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Constitutional Patriotism

*Four European Reincarnations
and the Russian Version*

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This study examines the theory of constitutional patriotism with respect to the interests and needs of constitutional and legal development of Russia. The author pays special attention to the views of German legalists and philosophers as originators of this legal theory. Thoroughly analyzing foreign documents that define the content and purpose of constitutional patriotism and give examples of countries using this concept as a basis of their national development, as well as shaping of the European Union's common identity, the author explores its relevance for the legal doctrine of the Russian Federation and other countries.

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Contents

Introduction	5
“Founding Fathers” of the Constitutional Patriotism Doctrine and Jurgen Habermas	9
Constitutional Patriotism as a Description of the Reunification of Germany.	17
Definition and Content of Constitutional Patriotism	22
Civic Patriotism	26
Constitutional Nationalism	36
Constitutional Patriotism as a European Abstraction.	42
“Learning Sovereign” — a Constitutional Patriotism Requires Learning	48
Constitutional Patriotism — the Russian Version	60
Afterword. “Are constitutional patriotism’s aspirations too good to be true?”	70

Introduction

“Constitutional principles can take roots in the hearts of citizens, if they already have positive experience of democratic institutions and are used to political freedom. In this way they learn—in a dominating national context—to comprehend the republic and its Constitution as an achievement. Without such historical, conscientiously developed vision no patriotic bonds deriving from Constitution and linking to it will appear. Because such bonds may be caused, for example, by pride in the achievements of the civil rights movement.”

J. Habermas¹

“The sharpest impression ever was produced on me by our Constitution recited on the radio—it thrills and makes a true man out of you. It is more powerful than Chekhov or Dostoyevsky... Reading a work of fiction, you can applaud, enjoy, admire or even consume it, but you cannot claim for it... To achieve what the Bible says, you have to aspire, cleanse your soul, improve yourself, and still you will always be in the very beginning of the journey. Whenever you open it and at whatever page. For the Bible, you must change. For the Constitution—No. No! No!”

M. Zhvanetsky²

Among the objectives of overcoming the uncertainties of Russia's national development, the search for a national idea is one of the top priorities. Typically, it is boiled

¹ Habermas J. The Burdens of the Double Past//Dissent. V. 41. No. 4. Cit. ex: Fliberg B. Habermas and Foucault—Theoreticians of the Civil Society//Sociological Studies. 2000. № 2. P. 130.

² Rossiyskaya Gazeta. 12 December 2006

down to lamenting over the lack of a state ideology, the blame for which is put on the Constitution of the Russian Federation of 1993. Seeking to prove the uselessness of any efforts aimed at identifying an ideological platform for national development or principles of interaction between the state institutions and the civil society, those lamenting refer to the constitutional entrenchment of the ideological diversity and constitutional ban on imposing by the state of any mandatory ideology (Article 13, Constitution of the Russian Federation).

It is commonly understood that, having destroyed the Soviet system and rejected all the Soviet symbols, ideological values, cultural legends and social myths, the new elites that came to power in the early 1990's along with the intellectuals who had granted them their support could not offer the society a relevant ideological alternative. Despite the numerous discussions concerning a new national idea, Russia has failed to come up with a set of values capable to compete against the values of the consumerist society in the new economic circumstances. Realistically speaking, it is very difficult to oppose the call to buy more cars per one thousand per annum or to eat more ice-cream, or meat, or vegetables (pick any goods from the stock list to continue).

Ironically, having embraced the idea of consumption, the Russian society is still unsatisfied and keeps on looking for new goals. The goal of putting in place new national values has not been attained. Slogans like "For the Motherland! For Stalin!" being no longer an option, Russia, for reasons beyond control, is unable to get back to the "Orthodoxy, Autocracy, and Nationality" triad³. And it is not in the tradition of our country to live and die for the values of Constitution, Republic, Democracy, Human Rights or Civil Society.

This truth is clearly proven by the study of the Institute of Sociology under the Russian Academy of Sciences entitled "What the Russians Dream About". One of the main moral bearings of the Russian society is justice⁴. Moreover, the authors of the study note that Russians perceive

³ "Going deep into the subject and looking for the pillars that underpin the palladium of all Russia (every country, every people has such a palladium), it becomes obvious that we have three such key pillars, without which Russia cannot thrive, gain in strength, or live — 1) Orthodox Faith, 2) Autocracy, and 3) Nationality." This is the way the three main principles of the Russian state ideology were defined by Sergei Uvarov in his report "On some general principles that can serve as guidance on how to manage the Ministry of Public Education" presented to Nicolas I of Russia on the day of taking the office of the Minister of Public Education (19 November 1833).

⁴ "What the Russians Dream About (Sociologists' Reflections). Analytical report (prepared in cooperation with Friedrich Ebert Foundation in the Russian Federation)// Institute of Sociology, RAS, M., 2012. P. 30–41.

“justice” as something much more important than “law”. Putting the main focus on two components of the “image of ideal future—1) the state, the government and the political order; and 2) the social and economic system, the civilizational and the cultural values,”⁵—the authors demonstrate their full inability to analyze important government and legal components only focusing on social and economic aspects. The term “constitution” is not mentioned by them even once, while the notion of “law” is only referred to in the context of “human rights” and “equal rights for all”. What can explain such disregard of constitutional and legal values, the very concept of the rule-of-law state? Is it the lack of understanding on the part of individual social scientists or their true irrelevance to the Russian Society?

It is widely accepted that constitution plays a stabilizing role. The Constitution of the Russian Federation as the main symbol of Russia’s contemporary history helped the country to find a way out of the profound political crisis of the autumn of 1993. Was the victory of one group of political actors over the other, as it is enshrined in the Constitution of 1993, flawless? It is unlikely. The adoption of the Constitution was supported by 58,43% of those who took part in the voting, while 41,57% voted against it. The Constitution received the “go-ahead” from 32,937,630 participants of the nation-wide voting, while the total number of the Russian electorate was 106,170,835 (58,187,755 took part in the voting or 54,81% of those entitled to vote). Was it an ultimate victory? No doubt. According to the majority principle, the winner took it all. It was the winner who on that very day of 12 December 1993 determined the future path of Russia in its contemporary history. It was the Constitution of 1993 that set the political and legal framework for the development of the country, its economy, civil society and democratic institutions.

By entrenching the political constellation of the early 1990’s, the Constitution of the Russian Federation defined the constitutional and legal basis for dealing with the key issues of the Russian statehood, including:

- 1) Inconsistency between the nature of the Russian state structure and the objectives of territorial integrity and uniformity of legal framework;
- 2) Lack of unanimity of views on both external frontiers of Russia and its internal administrative division;

⁵ Ibid. P. 42.

- 3) Insufficient integration of the Russian society at all levels—ethnic, political and social;
- 4) Imperfection of the system of government;
- 5) Lack of legal mechanisms ensuring unity of power within Russia.

In many ways, the contemporary constitutional history of Russia is about overcoming the above-mentioned problems.

As a framework political and legal document, the Constitution of 1993 fulfils a number of functions, which fall within its key domains. What is most important, it has fulfilled its constituent function in both of its meanings: first, new state institutions were established; and, second, some legacy institutions were legitimized and filled with new content.

Became apparent and enshrined in its Constitution the civilizational choice of Russia—to build a democratic social state governed by the rule of law. The Constitution of the Russian Federation of 1993 established a democratic government model based on the principle of division of power in its functional meaning, and put in place a framework of government institutions, which was necessary for the country's national development. As a constituent instrument the Constitution created and legitimized all the state institutions, as well as those of the economy and civil society.

The peculiarity of constitutional regulation is that a constitution in combination with the laws that underpin it entrenches constitutional doctrines and predominantly legal statuses and organizational structures. The constitution itself, as well as the constitutional order established by it, require a system of measures of government-wide, nationwide and civil support. Such a system of measures is envisaged by the theory of constitutional patriotism.

