerful outbursts of violence and elaborate ideologies of destruction. Moral outrage on behalf of “innocent victims” was at the heart of National Socialism (Germany as victim), of revolutionary Marxism (the proletariat as victim), and, more recently, various forms of aggressive nationalism (the Serbs as victims) and aggressive Islamism (Islam as victim).

Simple promotion of civic loyalty will not necessarily produce a peaceful civic society. It can produce quite a different and violent result. It would be a mistake to take the promotion of civic loyalty as an ultimate end, then. The moderate alternative, as I see it, incorporates civic loyalty into a larger context of a struggle between efforts to promote multiple legitimate ends—efforts we can collectively call “development”—and efforts to enhance the effects of human destructive capacity. This is a struggle, then, between development and destruction.

Development, in this sense, is not to be equated with the promotion of human welfare, or with economic growth as measured by GNP, or with maximization of net benefits (as in the cost-benefit calculus). It is also not to be identified with liberation or emancipation, as has been done across a broad range of theories from Habermas (with his emancipatory interest)²⁶ to Amartya Sen (with his development as freedom).²⁷ Development is, rather, something more like the fulfillment of potential, whether in a negotiation, an institution, or global civilization. It is what civic loyalty can serve, by making its various objects as good as they can be while also maintaining and protecting them.

This view of politics, as centering on such a struggle, is a moderate view, and it is Gandhian in its basic inspiration, without being Gandhian in all the detail. The key struggle of politics is against the use of violence and destruction, but that does not mean we must be always nonviolent and pacifist. It is a matter of complex prudential judgment how much reliance on the means of destruction is required in the struggle against the reliance on the means of destruction. And in this struggle we do not simply fight against guns, so to speak. Rather, we participate in a battle between the forces of improvement, reform, creation, or development, on the one side, and the forces of destruction, on the other. Civic loyalty should be seen as an instrument in this struggle. We do our share of improving and protecting the world in stages. Moreover, we do so in a way that blocks, insofar as possible, the proclivity to violence and destruction that this effort would otherwise produce.

This is a struggle in which a great deal is at stake, so it can be described legitimately in William James’s phrase, as “the moral equivalent of war.”²⁸

²⁶ JÜRGEN HABERMAS, *KNOWLEDGE and HUMAN INTERESTS* (Beacon 1972).

²⁷ AMARTYA SEN, *DEVELOPMENT and FREEDOM* (Anchor 2000).

²⁸ WILLIAM JAMES, *The Moral Equivalent of War*, in *THE WRITINGS OF WILLIAM JAMES* 660 (John McDermott ed., Univ. Chicago Press 1977).

Think of what the complete triumph of either side would mean. A complete triumph of the forces of destruction is easy to imagine; it is not a Hobbesian war of all against all, but something far worse: a complete destruction of human life on Earth, or perhaps of life in general, perhaps through a global nuclear war, or the destruction of the ecosystem, or some other future story of destruction. Unfortunately, the complete triumph of the other side is a bit harder to imagine. It would be a world in which violence and coercion are eliminated, and a world in which principles and ideals are fully sovereign. The reader should feel free to fill in the details.

So much is at stake in this struggle that a willingness to risk one's life, or even to die, is appropriate. But this is a struggle against violence. So the willingness to die must be, in a Gandhian manner, strictly separated from the willingness to kill. The struggle can certainly take the form of Gandhian self-limiting social movements. It is, perhaps, most dramatic in that form. However, we see it also within the institutions of ordinary politics and ordinary law and of constitutional law, especially.

Such a Gandhian form of patriotism is militant; it is an engagement in a battle. It has both an object of loyalty and an enemy. It is part of a moderate way of life: human destructive capacity, violence, and harm are its enemy. In engaging in this battle we must recognize the pervasive influence of the human capacity to destroy, both the direct influence (the actual destruction that humanity is responsible for) and the indirect influence (via threats of harm, for example). Furthermore, the power of human destructiveness is growing dramatically as a function of technological improvements, not to speak of the sheer growth in numbers of the human species.

