

THE DOCTRINE OF “CONSTITUTIONAL PATRIOTISM”: RUSSIAN DREAMING ON EUROPEAN IDEAL. MOTIVES WITH GERMAN ROOTS

“Constitutional principles can only take root in the hearts of citizens who have a profound experience of democratic institutions and a habit of political freedom. In that way they learn – in a nationally dominated context – to perceive the Republic and its Constitution as an achievement. Without this historical and consciously created vision, no patriotic bonds will ever arise from the Constitution and between them, since these bonds result from, for instance, taking a pride in a successful civil rights movement.”

J. Habermas¹

“The most striking thing I ever heard was our Constitution on the radio – so utterly thrilling and humanizing. It is a more potent piece than Chekhov or a Dostoyevsky... You can be delighted with a work of fiction, you can enjoy it, or marvel at it, or even feed on it, but you cannot possibly want it for yourself... The things you read in the Bible – you must aspire to them, you must first purify yourself and try to be better, and you are always at the beginning of this road. Whenever and wherever you open it. You must change for the Bible. Never for the Constitution. No. Never!”

M. Zhvanetsky²

One of the most important goals on the path towards resolving all uncertainties around development of the Russian statehood is the quest for its national idea. This quest usually boils down to lamentations on a lack of state ideology that, in its turn, is blamed on the 1993 Constitution of the Russian Federation. Apologists talk about the futility of attempts to lay down ideological groundwork for the developing Russian statehood and cooperation between state and civil institutions, citing the constitutionally-stipulated ideological diversity and the constitutional ban on a single compulsory state ideology (Article 13 of the Russian constitution). It soon became obvious that, having cast away almost all Soviet symbols, ideological values, cultural legends and social

myths upon the collapse of the Soviet form of statehood, the ruling elite of the early 1990s and likeminded intellectuals failed to come up with an adequate substitute. After numerous debates on a new national idea, Russia found itself in a dead-end, unable to flesh out a viable set of values that could compete against those of the consumer society that emerged in the new economic reality. It is fairly difficult to oppose the calls to buy annually more and more cars per capita, or eat a few more tons of ice-cream, or meat, or vegetables (you can continue the list if you open any merchandise index).

But here’s the crux: although the Russian society has fully embraced consumerism, this idea has left it longing for different goals. And this objective to identify

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² The Rossiyskaya Gazeta. 2006. December 12.



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Summary: The article reveals the content of the theory of “Constitutional patriotism” concerning the interests and needs of the constitutional legal development of Russia. The constitutional legal phenomena of the Federal Republic of Germany have been specially studied; views of German lawyers and philosophers as ‘fathers’ of this theory are given. On the basis of the detailed analysis of foreign sources revealing the content and designation of the constitutional patriotism the article investigates perspectives of its application in the state legal doctrine of the Russian Federation and abroad.

Keywords: Constitution of the Russian Federation of 1993; Constitutional Patriotism; Constitutional Ideology; Invariance (stability) of the Constitution and Perspectives of its Development; Collisions and Gaps of the Constitution.

new national values still hasn't been met. Having given up on "For the Motherland! For Stalin!" Russia now cannot possibly go back to the "Orthodoxy-Autocracy-Nationality"¹ triad. Neither are we used to live and die in the name of the Constitution, Republic, Democracy, Human Rights or the Civil Society.

It is all more evident in the light of the survey called "What Russians Dream About" that was conducted by the Sociology Institute of the Russian Academy of Sciences and cited fairness among the key guidelines of the Russian society [What Russians Dream About..., 2012. P. 30-41]. The poll also revealed that the concepts of "law" took the backseat to the idea of "fairness." The authors of the survey identified two components that together formed "an image of the ideal future that comprises: 1) the state, state and internal political structure of the country; 2) social and economic structure, civilized and cultural values" [What Russians Dream About..., 2012. P. 42], demonstrating a complete inability to analyze state and legal elements by zeroing in on social and economic aspects alone. The word "constitution" was not mentioned even once, as did the word "law," which was substituted with the concept of "rights" and came up only in such word combinations as "human rights" and "equal rights for all." So, what stands behind this disdain of constitutional and law values, and the very concept of the rule of law, for that matter? What is a misunderstanding on the part of a certain group of social scientists or do these aspects actually represent a blind spot for the Russian society?