It may be interesting to discuss the adoption of the Basic Law for the Federal Republic of Germany as a historical parallel to the adoption of the Constitution of the Russian Federation in December 1993. Like Germany, Russia was adopting its Constitutions after a defeat in a war, albeit “cold” rather than “hot”, in the conditions of a collapsing thousand-year-old statehood, severe economic crisis and need to overcome the consequences of the totalitarian communist regime. This similarity of political and historical circumstances, in which the Basic Law for the FRG of 1949 and the Russian constitution of 1993 were adopted, along with the traditional linkages between Russian and German legal theories and models, explains our attention to the idea of constitutional patriotism as a compelling consolidating framework for both the Russian state and the citizens of Russia.

“Founding Fathers” of the Constitutional Patriotism Doctrine and Jurgen Habermas

The notion of constitutional patriotism was first articulated in post-war Germany, a country divided into zones of occupation and then into two mutually hostile states. A country, which developed a great state and legal theory, but had no possibility or courage to use any of its numerous statutory concepts.

Many people wrongly believe that the only “founding father” of the theory of constitutional patriotism was the German philosopher Jurgen Habermas, who gave a detailed description of its elements in his work “Citizenship and National Identity”⁶. However, Jurgen Habermas himself, nobly and on reasonable grounds, yields the palm in the definition of the notion of constitutional patriotism

⁶ *Habermas J. Staatsbürgerschaft und nationale Identität//Faktizität und Geltung.*—Frankfurt am Main: Suhrkamp, 1992; См. Также: *Habermas, J. (1995) “Citizenship and National Identity: Some Reflections on the Future of Europe”.* In Beiner, R. (ed.) *Theorising Citizenship.* Albany: SUNY Press. pp.255–282; *Habermas, J. Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy.* Oxford: *Polity*, 1996; *Habermas, J. The Inclusion of the Other.* Cambridge: *Polity*, 1998; *Habermas, J. “Reply to Symposium Participants: Benjamin N. Cardozo School of Law”.* In Rosenfeld, A., and Arato, A. (eds.) *Habermas on Law and Democracy.* Berkeley and Los Angeles: University of California Press. 1998, pp.381–444; *Habermas, J. The Postnational Constellation: Political Essays.* Cambridge: *Polity*. 2001; *Habermas, J. Why Europe Needs a Constitution.* *New Left Review.* 2001, 11: 5–26. *Habermas, J. The Divided West.* Cambridge: *Polity*. 2006; *Habermas, J. “A Political Constitution for the Pluralist World Society?”* In Brown, G.W., and Held, D. (eds.) *The Cosmopolitan Reader.* Cambridge: *Polity*. 2010. pp. 267–288.

(*Verfassungspatriotismus*) to his two compatriots—Karl Jaspers (1883–1969) and Dolf Sternberger (1907–1989)⁷.

It is in the work by Karl Theodor Jaspers, a professor of philosophy at the University of Heidelberg (sometimes referred to as “*Praeceptor Germaniae*” or “Educator of Germany”⁸), (“*Die Schuldfrage*” (1946); “The question of German guilt” (1947))⁹ that the researchers find the derivation of the constitutional patriotism doctrine. Jaspers believed that Germany would not be able to restore its national identity without assuming a collective responsibility for its past. Jaspers identified “continuously contested memory” as the basis for new national solidarity of the Germans¹⁰.

Rejecting the possibility of “collective guilt” of the German people, Jaspers considered the question of guilt as “*a question which is crucial for the German soul. No other path can bring us to spiritual renewal <...> That the victors condemned us is a political fact, which has significant implications for our life, but this does not help us to deal with the main question—our internal spiritual resurgence. Here we are on our own.*”¹¹

In 1966, analyzing the outcomes of the two decades that followed Germany’s defeat in World War II, Karl Jaspers wrote:

“In 1945, we faced the moral and political task to establish a new state. This task has not been accomplished yet. The Federal Republic of Germany¹²,

⁷ Dolf Sternberger was a follower of Hannah Arendt (German-American philosopher of Jewish descent raised in Königsberg). Hannah Arendt studied under Karl Jaspers (during the Nazi regime he was deprived of professorship; moral leader of German philosophers of the post-war period) and Martin Heidegger (hardcore NSDAP member in 1933–1945; underwent denazification). After 1933, Jaspers insisted that he had nothing to do with Heidegger. The complicated relationship between German philosophers is confirmed by the romantic intellectual correspondence between Martin Heidegger and Hannah Arendt. See: “Arendt Hannah, Heidegger Martin. Letters (1925–1975) and Other Records” / Translated by A. Grigorieva. M., publication of the Gaidar Institute. 2016. P. 456

⁸ In the German context, the unofficial title “*Praeceptor Germaniae*” belongs to Philip Melancthon (1497–1560), but, given the contribution of Karl Jaspers to the development of science, many of his peers find it possible to call him the same.

⁹ *Jaspers K.* The question of German guilt. New York. The Dial Press. 1947

¹⁰ For more details see: *Müller J.*—W. Constitutional Patriotism.—Princeton: Princeton University Press, 2007. 177 p.—pp. 16–18.

¹¹ *Jaspers K.* The question of German guilt. New York. The Dial Press. 1947, P. 28.

¹² One important linguistic detail is worth noting: before 1990, in the USSR, the FRG was officially called «Федеративная Республика Германии» (the Federal Republic of Germany), where the word ending «-ии» (to which the English preposition

although established by Germans, was established as per the order of the allies. Some of those Germans were authorized to do so by them, rather than the German people.”¹³

“The Basic Law bears the imprint of the memories evoked by the evils of Nazism, considers the circumstances that lead to the events of 1933, puts the blame on the Weimar Constitution, and envisages measures... to avoid repetition of this. Therefore, its... dominant idea is distrust in the people.”¹⁴

Jaspers identifies a number of factors that are critical to understand the nature of the German constitutional development. These factors should be kept in mind, when discussing the shaping and application of the constitutional patriotism doctrine in Germany:

- a) Without downplaying the role of the Weimar Constitution in the development of the German constitutionalism and its contribution to the constitutional and legal thought and experience, any reliance upon the constitutional background and practices of the Weimar Republic was considered unacceptable, given the fact that it was the Weimar Constitution that had enshrined the provisions that legitimized the rise of the Nazi party to power.
- b) The Basic Law for the Federal Republic of Germany of 1949 is in many ways an imposed legal document—its provisions were developed and adopted, when Germany was divided into zones of occupation. Moreover, the occupational authorities directly and immediately influenced upon this process.
- c) The Basic Law was adopted in the conditions of a defeated nation, distrust in the country and its people on the part of both victorious powers and neighboring states.

The very term “constitutional patriotism”, as well as its definition, belong to Dolf Sternberger. This term explains the ability of a democracy to survive by the readiness of the citizens to defend the values of their democratic constitution, for which they must identify themselves

“of” corresponds in this case) would mean “belonging to something bigger”. It was intended to underscore the existence of “another” Germany—the German Democratic Republic. Since 1990, the abbreviation «ФРГ» (the FRG) has been standing in Russian for «Федеративная Республика Германия», which can be translated into English as “Germany, a Federal Republic” to avoid any allusion to Germany as “a part of something bigger”.

¹³ *Jaspers K. Where is the FRG Going? / Karl Jaspers. — M., 1969. P. 66.*

¹⁴ *Ibid.*

with their constitution—i. e. have a feeling of constitutional patriotism. At the same time the requirements of constitutional patriotism are picked out of a broader political and cultural context to make up a number of universal principles the citizens must loyally follow.