One way to battle human destructiveness is to renounce violence unilaterally, to become a pacifist and an anarchist. You adopt nonviolence as a principle. But the battle against destructiveness is likely to be more effectively (more rationally, in the basic instrumental sense of that word) fought if we adopt a more complex strategy. Some individuals, working within some institutions, adopt a principled nonviolence. Others allow some coercion and violence but in a way that is strictly limited by legitimate ends (in the manner of a constitutional state). Moderation is not to be reduced to the battle against destructiveness. It involves also the reasonable pursuit of multiple legitimate ends. It can take the form of constitutional patriotism.

6. Constitutional patriotism

What makes constitutional patriotism constitutional? The usual answer is that a constitution is the object of the patriotism, and constitutional patriotism is a loyalty to a constitution. The usual answer then goes on to refine its account of constitutional patriotism by specifying what is and what is not meant by a constitution.

One perfectly serviceable way of understanding constitutions is to see them as a morally neutral set of principles to which a system (let us say a political system)

is committed. In this sense, the leading role of the Communist Party—institutionalized in the *nomenklatura* system—was (is?) a central principle of communist systems. Loyalty to constitutions, in this particular sense, has nothing in general to recommend it (unless loyalty to the powerful is a good in itself).

Similarly, if by a constitution we mean the supreme law of a state or, more generally, the supreme law of a polity (to allow for entities such as the European Union), again, constitutional patriotism would not have much to recommend it, although perhaps a little more. This kind of constitutional patriotism would take loyalty to law, whatever the content of the law, to be a good in itself. A law-bound apartheid regime would evoke this kind of patriotism.

To make constitutional patriotism attractive we need to move away from these purely positivist accounts. A constitution worthy of patriotism must be like the German Constitution; it must incorporate commitments to universal principles, such as the inviolability of human dignity, and to democracy. Then, and only then, does constitutional patriotism become this combination of a commitment to the unique and particular with a commitment to attractive universal and impartial principles. And only then does constitutional patriotism itself become attractive. So the idea of a constitution relevant to constitutional patriotism cannot identify constitutions with the supreme law without regard to the contents of that law. For purposes of constitutional patriotism a constitution must contain within it a commitment to impartial, attractive, and rationally defensible principles. Without such a commitment, whatever we might otherwise be inclined to call a constitution (for example because it is called a constitution and performs some of the functions of a constitution in a legal system) cannot be a constitution in the sense relevant to constitutional patriotism.

So let me suggest an alternative way of thinking about constitutions: they are commitments, and they are constitutions only to the degree they are serious commitments. Hence, the popularity in discussions of constitutions and constitutionalism of the imagery of Ulysses binding himself to the mast in order to be able to hear the sirens and survive the experience, or the frequent repetition of the slogan that in constitutions the people sober restrain the people drunk.²⁹ We make a commitment to something when we make changing our minds more difficult than it would be otherwise. Without that element, there is no constitution, I would say; it is all fiction and mirage. To make a constitution is to make a certain kind of commitment. The key question is: To what are constitutions commitments and what form do these commitments take?

The answer I give is faithful to the constitutionalist tradition and gives constitutional patriotism a broad political significance. If we needed a one-sentence summary, we could say that constitutions were commitments to a certain form of moderate politics. The first commitment is to diminish the use of destructive means in politics. The second commitment is to strengthen the pursuit of

²⁹ Stephen Holmes, *Precommitment and the Paradox of Democracy*, in *CONSTITUTIONALISM AND DEMOCRACY* (Jon Elster & Rune Slagstad eds., Cambridge Univ. Press 1988).

impartial principles and legitimate ends. Both commitments are largely legal, which means they can be enforced by courts. But their legal form is not sufficient. And the two commitments combined can be seen as a centerpiece of moderate politics.