It is evident that the role of the 1993 Constitution of the Russian Federation is not merely confined, in the eyes of the Russian state and society, to its recognition as the country's Fundamental Law. Twenty years that have elapsed since its endorsement would be enough to look back at our accomplishments and mistakes. Twenty years after the Russian Constitution was adopted, we still hear criticism of how undemocratic its endorsement was. François Mitterrand, the president of the French Republic (1981-1995), is often credited for saying that referendums are very democratic and generally a good thing, but the problem with them is that the French are asked one question and they answer another. It looks like the French are not alone in this, because the majority of Russians who in December 1993 said "yes" to the Constitution really

took a close look at it. What they actually backed was a certain political course and the victory of one political party over another. Thus, the referendum of 1993 substantiated the classical Lassalle-Lenin definition of the constitution as a way to secure the existing relation of political forces.

Despite the controversial history of preparing, appointing and carrying out the referendum on the Russian Draft Constitution in the second half of 1993, it was this state-legal document that finalized the end of the Soviet statehood and the victory of political powers that were later to shape new state, political and economic institutions.

It is common knowledge that the Constitution played a distinctive stabilizing role. The Constitution of the Russian Federation – the main symbol of its contemporary history – clearly helped the country on its way out of an acute state-legal crisis that broke out in autumn 1993.

By securing the political status quo in the Russia of the early 1990s, the Constitution laid down a constitutional and legal framework that allowed it to solve the key problems of the Russian statehood, which were:

- a gap between the nature of the Russian state structure and the importance of preserving its territorial integrity and homogeneity of its legal space;

- absence of unity on both external territorial borders of the Russian statehood and the principles of its internal divisions;

- a lack of integrity in the Russian society: ethnical, political and social;

- a lacking system of public administration;

- missing judicial mechanisms whose task it was to secure integrity of the country's government.

Finding solutions to the abovementioned problems stood largely at the pinnacle of Russia's contemporary constitutional history.

Russia's civilization-defining choice to pursue a democratic, social state dominated by the rule of law was self-explanatory. The Constitution of the Russian Federation set up the framework of government institutions needed for the development of the Russian statehood, thus executing its constituent power in both of its senses: on the one hand, it established new government bodies and, on the other, legitimized and the existing ones by filling them up with new content.

The 1993 Constitution of the Russian Federation established a democratic form of government in the country based on the principle of checks and balances in its practical sense. But that is an essential quality of constitutional regulation, in which the constitution is developed through legislative standard acts and this entire bulk of documents secure constitutional doctrines and predominantly legal institutions that manifest themselves in the form of legal statuses and organizational structures. A constitution needs to be shored up with state, national and civil support that comes as a

1 "Delving deeper into this subject and looking for the principles that are at the heart of Russia (and every land, every nation has a Palladium of this kind), it becomes evident that Russia has three basic principles that it cannot prosper, grow in strength or live without: 1) Orthodoxy; 2) Autocracy; 3) Nationality," wrote Sergei Uvarov about Russia's dominant ideological doctrine in his report "On some basic principles that can serve as guidelines for managing the Ministry of Public Education" (19 November, 1833) to Nicolas I after he was appointed as the Minister of Public Education.

system of endorsement measures. These exact measures are described in the theory of constitutional patriotism.

German philosopher Jürgen Habermas is often mistakenly perceived as the sole grounding father of the "constitutional patriotism" concept, who studied it in depth in his work titled "Citizenship and National Identity" [Habermas, 1992], whereas Habermas gives credit for the definition of "constitutional patriotism" (Verfassungspatriotismus) to his two compatriots – Karl Jaspers (1883-1969) and Dolf Sternberger (1907-1989).

And yet the problem of who was the first to come up with the principle of constitutional patriotism is of much lesser importance than the conditions in which it emerged and the state interests it was looking out for.

Jan-Werner Müller believes there is at the moment no single legal-philosophic definition of constitutional patriotism [Müller, 2007. P.72-95]. On the other hand, he underscores the importance of this concept, which he says serves as a source of public trust and privileges conceptualizing citizens' beliefs and intentions that are needed to preserve a certain form of government. The expression "constitutional patriotism" essentially means that political loyalty needs to be rooted in norms, values and procedures of a democratic constitution [Müller, 2007. P.1,48, 50-51]. It is patriotism, which relies on a set of constitutionally-stipulated shared principles, rather than a common history or ethnic origin.