The notion of constitutional patriotism is a kind of Dolf Sternberger's present to the Federal Republic of Germany on the occasion of its 30th anniversary—23 May 1979, on the day of foundation of the FRG and coming into effect of its Basic Law (1949), The Frankfurter Allgemeine Zeitung published Dolf Sternberger's article entitled "Verfassungspatriotismus" (Constitutional Patriotism)¹⁵. Sternberger's reflections on "patriotic feelings towards a constitutional state" date back to an earlier period (1959), and over time he introduced the hard-to-translate term "Staatsfreundschaft", which means citizens' amicable, even brotherly attitude towards the state based on "passionate rationality" of the relationship between the former and the latter, where the citizens see their national identity through the prism of attachment to their democratic state (it goes something like this)¹⁶.

In its first incarnation constitutional patriotism is patriotic commitment to the democratic "constitution" of West Germany.

Sternberger finds some roots of constitutional patriotism in the era preceding the emergence of national states, although it is hardly possible to refer to patriotism when speaking about the subjects of those pre-national states, which seems quite logical. However, this logic entails an overly idealistic conclusion—namely that prior to the establishment of national states (i. e. until the end of the 18th century) patriotism could only be based on people's general attitude towards the law (as understood in the context of the traditional customary law) and certain liberties. The idealism of this concept is explained by the fact that Sternberger used as basis the Aristotelean philosophical tradition taught to him in the form of republicanism by his professor Hannah Arendt. Thus, Sternberger leads us to the conclusion that the constitutional patriotism doctrine brings back to the roots, if you will. To the times, when nationalism in the form of blood relation or ethnic affiliation did not exist. It is very difficult to agree with this idealistic approach, since the historical experience of most nations gives us eloquent evidence that in the pre-national era patriotism could take on no less, if not much more scary, brutal and bloody forms, while the uniting power could come

¹⁵ *Dolf Sternberger, Verfassungspatriotismus [Constitutional Patriotism], Frankfurter Allgemeine Zeitung, May 23, 1979.*

¹⁶ For more details, see: *Dolf Sternberger, Staatsfreundschaft [Schriften IV], Frankfurt/Main: Suhrkamp, 1980.*

from a lot of different sources, except for phenomena such as the law, liberties or values.

Jurgen Habermas managed to avoid such adding to history in his definition of the principles of post-traditional society development. Instead of getting back to the pre-national forms of human life, he suggests that the national (ethnic) traditions be evolved towards universalism. Addressing the question of the sources of such universal principles capable of uniting the members of society, Habermas refers to the constitutional provisions and norms. This by no means implies abandoning national traditions, religious views or social philosophy of a society. On the contrary, it requires that these traditions, views and philosophy be rethought, reconceptualized and “riddled” in terms of their compatibility with constitutional values. There is a possibility that as a result of such rethinking some of the views and traditions will be kept in order to be developed in the post-national society, while the others will stay in the “riddle of history”—the society will have to remember them, but only to be able to validate the choice of getting rid of them.

Following the tradition of Sternberger, Habermas preaches a realistic approach to the “riddling” of national values. In the course of “rationalization of collective identities” the society eventually replaces national patriotism, which implies that everything inherited from the past is an absolute value only because it was touched by our ancestors, for constitutional patriotism, which requires that any heritage be subject to critical reevaluation for compliance with universal principles.

Knowing the name of the researcher who was the first to voice the concept of constitutional patriotism is way less important than understanding the historical conditions, in which it appeared, as well as the state interests it is designed to serve. However, it is obvious that Jurgen Habermas is perceived as the author of the constitutional patriotism doctrine, which points up the necessity for timely translation of scientific studies into English. Habermas also has the upper hand in gearing this doctrine to practical needs in the course of German unification and bringing the country in line with the format of the European identity.

Indeed, the contribution of Habermas to the establishment of the concept of constitutional patriotism as a political and legal theory is so big, that it was made popular beyond the German frontiers through the translation of works of Habermas and subsequent discussion and criticism of his views. In the course of these discussions the doctrine of constitutional patriotism was first pulled away from its post-war context and intended practical purpose of underpinning the reunification

of Germany, and then spread far beyond the goal of providing a constitutional and legal framework for the processes of European integration.

Jaspers, Sternberger and Habermas have managed to articulate and present to Germany and the World a concept, which, on the one hand, was extremely important to Germany itself, because it addressed the most relevant challenges of developing Germany's post-war national identity, helped the German society to get rid of ideological chaos, escape the temptation of suppressing the truth ("*Verschweigerung*"), give up the stance "I-don't-want-to-know-for-sure" ("*Nicht-genau-wissen-Wollen*"), complete true rather than superficial denazification, and, on the other hand, satisfied external stakeholders by infusing into them hope for a possibility to overcome Germany's Nazi heritage. It is in this concept that the authors of the Basic Law for the Federal Republic of Germany of 1947 and the entire constitutional and legal model of the country found a foothold for national optimism—Germany did adopt a supreme law conducive to overcoming the consequences of Nazism, stopping to be an occupied country, becoming one of Europe's strongest economies, reunifying the nation and demolishing the Berlin Wall.

The success of Germany in its post-war history does not cancel out the notion of "continuously contested memory". The accuracy of this term was confirmed forty years later, when the "Historians Debate" ("*Historikerstreit*") was launched in Germany in 1986. It was a major discussion devoted to the perception of the Nazi past¹⁷. The discussion was provoked by the article entitled "The Past, which is Reluctant to Pass" ("*Vergangenheit, die nicht vergehen will*") by Ernst Nolte, a professor at the Free University of West Berlin, published by the same Frankfurter Allgemeine Zeitung.

A group of prominent German historians, including Ernst Nolte, Martin Broszat, Andreas Hillgruber, Michael Stuermer, Hagen Schulze, Klaus Hildebrand, Joachim Fest, et al — suggested that the crimes of the Nazism were not something extraordinary and ranked with other mass crimes of the 20th century, such as the Civil War and Stalin's purges in Russia, the Armenian Genocide in Turkey, numerous wars, including the Vietnam War, etc. The partisans of rehabilitation of Nazism found its source in the October Revolution and presented Hitler's aggression as a measure to prevent the potential attack of the Communist Soviet Union on the West—i. e. up until 1945 Hitler was carrying out the historical

¹⁷ For more details, see: *Kauganov E. National Identity Discourse in Postwar Germany// Essays on European Identity and Multiculturalism: Collected works/Eds. M. Y. Martynova. M., IEA RAS, 2013. 480 p.—P. 11–73.*

mission of protection of the Western World against the evils of Communism. This approach was promoted within Germany under the slogans of getting rid of the guilt complex and “normalization” of the German National Identity.

These revanchists were confronted by a group of daring liberal historians headed by Habermas (Hans and Wolfgang Mommsen, Rudolf Augstein, Heinrich Winkler, Kurt Sontheimer et al), who demonstrated why it was impossible to get back to so-called “normal” historical National Identity of the Germans.

In July 1986, Habermas published in the “Die Zeit” weekly his response to Ernst Nolte under the title “*Apologetic Trends in Contemporary German Historiography*”. In the opinion of Habermas, the national identity of the Germans can only be based on constitutional patriotism—German national traditions cannot exist “*without scrutiny and can only be accepted as a result of critical examination and self-criticism.*”¹⁸

“Those who want to bring the Germans back to the traditional form of their national identity, destroy the only reliable rationale for our connection with the West.”¹⁹

In the end of his article Habermas wrote, “Unfortunately, the commitment to universal constitutional principles, which is entrenched in people’s views, could only be shaped <...> after—and through—Auschwitz.”²⁰

E. Meyer defined the patriotism based on the memory of Auschwitz as “negative patriotism”²¹—this term became part of the German social and political discourse.

¹⁸ Kühnl R. Vergangenheit, die nicht vergeht. Die Historiker-Debatte Dokumentation, Darstellung und Kritik. Kln: Pahl-Rugenstein Verlag, 1987. S. 281.

¹⁹ Ibid, S. 282.