Constitutions are thus commitments to moderation. Such commitments tend to have at their heart the *law* of the constitution—that is to say, the expression in legal terms of the basic commitments of a polity, including its central principles and the structures of government meant to serve those principles. Law and courts of law, understood as purposeful enterprises and not simply as instruments of the state, are also an element of the moderate way of life. Their goal is to resolve disputes peacefully and on the basis of reasoned principle. Law, understood in this purposeful way, can be seen as a product—and as an expression—of the same form of loyalty, directed not so much to state-like institutions as to court-like institutions (courts, institutions that can substitute for courts, institutions that can evolve from courts, and so on).

More needs to be said about the two commitments of moderation. I will discuss, first, the commitment to diminish the use of the means of destruction in politics. What does it mean to use guns less? There are two rather different uses of guns in politics, and both are at issue here. I use a gun in one way when I kill you with it. And that is a common use of guns. But even more common is a different use: I threaten you with death if you do not give me your wallet. You remain alive, and I become richer. This is what we know as coercion. Both violence and coercion are pervasive in politics. Both uses of guns are common. Constitutions, and constitutionalism more broadly, involve a commitment to diminish both uses.

Traditionally, this has created some tension. Faced with a threat of a Hobbesian war of all against all, or just with a bloody and protracted civil war (one use of guns), it is natural to turn to what we might call a Hobbesian solution: a hegemonic power capable of rule through overwhelming coercion. But a constitution is a commitment against both violence and coercion. It is also, I have suggested, a commitment to politics of principle. To have a constitution, according to this view, is to engage in (to commit yourself to) a battle between the politics of principle and the politics of destruction. Constitutional patriotism, then, is also a way to engage in this battle.

To understand constitutional patriotism we need to understand the requirements imposed on it by its double commitment. Having begun with the politics of destruction, let me continue with the politics of principle, which we can translate, above all, into a commitment to equal human dignity, to a free and democratic society, and to basic human rights, with all that this commitment requires (and all the controversies it engenders). These are, I take it, universal principles.

But is the politics of principle entirely universalist? I do not think so. When we recognize the complexity of the politics of principle, we will incorporate into it support for legitimate “local” principles, not just pure universal ones.

Universal principles recognize legitimate individual interests and will protect them through a system of individual rights. In the same way they recognize legitimate local principles and will protect them as well. We can act to promote the common good in the small as well as in the large. Even a fleeting two-person negotiation we can treat as a shared problem requiring a solution and engage in principled negotiation.

What seems like an impartial principle, locally, may be a universal principle; or it may be a legitimate local principle (allowed or even encouraged by universal principles); or it may be an illegitimate form of bias and local prejudice. You can know which it is only from the more universal perspective. So, a civic loyalty to the nation, and to its local principles, requires more universal loyalties, as well, to allow us properly to evaluate these local principles. And universal loyalties require the preservation of what is unique and distinctive, in individuals to be sure, but also in local, regional, institutional, and national traditions. We let Poland be Poland (“*Żeby Polska była Polska*,” in the words of a popular Solidarity song), let Latgale be Latgale, let Red Cross be Red Cross, let Princeton be Princeton, and we let Karol Sołtan be Karol Sołtan. But with regard to each one of these, the people who are loyal must concern themselves not just with preservation of the object of their loyalty but also with its improvement in light of both the local and the universal principles, making it the best it can be.

So a local principle, a national tradition, say, may be a prejudice, a form of illegitimate bias, or it may be a legitimate local principle. But, in a parallel way, a purported universal principle may be a prejudice of groups that are dominant in the world (the West, say, or the global military-industrial complex, or perhaps the oil industry) or a legitimate universal principle. This possibility is at the heart of the debates between advocates of universal human rights and their critics on behalf of “Asian values” or Islamic civilization.

To conclude, then, constitutional patriotism understood in this way is a form of engagement in the battle between the politics of impartial principle and the politics of destruction; however, the impartial principle may be only locally impartial. So constitutional patriotism may be a form of national patriotism, for example. And other forms of local, regional, institutional, and global patriotism may also take this constitutional form. A document called a constitution is certainly not essential, and neither is the state.