The idea of "constitutional patriotism" was first formulated in the post-war Germany, a nation that was first divided into occupation zones and then into two enemy states. It was a country that conceived a great state-legal theory, but had too little means or courage to use many of its judicial constructs. It is then, in the late 1940s, that Germany adopted its Constitution that would later help it overcome the Nazi legacy, rid itself of the occupation regime, create Europe's strongest economy, reunite the country and tear down the Berlin Wall.

It's hard to oversee certain similarities between the adoption of the Constitution by the Federal Republic of Germany in May 1949 and that of the Russian Constitution in December 1993. Russia's Constitution was adopted following its defeat in the Cold War, instead of a "hot war," when its thousand-year-old statehood was crumbling, its economy was going through a severe financial crisis and it needed to overcome the legacy of the totalitarian Communist regime. It's these parallels between the Russian and German constitution stories of 1993 and 1949 respectively, as well as Russia's historical susceptibility to German legal theories and models that explain popularity of constitutional patriotism as a means of bonding the state with its society.

German constitutional patriotism outlived its goals: as a substitute to the "right" national identity that was expected to become obsolete after the reunification [Müller, 2007. P.195]. This concept was again used in the late 1980s-early 1990s to integrate East Germany into West Germany and also to stigmatize the German

Democratic Republic as a lawless state, with all what this accusation may entail. This stigma was also used to justify violations in the agreed principles of succession that saw East Germany's accession to the Federal Republic of Germany.

As it known, agreements that were in place before the unification continued to legally exist within the boundaries where they had been adopted but were limited to these territories. But when the German Democratic Republic was called an unlawful state it lost its legal personality and all its international legal agreements were seen through the prism of guarantees, interests of the countries involved and treaty obligation of West Germany, as well as in the light of European jurisdictions. Thus, West Germany's treaties were kept in place and extended to the East Germany's territories.

In the late 1989, debates around the German reunification process were dominated by the judicial aspect of restoring a united German state. One of the most popular options was to adopt a new constitution by general vote of the German people [Constitutions of European Union member states. Basic Law of the Federal Republic of Germany. P. 172], while the other option was to extend the 1949 Constitution of West Germany to the incorporated territories according to Article 23 of the Basic Law. Eventually, the second way was chosen and the East Germany was broken up into separate territories, which were then absorbed by the Federal Republic of Germany. Article 23 originally read: "For the time being, this Basic Law shall apply in the territory of the Lander Baden, Bavaria, Bremen, Greater Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern. It shall be put into force for other parts of Germany on their accession." German lawmakers kept this article in the text of Constitution despite accusations of revanchism. In 1956, this mechanism was used to integrate Saarland to the FRG, followed by GDR absorption in 1999.

Constitutional patriotism thus became not only a convenient construct through which to comprehend the German history in the second half of the 20th century, but also an integral element of its political system and social consciousness. The concept of constitutional patriotism has become very influential in the European Union of today, where it is used to in debates on the European Constitution. The 2004 Treaty of Nice was to supplant Europeans' national patriotism with democratic principles of an EU constitution. But the Lisbon Treaty of 2007 totally omitted the word "constitution."

Nevertheless, a pan-European constitutional patriotism is a very promising unity doctrine for the European Union. It has overstepped the borders of the European continent and is now considered as an attractive legal form of civil loyalty to an increasingly "multicultural" society, as well as a way to conceptualize civil identity at a supra-national level [Müller, 2007. P. 195].

Interestingly enough, one of Habermas's main opponents, Jacques Derrida, subscribed to his article that hailed European unity on common rational principles and the idea of an EU constitution, despite being always skeptical about integration and consensus.

Constitutional patriotism can be viewed in its two meanings:

as a type of patriotic ideology where citizens of a state are united through their acceptance of democratic values and human rights, rather than through traditional fore-political bonds [Fossum, 2007. P. 23]. This approach redirects a limited civil loyalty to the nation as a whole and to constitution. Constitutional patriotism is based on citizens' support of a certain constitutional system as a manifestation of universal political principles, instead of separate ethnic, cultural or even state values [Oklopčic, 2012. P. 23], although, at the same time, they must not contradict national values;

as a constitutional idea that reflects its mission to accept, stipulate and protect state-legal values, mainly democracy and human rights. In this sense, constitutional patriotism underlies the system of values in the rule of law and a just state where it serves to solve urgent state issues.

Constitutional patriotism does not serve the sole purpose of supplanting nationalism. It should not be perceived as merely a safe haven against nationalism – even in its patriotic interpretation – on the way to an even liberal project. The liberal implication of constitutional patriotism should not be underestimated, although its doctrine is rooted predominantly in rationalism.