²⁰ Kühnl R. Vergangenheit, die nicht vergeht. Die Historiker-Debatte Dokumentation, Darstellung und Kritik. Kln: Pahl-Rugenstein Verlag, 1987. S. 50. Cit. ex: V.V. Rulinsky “Historians’ Dispute” in Germany: the problem of responsibility for Nazis’ crimes // Slavic Cultures Bulletin. 2013. Vol. 27, № 1. P. 45–56.—P. 51.

²¹ Giesen B. (Hrsg.). Nationale und kulturelle Identität.: Studien zur Entwicklung des kollektiven Bewußtseins in der Neuzeit. Frankfurt am Main, 1991. S. 88. Cit. ex: Kauganov E. National Identity Discourse in Postwar Germany // Essays on European Identity and Multiculturalism: Collected works / Eds. M. Y. Martynova. M., IEA RAS, 2013. 480 p.—P. 11–73.—P. 58.

“All democracies have their basis or foothold. For France it is the year 1789 (the French Revolution), for the USA it is the Declaration of Independence, for Spain it is the Civil War. For Germany Auschwitz is such a foothold. It can only be Auschwitz and the Memory of Auschwitz. In my opinion “Auschwitz Never More” (“Nie-mehr-Auschwitz”) is the only possible footing for the Berlin Republic.”²²

Joschka Fischer
Vice Chancellor and Foreign Minister of the FRG (1998–2005), 1999

“The one who is thinking about Germany today and looking for answers to “The German Question”, must also think about Auschwitz.”²³

Gunter Grass
Laureate of 1999 Nobel Prize for Literature, 2000

The notion of constitutional patriotism was defined in order to protect the German society from the deleterious influence of strong ethnic nationalism²⁴. This model of patriotism intended to unite the German nation is based on the principles of law and civic consciousness—i. e. on the “identity of citizenship” as opposed to the “identity of blood” or ethnic identity.

In Germany, the idea of constitutional patriotism outlived the specific goal, for which it had been developed,—to substitute the “right” national identity, which was expected to become unnecessary after the reunification of the country²⁵. If at an early stage this concept, in its utilitarian political application, was intended to provide a liberal democratic alternative to the national (ethnic) patriotism, very soon it was upgraded to enable the main event in the contemporary history of Germany.

This refers to the second reincarnation of constitutional patriotism as a description of the German reunification.

22 Cit. ex: *Assmann A., Frevert U.* *Geschichtsvergessenheit—Geschichtsversessenheit. Vom Umgang mit deutschen Vergangenheiten nach 1945.* Stuttgart, 1999. S. 412.

23 Cit. ex: *Frei N.* *1945 und wir. Das Dritte Reich im Bewußtsein der Deutschen.* München, 2005. S. 285.

24 *Reinkowski M.* *Constitutional Patriotism in Lebanon//New perspectives on Turkey.* 1997. № 16. P. 63–85.—P. 71.

25 *Müller J.—W.* *Three Objections to Constitutional Patriotism//Constellations.* 2007. Vol. 14. № 2. P. 195–206.—P. 195.

Constitutional Patriotism as a Description of the Reunification of Germany

Bernard Yack says, “Habermas uses this idea to combat the resurgence of ethnic chauvinism in the wake of German reunification²⁶.”

“He contrasts two ways of characterizing the incorporation of the East German states into the Federal Republic: on the one hand, as the restoration of “the pre-political-unity of a community with a shared historical destiny”; on the other hand, as the restoration of “democracy and a constitutional state in a territory where civil rights had been suspended... since 1933.”²⁷ Haberman’s defense of constitutional patriotism is to a great extent a defense of the second purely civic description of German reunification.”²⁸

Key in this quotation is the word “description”. As a matter of fact, the doctrine of constitutional patriotism just described the process of reintegration of the GDR into the united Federal Republic of Germany, rather than

²⁶ *Yack Bernard*. Nationalism and the Moral Psychology of Community. Translated from English M., Publication of the Gaidar Institute, 2017.—p. 520—P. 67

²⁷ *Habermas*, “Citizenship and National Identity” // Habermas J. Democracy. Intelligence. Morality. Moscow lectures and interviews. M.: KAMI-ACADEMIA, 1995.—P. 211.

²⁸ *Yack Bernard*. Nationalism and the Moral Psychology of Community. Translated from English M., Publication of the Gaidar Institute, 2017.—p. 520—P. 67

characterized this process. In the context of a study devoted to the situation in the period between the late 1980's and the early 1990's, the constitutional patriotism doctrine could be considered *a constitutional myth* (in the positive meaning of this term—a myth uniting the society and citizens in terms of how they perceive their historical past)²⁹.

The reunification of Germany resulted from a combination of two factors—the mass popular movement in East Germany and the decisiveness of the political leadership of the FRG headed by Helmut Kohl. It is these two forces that acted as subjects of the reunification policy. On the contrary, the political leaders of the GDR and the people of the FRG played the role of its objects: while the former (GDR leadership) were frantically attempting to restrain the course of history, the latter (citizens of West Germany) were following the developments on the TV.

What determined the wish of GDR citizens to find themselves in West Berlin or the FRG, by hook or by crook? Why on earth were they applying for asylum in the Embassies of the FRG in Budapest and Vienna in May 1989? Why did millions of citizens of the socialist German state take to the streets of Dresden, Berlin and Leipzig in autumn 1989 with the Perestroika-like slogan “Wir sind ein Volk” (“We are the people”), and a year later transformed it into “Wir sind das Volk” (“We are one people”)? Originators of myths believe that they “got out on the streets not in order to restore the national German state, but because they wanted to be free, live in a country with no nomenklatura class or privileges, a country with equal protection by the law; they wanted to live in a fraternal society, society of social justice with no exploitation of man by man.”³⁰ Ironically, the language “fraternal society”, “society of social justice” and “lack of exploitation of man by man” was borrowed from the East German ideological vocabulary.

The indignation of those who won and achieved reunification over the atrocities committed by the officers of the Ministry of State Security of the GDR (*Ministerium für Staatssicherheit* aka *Stasi*), will probably abate once they have got access to the archives of the still existing Federal Intelligence Service of Germany (*Bundesnachrichtendienst* or the BND) and Federal Office for the Protection of the Constitution of Germany (*Bundesamt für Verfassungsschutz*)³¹.

²⁹ For more details see: *Bartsits I.N. Constitutional Myths and Constitutional Illusions: About Heroic Past and Better Future*. M., “Delo”, 2018. — p. 60.

³⁰ *Heiner Geißler. Citizens, Nation, Republic—Europe and the Multicultural Society // Reserve Stock*. 2002. № 5. Geißler H. Bürger, Nation, Republik — Europa und die multikulturelle Gesellschaft // *Die multikulturelle Herausforderung. Menschen über Grenzen — Grenzen über Menschen*. / Hrsg. von Bade K. — München, 1996.

³¹ It must be admitted that the Federal Office for the Protection of the Constitution has very little to do with the protection of the values of Constitutional Patriotism

However, there is still a possibility that the citizens of East Germany were mostly motivated by FRG's higher living standards, while the political elite of the FRG were driven by understanding that the reunification would in every way reinforce the role and positions of Germany in the world. Obviously, these aspirations only facilitated the legitimate overcoming of the division of Germany and the freeing of the Germans from the stigma of a "divided nation".

The above list of factors defined by Jaspers and critical for understanding of the constitutional development of Germany, the factors that should be kept in mind when discussing the development and application by Germany of the constitutional patriotism doctrine, can be continued with two more theses:

- d) In the post-war period a supreme law called "Constitution" only existed in East Germany (Constitutions of 1949 and 1968 (as amended in 1974). West Germany, which by the right of the powerful had declared that only the development of the constitutional doctrine within the framework of the Basic Law of the FRG of 1947 could be considered constitutional history, having fully denied the constitutional experience of the German Democratic Republic (1949–1989), did not have a constitution or more accurately a legal document called "Constitution"
- e) According to the plan of its originators and authors, the Basic Law for the Federal Republic of Germany (Grundgesetz) of 1949, "*which, since the achievement of the unity and freedom of Germany, applies to the entire German people, shall cease to apply on the day on which a constitution freely adopted by the German people takes effect.*" (Article 146, Basic Law for the Federal Republic of Germany of 1949).