If constitutional patriotism is taken as a superior *alternative* to national patriotism, then we have some awkward questions. Would we favor loyalty to an Iraqi constitution, if it is democratic, in the name of Iraqi constitutional patriotism against Shi’a sectarians or Kurdish separatists? Would this idea of constitutional patriotism oppose Kurdish national aspirations? And why? Because they are national? Because they do not fit state boundaries arbitrarily determined by the British empire almost a century ago?

And, if we lived in 1910, would we support a Russian constitutional patriotism against Polish national separatism, and a U.K. constitutional patriotism against Irish national separatism? Was Irish and Polish independence a

mistake? Would it have been a mistake if either Russia or the U.K. had been full-blooded constitutional democracies at the time? Or if they could have reformed themselves? What if they had been deliberative democracies? A line of analysis that makes these into serious questions is not promising. It is good to have an independent Poland and Ireland. I take that as a fixed, considered moral judgment.

But if constitutional patriotism can be a form of national patriotism, as well as of many other types of patriotism, as I suggest here, then the awkward questions do not arise. This patriotism is constitutional not because of its loyalty to a constitution as the highest law but because of its loyalty to the double commitment that defines a constitution understood in a less narrowly legal way. It is an engagement in a crucial battle of politics, between the politics of principle and the politics of destruction. Of course, constitutions as supreme law are not entirely irrelevant; they will often contain precisely the right kind of serious commitments. Then they, too, take part in the battle between the politics of principle and the politics of destruction.

Let me illustrate by reporting on a small experiment, with myself (and, I regret to say, only myself) as a subject. Just about every time I read aloud the opening words of article I of the German Constitution (“Human dignity is inviolable”), I have tears in my eyes. By contrast, when I read “Congress shall make no law abridging the freedom of speech,” I do not. Why would that be? I can think of two reasons. Article I of the German Constitution expresses a high universal principle more directly and more fully. But I think something else is more important. I am always conscious that this principle emerges from a battle against Hitler, from the front lines, truly the front lines, of the battle between development and destruction. The German Constitution, in general, more than others, presents itself as an instrument of this battle, with this stark and moving opening, with its unamendable commitments, and with its elaboration of an idea of a militant democracy—and, more broadly, a militant moderation—in a struggle against the most destructive forces of twentieth-century politics.

We arrive at the following formulation. Constitutional patriotism is a loyalty to some object, which involves a double commitment on behalf of this object both in favor of attractive impartial principles and against the power of the means of destruction. This is a distinctive form of loyalty, which can be directed at many objects of various degrees of uniqueness, and often can be expressed in a certain form of law that we might well call constitutional. Indeed, there is an intimate sort of connection between this loyalty and constitutions not because the loyalty is to a constitution but because modern constitutions (in the more or less conventional legal sense) are good ways to express this loyalty and to translate it into effective action.

One of the attractive features of the idea of constitutional patriotism is that it preserves patriotism but eliminates the recent monopoly of nation, state, and country over patriotic loyalties. However, it is not clear how this may be achieved as long as we think of constitutions alone as the objects of

constitutional patriotism, and we think of constitutions in the conventional way. For example, are we to speak, say, of constitutional patriotism toward the European Union only if the EU has a constitution? But why should our constitutional patriotism depend on how the European Court of Justice treats the various treaties that have created the EU, or on whether the proposed draft Constitutional Treaty is eventually adopted in some form? Or whether the adjective “constitutional” is dropped from its name? And what about other patriotisms, local and regional? Again, the value of constitutional patriotism is enhanced when it allows many diverse local patriotisms, not associated with anything that a conventional lawyer (if you will pardon the expression) would identify as a constitution.