It's safe to assume that the doctrine of constitutional patriotism sees an ideal constitution (even unwritten one) as a shared sense of values and rules that hold all citizens together. The "call of blood" and cultural traditions are irrational and cannot underlie patriotism, which reflects a sense of caring for public good that advocates of this theory seem to equate with love for you motherland.

One can also argue that a consensus on basic rules and values is an extremely or even imagined state of society. This objection can, in its turn, be countered with the interpretation of a constitution as an ideal model of rationality that serves as a litmus test for reality and guides the development of irrational elements on their way towards rationality. Thus, a seemingly idealistic concept of constitutional patriotism is actually based on the perception of a social subject as a rational individual (a multitude of them). In this sense, rationality is interpreted in the light of the classical European thought as: profit-oriented thinking in the widest sense of the word "profit," independence ("separateness"), advanced self-consciousness, and logic-oriented decision-making. A constitution is a way of life chosen by a nation (and every single one of its rational individuals that it is comprised of) and a way in which public life is organized. It

is a utopia, but it makes a great ideal model.

John Fossum identified three centerpiece elements of constitutional patriotism. The first element is traditional for the Western social and legal thought in that it is linked with human and civil rights and ensures personal autonomy. The second one outlines institutional conditions, and the third one looks at it in terms of constitutional status [Fossum, 2003, P.4-5].

If we apply these three components to the Russian society we could use the theory of "constitutional patriotism" to lay down a roadmap that would help us tackle the abovementioned problems of Russian statehood, especially when it comes to combining universal human values with the values of the entire Russian society and all of its integral societies and help them co-exist, while also preserving their unique features and diversity. Constitutional patriotism is based on a set of universal approaches that need to be identified for each specific society – the Russian society in this case.

In order to implement the principle of constitutional patriotism we need to reconsider some fundamental constitutional and legal phenomena.

First of all, it requires setting right the principle of people's sovereignty and democracy that dominate the Russian legal doctrine. The category of "sovereignty," as stipulated in the Russian Constitution's concepts of state and people's sovereignty, is defined as one of the bedrocks of the Russian constitutional system. Most constitutions around the world described people's sovereignty as merely rights of a nation and its sovereignty. The Japanese Constitution of 1947 even goes as far as declaring people's sovereignty a principle that should be common to all humankind. In Article 1 of the Japanese Constitution, which is there to protect the monarchy, it is also stipulated that even the Emperor derives his position from "the will of the people with whom resides sovereign power" [Modern Foreign Constitutions, 1992, P. 270], something that no European monarchy can even dream of. No European constitution stipulates both rights and duties of its people.

And yet that is the exact title of Chapter III of the 1947 Japanese Constitution: Rights and Duties of the People. Article 12 of the Constitution delves into the phenomenon known as "people's duties" saying: "The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare" [Modern Foreign Constitutions, 1992, P. 270].

The 1949 German Constitution stipulates that all state authority is derived from the people. It is exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. The power of the people is therefore limited, which is illustrated through the presence in the Basic Law of the German Federative Republic of extracts

from the Weimar Constitution, namely Articles 136-141 which are still in force and regulate relations between the Church (Lutheran and Catholic) and the State. This reference to the Weimar Constitution was made despite that Germany chose to give up its previous state experience when it adopted the 1949 Constitution of the FRG.

As can be seen from the history of state (constitutional) law, there exist provisions that are defined only once and remain in force ever since without being revised. Such provisions cannot be altered even on people's demand. This is true, for instance, of the status of the Greek Orthodox Church in the Greek Constitution, which cannot be subject to amendments.

It is not allowed in Germany to revise its federative form of government, principles of legal cooperation between its territories, as well as groundwork principles as inviolability of human dignity, inviolability and inalienability of human rights, democratic and social basic order of the Federation, people's sovereignty, its right to oppose any attempts to change its constitutional order if nothing else can be done. Similar provisions can be found in other countries. For instance, France and Italy cannot amend their republican political system, while in Greece it is prohibited to change norms that identify it as a parliamentary republic, as well as principles that stipulate personal protection and respect, equality before the law, personal liberty, freedom of choice and separation of powers.

Jewish philosophy is also notable for its thoughts on people's duties. Yosef Ben-Shlomo said in “An Introduction to Philosophy of Judaism” wrote that a people's right to live on their soil was part and parcel of the duties that were imposed on it by God. Should the people forsake these responsibilities, the land will cast them off [Ben-Shlomo, 1994].