However, if the objective set by the Basic Law has already been achieved, why is the Basic Law still in effect?³²

being focused on counterintelligence activities, including, as reported by the German media, spying on FRG citizens in the interests of the USA — these activities include interception of telephone calls, online correspondence, email messages, etc.

³² V.P. Serebrennikov openly poses the question "When?", since Article 146 does not envisage replacement of the current Basic Law (Grundgesetz) for another provisional Basic Law but provides for its replacement for a Constitution (Verfassung) in the exact meaning of this word, moreover, for a permanent, rather than provisional Constitution. For more details, see: Serebrennikov V.P., On One Mystery of the Basic Law for the FRG of 1949.//Management in Social and Economic Systems: materials of the 20th international academic conference, Minsk, 20 May 2011 /Minsk Institute of Management; eds: N. V. Sussha [et al].—Minsk, 2011.—P. 313–317.

Isn't it the desire to rule out any positive memories of the GDR that leads to "Ostalgie"?

Isn't the doctrine of "simultaneous mastering of two pasts" (Doppelte Vergangenheitsbewältigung) erroneous from the perspective of shaping of constitutional values common to the whole nation?

In the period between the late 1980's and the early 1990's, the concept of constitutional patriotism was not only used as an enabler of incorporation of the GDR into the FRG, but also in the evaluation of the history of the German Democratic Republic as a rogue state with all that it entails. The theory of "simultaneous mastering of two pasts" (Doppelte Vergangenheitsbewältigung) was designed, which envisages reflections on both the Nazi past and the East German communist regime.

This confession justified the violation of the principles of succession in respect of treaties and agreements when the territory of the German Democratic Republic was integrated into the Federal Republic of Germany. As is known, in case of junction of states all their treaties and agreements remain valid but only apply to the part of the territory of the unified state where they were effective in the moment of succession. But because the GDR was found an illegitimate state and lost its legal standing, a rule was used, according to which all the international treaties and agreements of the GDR were reviewed from the standpoint of ensuring trustworthiness, interests of the participating states and treaty obligations of the FRG, as well as considering the competencies of European communities. The treaties and agreements of the FRG retained validity and were made applicable to the territory of the former GDR.

Let us remind you, in the end of 1989, one of the key aspects of the reunification of Germany was the discussion of the legal procedure of restoration of the unified German state. One of the two most preferable options provided for "adoption by free determination of the German people"³³ of the Constitution of the unified German state, while the other option envisaged extension of the effect of the Basic Law for the Federal Republic of Germany of 1949 to the incorporated territory as per Article 23. The second option was implemented—the territory of the GDR was divided into lands which in turn were integrated into the FRG. The original Article 23 of the Basic Law for the Federal Republic of Germany read:

"For the time being, this Basic Law shall apply in the territory of the Laender Baden, Bavaria, Bremen, Greater Berlin, Hamburg, Hesse, Lower Saxony,

³³ Constitutions of the European Union. The Basic Law for the FRG. Preamble. M., 1997. P. 172.

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.”³⁴

As a matter of fact, “neither constitutionalism, nor patriotism were invented by the Germans”³⁵, let alone having been invented to help shape German’s national identity in the post-war period. However, constitutional patriotism proved to be not only a good framework to review to comprehend the history of Germany in the second half of the 20th century, but also an essential element of the country’s political system and public conscience. Exceeding reliance on the experience and needs of Germany in specific historical periods is one of the weighty arguments of the opponents of the constitutional patriotism doctrine³⁶.

³⁴ The German legislator kept this article in the language of the Constitution, despite all accusations of open revanchism. As early as in 1956, the mechanism entrenched in this article was implemented when Saarland was integrated into the FRG; and in 1990, it was employed again during the incorporation of the GDR. The Unification Treaty of 31 August 1990 cancelled Article 23 of the Basic Law for the FRG in its original wording. The Basic Law as amended 21 December 1992 changed the content of the Article — now it defines the role of the FRG in the process of European integration.

³⁵ *Müller J. — W. A “Thick” Constitutional Patriotism for Europe? On Morality, Memory and Militancy’* // <http://www.princeton.edu/jmueller/CP-ThickCPEurope-JWMueller.pdf>. P. 4.

³⁶ *Miller, D.* On Nationality. Oxford: Clarendon Press. 1995; Turner, Charles. “Jürgen Habermas: European or German?”. *European Journal of Political Theory*. 2004. Vol. 3 (3), pp. 293–314.; Viroli, Maurizio. For Love of Country. Oxford University Press. 1995. pp. 172–175.

Definition and Content of Constitutional Patriotism

There are two ways to present and define constitutional patriotism:

- 1) As a type of ideology of patriotism, where the citizens of a state become interrelated by means of adopting democratic values and human rights, rather than through traditional pre-political relations³⁷. In this approach citizens' loyalty is refocused from limited loyalty to the loyalty to the nation and constitution. Constitutional patriotism is based on the acceptance by citizens of a specific constitutional system not as an incarnation of individual ethnocultural or even state values, but as an expression of unique political principles³⁸ which in spite of their uniqueness do not contradict national values;
- 2) As a constitutional characteristic which reflects the purpose of the constitution to ensure recognition, safeguarding and protection of the values of state and law, and in the first place the values of democracy and civil rights. In this sense constitutional patriotism provides a basis for putting in place a state governed by the rule of law, a fair state as a way to solve key state problems.

³⁷ *Fossum J.E.* On the Prospects for a Viable Constitutional Patriotism in Complex Multinational Entities: Canada and the European Union Compared / Annual Conference of the Canadian Political Science Association. — Saskatoon, 2007. 20 p. — P. 2.

³⁸ *Oklopčič Z.* The Territorial Challenge: From Constitutional Patriotism to Unencumbered Agonism in Bosnia and Herzegovina // *German Law Journal*. 2012. Vol. 13. № 1. — P. 23–50. — P. 23.

It would be fair to say that, in the context of the constitutional patriotism doctrine, the best basis for citizens' coexistence is an ideal constitution (not necessarily a written one) providing a set of values and rules similarly understood and shared by all the members of the society. The "call of the blood", as well as cultural traditions, are irrational phenomena and as such cannot serve as a basis for a true patriotism as an expression of looking to the common good, which is perceived by the proponents of this theory as true love for the country.

It may be argued that a consensus on basic values and rules is a very unstable or even fake state of the society. However, any such arguments can be confuted by interpreting constitution as an ideal model of rationality, a benchmark helping to assess the reality and identify a migration path for the irrational elements to become rational.

Constitutional patriotism is not intended exclusively to replace nationalism. It should not be regarded only and solely as a safe haven to refuge from nationalism, albeit patriotic, and engage in a more liberal project. However, the liberal component of the constitutional patriotism doctrine should not be overlooked either. Yet predominant in the doctrine of constitutional patriotism is rationalism.

Therefore, for all that seeming idealism of the concept of constitutional patriotism, in masks the perception of a social subject as a rational individuum (or a multitude of such individua), where rationality is understood in a classical way typical of the European social thought — i. e. focus on self-interest (in the broadest sense of the word), independence (separateness), developed self-consciousness, and reliance on the logic in decision-making.

Constitution is a way of people's living chosen by this particular people (each of its rational individua), a design or organization of the state life.

It may sound utopian, but it is extremely useful as an ideal model.