7. Loyalty to universal civilization

Once we articulate the idea of constitutional patriotism so that it does not require a constitution as an object we can allow this broad range of patriotisms. A country, a city, a nation, a state, a university, a corporation can all be the object of a constitutional patriotism. The limits are set by the nature of constitutional patriotism itself. Our loyalty to whatever is its object must be a part of the comprehensive battle between efforts to improve the world, based on multiple impartial principles and legitimate ends, and efforts to subject it to the power of the human destructive capacity. This certainly puts a constraint on the objects of constitutional patriotism. This constraint may be formulated differently, to make explicit the cosmopolitan potential of constitutional patriotism. A loyalty to any object can be a form of constitutional patriotism only as long as it can be, simultaneously, a loyalty to the universal civilization. You might call this the principle of dual loyalty.

According to this view, then, a *Volkspatriotismus* can be a form of constitutional patriotism if it involves a double commitment in favor of principle and against destruction and as long as loyalty to this nation, at this time, and in this form, can be consistent with loyalty to universal civilization. And, to take another example, a constitutional patriotism directed toward the European Union would derive its strength from the EU’s commitment to universal principles, from its extraordinary success in making war unthinkable, and from its serving as a unique model for a possible, future legal and political foundation of a universal civilization. Whether the EU institutions, and its courts especially, have anything they can treat as a constitution truly does not matter, then, to the strength and confidence of our constitutional patriotism.

Universal civilization is just that, it is universal. But it is also utterly unique. The project of building universal civilization is an ancient project with an extraordinarily dramatic history (much of it forgotten or distorted); it is unlike anything else in the world. It is universal, and it is lovable because of its uniqueness and depth.

What is civilization? In the language of contemporary social science, it is a type of culture. For an anthropologist, it identifies more complex forms of culture, and societies with greater division of labor.³⁰ This has the virtue, for the anthropologist, of being value-free. Complexity is certainly one aspect of civilization, but civilization as a normative ideal includes more. An informal marker of civilization for a historian of civilizations, such as Quigley,³¹ is the presence of cities and of writing. As long as we speak a language influenced by Latin we will not escape the connection between cities and civilizations. What makes writing such a breakthrough though? Writing develops in very practical contexts, but its broader significance is soon recognized. For civilization, the crucial feature is perhaps this: writing diminishes reliance on memory. So it makes it easier to preserve the intangible inheritance of a culture, and, hence, it also allows us to shift more of our attention and energy to improving that intangible inheritance. It is a crucial instrument for building in the space of intangible values the equivalent of tools, houses, temples, and cities in tangible space.

The most important twentieth-century expositor of the “process of civilization” Norbert Elias opens his analysis of the concept by stressing its breadth:

The concept of “civilization” refers to a whole variety of facts: to the level of technology, to the type of manners, to the development of scientific knowledge, to religious ideas and customs. It can refer to the type of dwelling or the manner in which men and women live together, to the form of judicial punishment, or to the way food is prepared ... it always seems somewhat difficult to summarize in a few words everything that can be described as civilization.³²

But we can say this much, paraphrasing the opening phrases of Hamilton's first Federalist essay: it is a product of improvement based on reflection and choice, rather than a product of inevitable fate (the way our genetic makeup or the law of gravity is our fate, for the moment) or force or accident.

The idea of civilization seems to have two faces; one connects it to improvement, the other opposes it to violence and destruction. To civilize originally meant to make more civil, not simply in the sense of more polite but also in the much larger and more significant sense of less prone to violence—civil as opposed to military. To be barbaric meant to be savage and unimproved. It also meant, and still means, to be prone to violence.³³

So civilization requires a complex culture because it is a product as well as a continuing process of improvement and at a rate that requires specialization and division of labor. But civilization also stands opposed to violence and

³⁰ See, e.g., JOSEPH TAINTER, *THE COLLAPSE OF COMPLEX SOCIETIES* (Cambridge Univ. Press 1990).

³¹ CARROLL QUIGLEY, *THE EVOLUTION OF CIVILIZATIONS* (2d rev. ed., Liberty Fund 1979) (1961).

³² NORBERT ELIAS, *THE CIVILIZING PROCESS* 3 (Blackwell 1994) (1939).