If we ignore speculations of Jewish philosophers on their being the chosen people on a holy mission (the same author says that the special status of the Jewish people manifests itself in the abundance of their knowledge and ethical values, rather than in their numbers, while their historic mission is to lead the world out of the dark), we can still discern a deep philosophic thought that the people have duties to their past and future generations.

Hence, a state-building nation in the deeper, historical meaning of the word is not just generations of people who live on a certain state-shaped territory and share values and culture, but also the generations before them who made them what they are today and generations after them who will inherit this land. This approach may seem to have nothing in common with modern state-legal practices – but only at first sight. In fact, it is the source of duties that the people and elected authorities have: to preserve their state, its territory and ethnos, to enhance its culture, economy and policy, to create positive relations with their neighbors and maintain its

right among other nations around the world.

All these examples support the thesis that the idea of people's sovereignty is a theoretical, philosophical and legal category that is embodied in a large system of constitutional institutions and mechanisms. A nation is a sovereign owner only within its right and only if it really defines that right, and not when this right is imposed on them by some other, non-representatives body. There is no such thing as a metaphysical nation, same as there's no empirical nation – there is an elective body and voters. There exist wishes of an elective body or of a single voter, but it's next to impossible to define a united will of the entire nation. Or, as Dolf Sternberger put it, “democracy is an element of the constitution, even its fundamental element, because a nation and only a nation, first of all, as voters legitimize the existing authorities, and it's in the elections that the democratic element of the constitution is actualized” [Sternberger, 2005. P. 309].

At the same time, no part of the nation can monopolize the right to sovereignty. Electorate is only a part of a nation, its politically active part. People's sovereignty is vested and realized within the borders of a real organic state.

Another constitutional-legal phenomenon that needs to be clarified is the interpretation of the Russian civic nation. In a nutshell, it is about looking for a compromise between a “Russian nation” and “Russian society.”

The constitutional-legal theory distinguishes between two notions: nation as a civic unity and nation as a common ethnicity. The concept of a “civic nation,” often called the French model, is based on the idea of a nation as a unity of all citizens in a country disregarding their ethnic origins. This model took into account France's historic and legal experience that created democratic principles, a civil society, and preconditions for all its ethnic groups to accept the culture of its core nation (primarily its language).

The second concept, also called the German model, is ethnic and blood-oriented. It dominated society during the period of nation-building, which lasted in Europe for some 400 years. This model is based on the recognition of a nation's ethnic roots (from Greek “ethnos” – “nation”) in that it is a historically formed community of people, possessing common, relatively stable specific features of culture and psychological traits, as well as being aware of their unity and differences from other similar communities (self-consciousness). A nation (from Latin “natio”) defines a historically formed type of ethnos that represents an integral socio-economic unit that consists of large groups of people united through production activities.

This approach served as a basis for the guidelines and practices of the Bolshevik party and was first used to build the national and state premises of the Russian Soviet Federative Socialist Republic and then of the Soviet Union. Some experts believe that the Soviet Union

rested both on the principles of both an ethnos and a civic nation. The 1977 preamble to the Constitution of the USSR established a society of a new historical community of people based on all classes and social strata, de jure and de facto equality of all nations and nationalities and on brotherly cooperation between them.

The inadequacy of this approach came to the fore during the Soviet period of “perestroika” that triggered “velvet revolutions” in Eastern Europe who implemented some national patriotic initiatives. The most popular slogan of that time again became their demand for self-determination. The final collapse of a state that it took a thousand years to build was a result of supremacy of ethnic principles over constitutional and state ones.

On the contrary, J.Habermas believes that constitutional patriotism can only emerge when political culture and state politics begin to differentiate more than in the case of a nation and classical state. Thus, identification through certain traditions and lifestyle is replaced by an abstract patriotism that refers to abstract principles and procedures [Habermas, 1987, P.173].

The concept of constitutional patriotism was created to ward the German society against the baneful influence of strong ethnic nationalism [Reinkowski, 1997. P. 71]. It was a unifying model of patriotism based on such ideas as “law” and “civic consciousness” – that is on “civic identity” as opposed to “blood identity,” or ethnic identity. To contrast constitutional patriotism, Western scientists used to write about so-called “religious patriotism,” a derogatory term used to describe hysterical patriotism that sacrifices truth, justice, and equality to national interests and national security. In other words, it is a type of patriotism in its ecstatic extreme that borders on religious awe.