The ranks of contemporary proponents of the concept of constitutional patriotism are headed by Prof. Jan-Werner Müller from Princeton University and Prof. John Erik Fossum from Norway's Center for European Studies who enriched the doctrine of constitutional patriotism with content going far beyond the model structured by Sternberger and Habermas.

Jan-Werner Müller argues that there is no single philosophical or legal definition of constitutional patriotism today³⁹, however, pointing

³⁹ A general theory of constitutional patriotism// *International Journal of Constitutional Law*. 2007. P. 72–95

out the significance of this concept he says that constitutional patriotism is a source of citizens' trust to state authority which conceptualizes the beliefs and intentions required of the citizens to maintain a certain form of political rule. The term constitutional patriotism implies that political allegiance must be based on the norms and values, as well as procedures, of a democratic constitution⁴⁰. It is patriotism based on constitutional principles shared by all, rather than common history or ethnical background.

Jan-Werner Müller poses three specific questions, by answering which one can analyze key characteristics of the doctrine of constitutional patriotism: "Can members of an evil regime, such as the Third Reich, be constitutional patriots of some sort? Does constitutional patriotism depend on the operation of a single constitutional document? Can the British and Israelis, who lack such documents, nevertheless be constitutional patriots?"⁴¹ And then he summarizes, "*And if not, is not constitutional patriotism, in some sense, always homogenizing, part of a potentially authoritarian "civil religion", a faith that can be as intolerant as any other religion?*"⁴²

Can a constitution be non-democratic? This is probably the most difficult question the constitutional patriotism doctrine must address contrary to reality or logic. Whatever we mean by the word "constitution"—a supreme law (constitution de jure) or political constellation (constitution de facto)—it is apparent that both can entrench the victory of non-democratic forces. Although it is obvious that the positive answer to this question is the correct one, the proponents of constitutional patriotism claim the opposite. Democracy is obligated to ensure political liberties and proclaimed (although not in all its forms) a mandatory principle of the constitutional tradition, and no constitution failing to enshrine democratic principles meets the requirements of this approach.

In contrast, according to Jurgen Habermas, constitutional patriotism can be given rise to if the political culture and state policy differ to a higher degree than in a classical nation-state. Identification with individual traditions and life style is replaced for a more abstract patriotism based on abstract principles and procedures⁴³.

⁴⁰ Müller J. — W. Constitutional Patriotism. — Princeton: Princeton University Press, 2007. 177 p. — P. 1, 48, 50–51.

⁴¹ Müller J. — W. A general theory of constitutional patriotism // International Journal of Constitutional Law. 2007. P. 73.

⁴² Ibid.

⁴³ Habermas J. Eine Art Schadensabwicklung. Frankfurt am Main, 1987. — P. 173.

John Fossum identifies three key components of constitutional patriotism. The first one, which is about the rights of man and the citizen, is traditional to the social and legal thought of the West and provides for personal independence as a must. The second one is about institutional environment, while the third one is about the status of the constitution⁴⁴.

Applied to the Russia, with these three components the theory of constitutional patriotism can provide a roadmap for resolution of the same problems of the Russian statehood, especially in the context of combining universal values with the values of the Russian society and the various communities it comprises. At the same time, it leaves room for differences between these communities—for diversity on the one hand and lack of contradictions on the other hand. Constitutional patriotism offers universal approaches for a specific society, in this particular case Russian.

Providing for a wider cultural openness, involvement of representatives of different ethnic backgrounds, views, religions and cultures, constitutional patriotism is not only criticized by right- and left-wing nationalists, but also by proponents of liberal theories. Criticism on the part of the latter can be explained by the stubborn fact that striving for universalization and declaring so called nation-wide political values constitutional patriotism fails to consider in full specific features of the current state of development of the society, including, in the first place, the extreme fragmentation of the modern democratic societies, as well as the existence of a wide range of political, cultural, religious and economic frameworks. The doctrine of constitutional patriotism envisages that the unity based on ethnical identity should be replaced for the commitment to constitutional principles which are supra-ethnic in nature. This suggests reconciliation with the communities existing in the European societies, meaning that social solidarity can and must emerge regardless of any historical background commonality or formation of a nation within a state.

The doctrine of constitutional patriotism is also attractive, because it offers a form of national solidarity acceptable to both the state and the citizens. To be a loyal and seamlessly integrated member of the society, the citizen is exempted of any nationalist requirements such as ethnic, cultural, linguistic, historical or any other commonality with the majority of population. However, constitutional patriotism does not lead to cosmopolitanism, thus pacifying the state and the authorities and underscoring the commitment of the citizen to constitutionally enshrined values and purposes of this particular state.

⁴⁴ Fossum J.E. The European Charter — Between deep Diversity and Constitutional Patriotism? Working Paper/ ARENA, 2003. 32 p.—P. 4–5.

Civic Patriotism

The theory of constitutional law has two main approaches—one defines the term “nation” as a civic community, while the other defines it as an ethnic community. The concept of civic nation, often referred to as the French model, is based on the view of a nation as a community of all the state’s citizens, regardless of their ethnic background. In many ways, this model of a “political nation” is underpinned by the historical and legal experience of France, a country with established democratic principles and mature civil society, where key conditions have been put in place for all the ethnic groups to be able to assimilate to the culture of the core ethnos (first of all, in terms of language). This concept does not provide for giving up one’s own culture, which sometimes, especially when there are constraints or concerns impeding such assimilation, may result in ethnic conflicts.

The second concept, which is based on ethnic affiliation or blood relation, is also known as the German model. This model was spread in the period of formation of nations—in Europe, for instance, this period lasted about 400 years. According to this concept, every nation descends from an ethnos—a stable community of people historically formed on a certain territory, having common traits and sustainable cultural and psychological features, and recognizing their community and difference from other such communities through self-consciousness. Therefore, “nation” (from the Latin word “natio”) is understood as a historically developed type of ethnos which represents a socio-economic community comprising big social groups interconnected by social relations of production—i. e. “cultural nation”.

Polyethnicity is typical of modern states. There are up to five thousand ethnies and slightly more than 200 states in the world. Most of the states are polyethnic, and it is internationally acknowledged that a state can be considered polyethnic, if more than 5% of its population belong to different ethnic groups. The list of monoethnic states is very short and includes Hungary, Portugal, Armenia, Malta and Yemen. At the same time, every second Armenian, every third Maltese and Yemenite, and every fourth Hungarian and Portuguese live abroad. And there are only slightly more than 20 federations in the world. Moreover, the choice of the federal form by modern states is explained by specificities of their political and legal development and historical experience, rather than their ethnic (national) mix. For example, in Russia, one of the biggest federations in the world, Russians account for more than 80% of the total population.

Therefore, the notion of people is narrower than the notion of population, although it is a broader community than ethnoses. However, this ranking of notions — “people”, “population”, “ethnos” — is relative and depends on the state’s legal practice. In the context of different political and legal traditions, the terms people and nation, or people and ethnic community, or nation and ethnoses can be considered as synonyms. In the Soviet constitutional law, the term nation was used to describe ethnicity. The term “Soviet people of all ethnic groups” referred to all the “peoples” and “nations” making part of the Soviet Union regardless of the extent to which they could exercise their right of self-determination — i. e. the right to establish a Soviet Republic (Armenians, Byelorussians, Kazakhs, *etc.*), Autonomous Republics (Abkhazians, Tartars, Kara-Kalpak, *etc.*), *etc.* Moreover, the Constitution of the USSR of 1977 defined the Soviet people as a “new historical community”.

Predetermination of theoretical conclusions by political (state) interests can be illustrated using as an example the closeness of the German and Italian doctrines. It is obvious that this closeness is determined by the similarity of historical purposes of Germany and Italy in the 2nd half of the 19th century.