³³ JOHN KEANE, *REFLECTIONS ON VIOLENCE* (Verso 1996).

destruction. And modern civilization—in some ways more complex than those that came before, but also more unbalanced—stands opposed to modern barbarism, a barbarism unprecedented in scale and in depth.

Civilization as an ideal is in the singular. The multiple civilizations, which may or may not be clashing,³⁴ can best be seen as products of past efforts to establish a universal civilization. Some of these efforts are continuing, others have been abandoned long ago. It would be wise, as we continue this ancient project of building a universal civilization, to do so in a way that takes advantage of the great work already done, incorporating it rather than suppressing it or rejecting it outright. So the work of building a universal civilization can best proceed not by crushing the civilizations of the past but, rather, by bringing them back to life in a form that will make them part of the mosaic of a universal civilization.

Central in the past to the building of a universal civilization were the great “universal religions” that we associate, today, with the different civilizations (plural) of the contemporary world (Christianity, Islam, Hinduism, Buddhism, Confucianism). Also central to these efforts in the past were “universal empires.” The current effort to establish a universal civilization builds on these past efforts and incorporates them. But neither a truly universal religion nor a truly universal empire are likely or desirable instruments of this task.

In medieval Europe, the project of universal civilization was carried forward on the shoulders of two institutions—the universal Church and the Holy Roman Empire. After the break with Constantinople, the Church was hardly universal (even within Christendom), and the Empire, as has been remarked, was neither holy nor Roman. Nonetheless, this was truly the last time the project of universal civilization was seriously pursued in the West before the two more recent ages of globalization (the one that ended in the disaster of 1914, and the one we are engaged in today). So some have come to refer to the resumption of the project of universal civilization as a sign of new medievalism.³⁵ But the project is older, and it did not die entirely between the Age of the Reformation and that of the glory of the British Empire. It is not new medievalism but an ancient, still-continuing project of building a universal civilization.

The political foundation of such a civilization, in its modern form, is now beginning to be discernible. It is neither a system of sovereign territorial states (which dominates the first stage of modernity, from 1648 to 1948, say) nor empire, but a system that is just barely discernible in the chaotic complexity of the European Union, a union of states. It is not a state, though composed of (modified) states. And it involves a fundamental shift in the relationship of states and law.

³⁴ SAMUEL HUNTINGTON, *THE CLASH OF CIVILIZATIONS* (Simon & Schuster 1996).

³⁵ HEDLEY BULL, *THE ANARCHICAL SOCIETY* 254–255 (Columbia Univ. Press 2002) (1977); Stephen Kobrin, *Back to the Future: Neo-Medievalism and the Post-Modern World Economy*, 51 J. INT’L AFF. 361 (1998).

Civilization is a product of cultivation and self-cultivation, to give it a Confucian reading. It is a culture that is a product of improvement and is committed to further improvement. And the improvement is measured by multiple standards of beauty, efficiency, truth, and goodness. There are multiple legitimate ends or values and, hence, multiple practices of improvement: individual, local, and global or universal.

Constitutional patriotism is loyal to universal values, but there are two ways of being so. We can be loyal to them as such, in isolation from any context. Or we can be loyal to them as part of our civic loyalty—or constitutional patriotism—directed toward a universal civilization. Universal civilization is something unique in human history. It is unique in its inclusiveness, most importantly. It is also unique in the long history of struggle to establish it, even through ages when this was quite impossible. Only in the last few centuries can the loyalty to universal civilization take the form of loyalty to something actually universal. So it is only in this modern period that the values of that civilization (human rights prominent among them) have had a chance to emerge. We may hold that, as central ideals of a universal civilization, they are valid in all places and at all times. When seen from the perspective of the courts, they are the long-sought-after principles of natural law. But we do not necessarily want to apply them in all times and in all places. A decision about how to apply these principles needs to be informed also by strategic questions: What would contribute the most, at a given time and at a given place, to the development of universal civilization?