Article 116 of the Germany Basic Law described who is considered a German, same as Article 66 of the Turkish Constitution explains who can be considered a Turk: “Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.” “Everyone bound to the Turkish state through the bond of citizenship is a Turk.”

The unity of people’s sovereignty and the unity of a civic nation are basic elements of constitutional patriotism. Other principles of constitutional-legal integrity of a country are defined as: 1) judicial integrity across Russia and supremacy of the Russian Constitution and its federal laws (Article 67) on the entire territory of the Russian Federation; 2) territorial integrity (Articles 1,3,67); 3) a single institution of citizenship; 4) the integrity of economic space, a free flow of goods, services and financial resources, support for competition, and the freedom of economic activity (Article 8); 5) a single system of federal government; 6) a single state

language; 7) a single international legal personality of the Russian Federation 8) centralized functioning of the armed forces and security services; 9) the establishment of state symbols, including the capital, Russia’s coat of arms and anthem.

The concept of constitutional patriotism as an ultimately liberal legal and philosophical doctrine doesn’t rule out the importance of analyzing possible risks and challenges it may pose if transplanted into the Russian judicial system. Some of the most evident risks are: constitutional patriotism can serve as a cover for a fixed relation of political forces which created this Constitution, as well as for its invariability; a hypertrophied patriotism; constitutional patriotism may conflict with demands to respect the priority of international law.

The nature of constitution is best defined through the approach described by German philosopher Ferdinand Lassalle in a brochure titled “On the Essence of Constitutions,” which contains his two speeches that he delivered in 1862 at a meeting of Citizens’ Union in Berlin. It was published on the club’s decree. The first speech came out in 1862 under the title “Uber Verfassungswesen” (“On the Essence of Constitution”), the second, “Was Nun?” (“What now?”), was published in 1863. Their complete translation into Russian appeared in 1905 in a “Public Benefit” collection. The main idea of Lassalle’s theory is that a real constitution of a country is the “actual relation of forces in a given society constitutes the actively operating force which determines all laws and juridical institutions of this society” [F. Lassalle, 1999. P. 437].

This approach was creatively rearticulated by Vladimir Lenin (Ulyanov) in his word “How Socialist revolutionaries review the outcome of the revolution and how the revolution reviewed Socialist revolutionaries” : “What is the essence of a constitution... Is it that it gets “freer” when there’s a constitution and the “working class” has an easier life that without one? No, only vulgar democrats can believe in that. The essence of a constitution is that the country’s basic laws in general and laws on election rights to representatives organizations, their competences, etc., reflect the actual relation of forces engaged in a class struggle. A constitution is fictitious when the law and the reality do not meet, and not fictitious when they meet” [V.I. Lenin, 1968. P. 345]. Despite that there is no ideological component to it anymore, the theory of Lassalle-Lenin about the nature of the constitution as a relation of forces has been proven again and again. On the other hand, changes in the social structure have washed away the phenomenon of “classes” and created a more complex strata society.

There is an evident contradiction here: if a constitution reflects the relation of forces and the outcome of a struggle between political powers, then the doctrine of constitutional patriotism is nothing more than justifica-

tion of this co-relation as a historical and rational inevitability, while the bedrock of the constitutional patriotism is the idea that it unites people on the grounds of rationality and common good.

Was the 1993 victory of one group of political forces over the other unconditional? Hardly so. The 1993 Constitution of the Russian Federation was endorsed by 58.43% of votes against 41.57%. But it was only 32,937,630 "yes" votes compared to the total electorate of 106,170,835. So was the victory absolute? No, of course not. It was the majority rule in action when the winner takes it all. The winners of the 1993 referendum were chosen to pick the path that Russia followed in its contemporary history. The Constitution of 1993 laid down the framework for the country's political and state-legal development, for its economy, civil society and democracy.

The 1993 Constitution as a fundamental political and legal document has a number of functions that describe the main areas where it is applied. First of all, it plays a constituent function. A Constitution as an act of the constituent power has created and legitimized not only state institutions but also economic and civil society ones.

If today we try to analyze constitutional principles behind the systems of government and municipal authorities, we are bound to ask ourselves: does Russia need to change its Constitution or it is all about the mechanisms of realizing its potential? An opinion poll by VTSIOM in early December 2012 showed that only 18% of respondents thought they knew the Constitution well, 59% didn't read the text but claimed they had a general idea of it, while 22% confessed they didn't know what it was about. At the same time, 45% of respondents told pollsters that the existing Constitution needed to be revised and amended.