Theorists of unification of the Italian nation identified the following constituent attributes of such unification as quoted by Neumann⁴⁵ and then reproduced by Bauer⁴⁶: 1) common geography (elemento

⁴⁵ *Neumann, Friedrich Julius.* Volk und Nation. Leipzig: Duncker & Humblot, 1888. 192 S.— P. 54

⁴⁶ *Bauer, Otto.* Die Nationalitätenfrage und die Sozialdemokratie. Wien: Verlag der Wiener Volksbuchhandlung Ignaz Brand. 1907, 500 S.—P. 130

geografico); 2) common ancestry (*razza*); 3) common language; 4) common habits and customs; 5) common experience, common historical background; 6) common laws and common religion⁴⁷.

Analyzing the meaning of these attributes for the processes of nationogenesis, as well as their usability for the purpose of identification of the essence of a nation, Bauer comes to the conclusion that “nation is a population of individuals making up a community of character based on the community of destiny”⁴⁸, where the community of character (*Charaktergemeinschaft*) is defined as relative and originating from the community of historical destiny (*Schicksalsgemeinschaft*), as well as community of culture. He also underscores the significance of common geography as an attribute vital for the existence of a nation⁴⁹.

Bauer does not include the original Italian terms in this list (they are given in brackets by Neumann, who refers to the works on international law by the above-mentioned theorists of *risorgimento*⁵⁰). In his study he analyses and denies metaphysical theories of the nation (national spiritualism and national materialism). Then he proceeds to attribute-based concepts defining nations as sets of necessary and sufficient characteristics (e. g., the concepts of Terenzio Mamiani (1799–1885) and Pasquale Mancini (1817–1888)), and then he considers psychological theories of the nation including the self-identification with a community, and the desire and will to belong to this community (*Willen zur Zusammengehörigkeit*).

The theorists of *risorgimento* had a very special national idea. In his study devoted to *risorgimento* in the context of European nationalism, Franco Valsecchi finds in the basis of the Italian nationalism a number of different original premises—idealistic by Mazzini, religious by Gioberti, rationalistic by Cattaneo, and realistic by Durando—all these premises were later used by Romagnosi who came up with his concept of *etnicarchy*, in which the national idea was combined with the principle of legitimacy (according to this principle, a nation is population whose geographic and spiritual community is determined by nature). Thus, together with Mancini, who underscored in his works the

⁴⁷ Bauer, Otto. “The National Question and Social Democracy”. St. Petersburg. “Serp”, 1909. P. 139.

⁴⁸ Ibid., P. 139

⁴⁹ Ibid., P. 136–137.

⁵⁰ *Il risorgimento* (the Resurgence or revival) is the process of the Italian unification in the middle of the 19th century which included a national liberation movement and resulted in the proclamation of the Kingdom of Italy in 1861, and the capture of Rome in 1870.

immortality of the national state based on the immortal idea of the nation, they shaped the idea of the legal fragmentation of Italy as a purely temporary phenomenon, while in reality a true state had to be national.

Pasquale Mancini in his famous study “On the nationality principle as the basic rule of international law” proclaims Italy’s national theory, which provides for observing a number of “objective features of a nation”. Identifying objective features of a nation, such as common territory, ancestry and language, he nevertheless pointed out that it was a subjective feature—namely the “consciousness of the nation, the feeling that it experiences internally and that helps it to differentiate itself externally”—that was paramount, and that only having this feature a nation can “strive for independent political life.”⁵¹

It is the position of Mancini that the Russian legalist Nikolai Kuplevaski refers to discussing a list of attributes that make a nation: common language, common religion, common ancestry, common activity and common customs:

“Speaking about these attributes, it is necessary to note that they are far from absolute or mandatory for us to be able to call a given community of people a nation...⁵² If all these attributes play a secondary role, which of them is essential? Professor and statesman Mancini believes (1851) that the main attribute of a nationality is the consciousness of one’s nationality... People can speak the same language without feeling themselves belonging to the same nationality, they can exercise the same religion, have the same ancestors, pursue the same objective of activity and still fail to feel closeness to each other. Only when one nation finds itself in opposition to another nation, when we feel the joy and pain of the group as our own joy and pain, only then we have that intimate unity that is called a nation.”⁵³

But key for the Russian pre-revolutionary law science is another thesis:

“Here we have to distinguish between the notion of people or population of a state and the notion of a nation. The population of a state, people of a given state sometimes called by the name of that state—the Austrians,

51 *Mancini P.* Della nazionalità come fondamento del diritto delle genti. Torino, 1850. P. 39. Cit. ex: Ol P. A., Romashov R. A. Nation (genesis of the term and questions of legal standing). St. Petersburg, 2002. P. 45–46.

52 *Kuplevaski N. O.* General Doctrine of State in Regard to the Principal Questions of State Law and Policy. Kharkov: edition of the student S. Flock, 1901. 530 p.—P. 167.

53 Cit. ex: *Kuplevaski N. O.* General Doctrine of State in Regard to the Principal Questions of State Law and Policy. Kharkov: edition of the student S. Flock, 1901. 530 p.—P. 18–19.

the Russians⁵⁴, etc.—are a political community of people, a community ruled by the same political power, the same political institutions.”⁵⁵

Thus:

“... in the case of France, the state builds a nation, therefore all the citizens of this nation “X” are expected to speak language “X”; therefore, they should be put in a position that will make them learn it. In the German model, the nation expresses itself in the state in such a way that all the German-speaking people become citizens of Germany: all those who have the same ethnic, linguistic and cultural qualities become citizens of Germany ...

“The French model is educational: cosmopolitanism, rationalism, universalism, abstract and formal universalism; in this sense Marx is right—it is truly a philosophy of assimilation understood as universalization, i. e. identification of each and every individual... with this universal citizen—the French citizen. While the German path... nation is about individuality, with historical roots, developed organically, unified thanks to the *Volksgeist*, i. e. common spirit of the people, which differs it from other nations and expresses itself in the language, customs, culture and the state.”⁵⁶

The differences between the two models above refer to the two main movements in the continental political thought—the Enlightenment and the Romanticism; more specifically, the French Enlightenment and German Romanticism. These differences between the German and French models can be seen in the patterns of integration of two major Muslim communities—Turkish in Germany⁵⁷ and Arabic (Algerian predominantly) in France—into the societies of these two countries in the second half of the 20th century.

⁵⁴ It is obvious that by “the Austrians” the author means all the subjects of the Austro-Hungarian Empire, while by “the Russians” he means all the subjects of the Russian Empire.

⁵⁵ Cit. ex: *Kuplevaski N. O. General Doctrine of State in Regard to the Principal Questions of State Law and Policy*. Kharkov: edition of the student S. Flock, 1901. 530 p.; P. 15.

⁵⁶ *Pierre Bourdieu, On the State: series of lectures at le Collège de France (1989–1992)*. M., publishing house “Delo”, RANEP. 2017.—720 p.—P. 636–637.

⁵⁷ *Henkel Heiko. Turkish Islam in Germany: A Problematic Tradition or the Fifth Project of Constitutional Patriotism?* Journal of Muslim Minority Affairs, Vol. 28, No. 1, April 2008 Pp.113–123.

All of a sudden, on the cusp of the 20th and 21st centuries, at the instigation of German authors of constitutional patriotism Germany and France “swap torches”,

“With Habermas’ thought Germany takes over the torch of enlightenment in order to provide European civilization with a helping hand into the post-romantic. But... Europe needs two heritages: that of the Enlightenment and of Romanticism: otherwise you have a monster.”⁵⁸

The facility, with which France and Germany swapped their political doctrines, brings us back to the skeptical thoughts about the predetermination of philosophical narrative of values by state interests or more precisely by the way those interests are understood by the leadership elite. Centered around people’s spirit and historical roots, the German romantic fiction of the 19th century was intended to help build a unified German national state. This romantic perception of the people’s spirit led Germany to National Socialism with its complete negation of the universal values of the Enlightenment. As was mentioned above, in the same period, similar processes were developing in Italy.