This is the thing about constitutional regulation: the Constitution and additional legal texts determine chiefly formal legal institutions – legal statuses and organizational structure. That's why "constitutional patriotism" doesn't rule out amendments to constitutional-legal regulations and to the text of the Constitution.

A thesis that currently dominates the Russian civic thought is that the Constitution should be developed without any changes to its text. Over these 20 years since its adoption, the 1993 Constitution of the Russian Federation has proved that it can exist unchanged and fit very different political regimes (for instance, we have seen several different models of presidential rule, of political rule that the Federal Assembly of the Russian Federation had over the year, different levels of regional autonomy). Russia's parliamentary system has tried almost every way of forming the Council of the Federation of the Federal Assembly, despite that the Constitutional provisions on its part remained the same all this time. Even the current model of a presidential republic has room for a stronger parliament to the extent

of a government's accountability before the parliament.

The Constitution suggests different models of development for the Russian federalism. For example, federal districts played a significant role in stabilizing federal relations as de facto government elements rather than the state's structural elements, without being mentioned as such in the Constitution. On the other hand, any attempted change in the country's constitutional state structure can potentially lead to ethnic tensions, despite its complexity and probably economic inefficiency. Russia's "ethnic suburbs" are only ready to tolerate talks about turning them into provinces as long as this unification rhetoric is heard from least popular political parties. They might still flare up if anyone tries to "improve" the constitution model and question the existing government structure.

Russia's experience has proven that political regime is not determined by constitutional norms. This is the idea voiced by Maurice Duverger who said that any constitution paints a multitude of ruling models rather than just one. Their organization depends on the actual relation of forces. Different political regimes can function in the same legal framework [Duverger, 1978. P.10 Citation from: Salmin, Pivovarov. P. 79].

The real political life is a deal richer than mere legal statuses. The thesis about the Constitution's invariability cannot be shaken by improvements in constitutional legislation, i.e. in normative legal acts that regulate legal relationships in the Constitution. A Constitution sets the framework of political construction, without preventing them from being filled up at will.

The Russian Constitution's provisions on the balance of administrative powers leave a lot of room for detail. This thesis serves as the premises for the presumption of its "integrity" in the nearest historical perspective. At the same time, experts point at inaccuracies in the system of the Russian state power (executive and judicial power and prosecutor's office), which is now a widely-recognized fact [e.g. Avakyan, 2000. P. 215-226].

It should be noted that this kind of constitutional collisions are typical of other countries too. Such conflicts are usually solved by choosing a single legal norm or an institute or a definition (according to certain rules), while at the same time determining relations between them, setting priorities and drawing the limits for certain concepts, norms and institutions in order to clarify the legal space and overcome political conflicts.

Another popular problem that often arises with respect to constitutions and has been highlighted in different debates is linked with legality of recognizing or ignoring constitutional gaps. Organic laws usually center around basic legal relations, therefore it would be wrong to say that constitutions can have gaps. A Constitution essentially must have such gaps, simply because it cannot define every single aspect of social relations. It is a sort of "preterition" with regard to some

aspects of state or social life. Moreover, such omissions are inevitable because practice is always more dynamic than adopted laws. It should also be noted that the choice between more and less important social relations that are then either regulated by the constitution or simply omitted is very subjective and depends on the stage of social development. It is often the case that issues that seemed vital at one stage of social development can later dwindle.

One can see that the constitutional framework can fit in political and economic development. Protests against a Constitution cult that take on the form of “Hands off our...” do not in the very least contradict the goals of developing political regime and economic system. Even if such a conflict does occur, it can be characterized in terms of dialectics rather than antagonism. Despite acknowledging the integral controversy of the Constitution, experts always claim that these contradictions should not lead to calls to amend the Constitution. “The urge to solve all problems – from corruption to a faulty boiler – by amending the Constitution is a sign of teenage “maximalism” in the society, rather than of an imperfect Basic Law,” said Sergei Shakhrai [Shakhrai, 2013. P. 15-16].

On the contrary, it is noted that most of the legal acts that could have fleshed out Constitutional provisions – in the sphere of constitutional influence on economy, freedom guarantees, including economic ones – still haven’t been adopted. “It won’t be that much of an exaggeration to suggest that the entire Constitution, all its divisions in their organic unity, are related to the country’s economic development and determine the logic of its functioning. A totalitarian constitution backs a totalitarian economy, a democratic constitution creates prerequisites and sets framework for a market economy” [Mau, 2010. P. 272]. The link between a market economy (economic democracy) and a political democracy (democratic political system) does not actually suggest itself. A market economy can co-exist with not too democratic political regimes. But there can be no political democracy without a market economy.

History can offer several examples of effective authoritarian regimes (Soviet industrialism, Chinese Socialism, the regime of Pinochet). But all these regimes were effective only at the initial stage of industrialization. Having realized their ambitions, totalitarian regimes lost their momentum and had to look for more democratic slogans. China has already exhausted the modernization potential of the first stage and reached this crossroads. A totalitarian model cannot be efficient in an information society. Although history knows of some successful authoritarian regimes, they never reached a higher level of development, so it’s hard to prove that such a regime can effectively manage economic growth.

A Constitution is not just a normative legal act, it is

actually much more than that and its ideas are a subject of economic studies, social sciences and political sciences. The Russian Constitution of 1993 is a document that identifies prospects for a developing national identity, which doesn’t rule out an overblown idea of constitutional patriotism. J. Habermas says: “For historical reasons, the majority national culture has become fused with the general political culture and must now be dissolved from it if it is to be possible for all citizens to identify themselves on equal terms within the same political community. As the political culture gets uncoupled from the majority national culture, citizens will unify on the abstract basis of ‘constitutional patriotism’” [Habermas, 2003. P. 119].

In Russia, a “spreading majority culture” can trigger a surge in nationalist sentiment, both nationwide and in the suburbs. Vladimir Solovyov spoke about “genuine patriotism that wants Russia to be better and false claims of nationalism that it is already as good as it gets” [Solovyov, 1989. P. 444].

Constitutional patriotism is a radical democratic concept within the theory of deliberative democracy that seeks a rational explanation of citizens’ loyalty to the constitution of their country. This theory suggests that citizens that see their constitution as rational and agree with justified argumentation perceive constitutional norms as reflection of their legal and moral values [Breda, 2013. P. 12,14].

“Rationality” of a national Constitution is more valued by society than “rationality” of international law, meaning that constitutional patriotism may collide with the thesis about superiority of international law and unmatched efficiency of international norms. This correlation, however, is not a sign of how civilized a country is. The Kingdom of the Netherlands agree that its international agreements have a higher priority than the Constitution, while the Kingdom of Sweden, whose level of development is generally beyond doubt, only allows for an international legal act to be placed above its own when its Rigsdag agrees to publish it in the Swedish Code, thus giving it the status of a law.

The Russian Constitution of 1993 has recognized the primacy of international law over domestic law (Chapter 4, Article 15). But it isn’t necessarily true for any kind of international norms. It refers only to peremptory norms, the so-called “jus cogens.” The supremacy of international norms doesn’t extend to the Russian Constitution. Thus, Chapter 6, Article 125 of the Russian Constitution stipulates that international treaties and agreements that do not correspond to the Constitution of the Russian Federation are not liable for enforcement and application.

Under Clauses a, z, Article 125 of the Russian Constitution, the Russian Constitutional Court is entitled to consider cases on the correspondence of international treaties and agreements of the Russian Federation which have not come into force to the Constitution

of the Russian Federation. It's also worth noting that there were precedents where the Russian Constitutional Court used international legal acts (such as the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, as well as documents of international organizations and international treaties) to substantiate its decisions, although it still refers to provisions of the Russian Constitution when it announced its ruling.

Each of the three abovementioned challenges that arise from the "constitutional patriotism" concept is not critical for the Russian constitutional and legal doctrine. Moreover, the very Constitution of the Russian Federation contains a set of mechanisms aimed at diminishing and neutralizing any possible negative impact of constitutional patriotism. Actually, constitutional patriotism cannot be threatened by the lack of ideological consensus. Or, as Daniel Sutter puts it, constitutional consensus won't perish in the absence of ideological consensus [Sutter, 1998. P. 323], meaning that constitutional consensus defines the way of state and social life and is based on constitutional ideology, which cannot be reduced to a mere arithmetic sum or a mix of ideological bits and pieces. Despite being open to elements of various political ideologies, the ideology of constitutional patriotism is of a different nature and, above all, self-sufficient. And finally, judging by constitutive character of the Russian Constitution, we can safely identify constitutional patriotism as bedrock of constitutional consensus, which is an indicator and basis of a legitimate authority.

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