In this historical period, France was already free from such aspirations (building a unified national state). This freedom allowed France to feel safe in preaching certain universal values until the very end of the 20th century, which was very much in line with the aim to enhance the role and authority of France (even in comparison with the USA) as a world leader in the assertion of human rights and liberties. The challenges of the 21st century made France’s non-critical approach to universalization (globalization) dangerous for the country, which explains why the French political thought and political establishment turned to the problem of preservation of the historical French identity and French traditions, habits and views, still national although not very universal.

On the contrary, having achieved unification and freed itself from the necessity to negate the interdependence of its economic power and political leadership in Europe, Germany was obliged to come up with its universal concept. Such concept proved to be constitutional patriotism.

The answer from the French side did not take long in coming. And it came in the form of the doctrine of *civic patriotism*. Civic patriotism

⁵⁸ Alain Finkielkraut (2001) ‘Nachhilfeunterricht in Post-Romantik’, Frankfurter Allgemeine Zeitung (14 Feb.) Cit. ex: Turner, Charles. “Jürgen Habermas: European or German?”. *European Journal of Political Theory*. 2004. Vol. 3 (3), pp. 293–314. p. 295.

is presented as a concept that is centered more around the interests of modern national states and diversity of political interests and aimed at the establishment of a political identity on the basis of recognition of the values of existing political institutions.

The followers of the concept of civic patriotism acknowledge the capability of constitutional patriotism to reconcile contradictory trends of the modern world and in the first place the trends determined by the requirements of cultural and economic openness. But at the same time, they argue that, in spite of the fairness of universal requirements of democracy and justice, the concept of constitutional patriotism, understates the role and significance of the established cultures and state systems. Constitutional patriotism is accused of insufficient protection of the existing “joint ventures”—i. e. national states⁵⁹. It is easy to tell which particular political culture is meant and which “joint venture” is being cared for by the French authors.

Credited to the concept of civic patriotism is its commitment to existing states and their democratic institutions which is a natural safeguard of the established political identity of citizens and societies. At the same time, the doctrine of civic patriotism does not require preservation of the existing political cultures and democratic institutions within the framework of national states allowing their continuous democratic review and even reformatting. Should these political institutions be found failing to fully comply with the requirements of the civic patriotism doctrine, they can be potentially undermined. Such undermining can be carried out by means of some forms of cosmopolitanism or even civil disobedience as a manifestation of constitutional patriotism⁶⁰.

Civil patriotism is a natural stage in the development of universal values: it does not reject the characteristics of constitutional patriotism but uses them as a basis and develops them being an optimal interim concept freed from the maximalism of constitutional patriotism and at the same time universal enough to avoid a conflict with the goals of European integration. And again, it is fully in line with the political interests of France.

A serious challenge for the doctrines of constitutional patriotism and civic patriotism was the necessity not only to develop an intellectual

⁵⁹ *Laborde Cécile*. From Constitutional to Civic Patriotism. 2002 Cambridge University Press British Journal of Political Science Volume 32, Issue 4 October 2002, pp. 591–612.

⁶⁰ *See: Bengoetxea Joxerranon*, Ugartemendia Juan Ignacio. Civil disobedience as constitutional patriotism//Legal Studies. Vol 17. Nº 3. pp. 434–447.

understanding of the migration crisis, but also to offer an adequate solution to it.

From the ideology perspective, the doctrine of constitutional patriotism is an extremely attractive way to encourage migration. What can an emigration officer processing refugee applications oppose against solemn assurances of commitment to the ideals of democracy and supremacy of law? Answers like “the doctrine of constitutional patriotism was developed to enable the reunification of Germany and then demanded to achieve the goals of integration within the European Union, and only applies to those representatives of non-European cultures who have already obtained legal status within the EU,” can hardly be called doctrinally correct.

It must also be recognized that the migratory influx causes proportional growth in nationalism and xenophobia—phenomena foreign to the doctrine of constitutional patriotism.

The unfavorable demographic conditions in all the developed states of the European Union and the Russian Federation in combination with the inability of these countries’ populations to achieve the rate of reproduction required by the economy predetermine the situation, in which the question to be addressed is not, *whether or not* the next generations of European nations will have to live together with those who are coming to Europe from Asia and Africa, but how they are going to live together. A very similar question can be asked relating to Russia with the only positive difference—Russia is originally multiethnic, over the course of its history it has incorporated many ethnies, doing that consistently and rather smoothly. Russia is in a position to fill its economy’s labor gap by encouraging the inflow of immigrants representing ethnic groups that have a long experience of living together and, despite the years past after the collapse of the Soviet Union in 1991, have kept many features and skills necessary for smooth integration into the Russian society. At a higher level, the needs of post-Soviet economies can be met within the framework of the various integration associations most important of which is the Eurasian Economic Union (EAEU).

Indeed, both Europe and Russia need a combination of universal values of the enlightenment and the national romanticism. With its version of response to the migration challenge the doctrine of constitutional patriotism is losing the first round to the concept of democratic (liberal) nationalism, whose earnest mouthpiece is David Miller⁶¹,

⁶¹ Miller, D. (1996) On Nationality. *Nations and Nationalism*. Vol. 2 (3). pp. 409–421; Miller, D. *Citizenship and National Identity*. Cambridge: Polity Press. 2000; Miller, D. “Immigration: The Case for Limits”. In Cohen, A. I., and Wellman, C. H. (eds.) *Contemporary Debates in Applied Ethics*. Oxford: Blackwell. (2005) pp.193–206; Miller, D. (“Against Global Democracy”. In Breen, K., and O’Neill, S. (eds.) *After the*

“As far as possible, each nation should have its own set of political institutions which allow it to decide collectively those matters that are the primary concern of its members,”⁶²

A unique attempt to combine the two concepts was made in the Soviet Union. The ethnic principle with the “right of peoples to self-determination up to and including separation” provided a framework for the program and practice of the Bolshevik party building, then was taken as basis for nation and state building on the RSFSR, and then in the USSR. However, along with the ethnic principle, the Soviet Union relied on the principle of civic nationalism. Thus, the Constitution of the USSR of 1977 proclaims in its Preamble having built a society, in which, on the basis of the drawing together of all classes and social strata and of the juridical and factual equality of all its nations and nationalities and their fraternal co-operation, a new historical community of people has been formed—the Soviet people.

The non-viability of such a combination was proven when, in the conditions of the Perestroika in the USSR and subsequent “velvet” revolutions in Eastern Bloc countries triggered by it, approaches based on national patriotism were implemented, and the right of nations to self-determination became one of the most popular slogans again. The demolition of a state that had taken a thousand years to be built was a result of the ethnic factor having overwhelmed the constitutional or national one. One may think that the collapse of the USSR (historical Russia) was caused by nationalism. Nowhere near. Nationalism just triggered the unification of the forces in different regions of the country that understood that the Soviet regime, Soviet political model, Soviet economy, and Soviet life style had become outdated. Nationalist theses were chosen as most understandable to the public, not requiring any proof, and facilitating primitive and therefore unmistakable identification based on the friend/foe principle.

Many national liberation slogans formed the basis for new civil society movements, including the first Popular Front in Estonia, and later in Latvia, Moldavia, Lithuania, Armenia and other countries. Similar movements emerged in Poland (Solidarity) and Czechoslovakia (Civic Forum). Failure to articulate any consistent and realistic national (and in the case of other socialist states international) policy resulted in the

Nation? Critical Reflections on Nationalism and Postnationalism. Basingstoke: Palgrave MacMillan. 2010. *Miller, David*. Immigrants, Nation and Citizenship. Translated from English by Artem Smirnov // Prognosis—2007.—N1.—P. 142–157.

⁶² *Miller, D.* On Nationality. Oxford: Clarendon Press. 1995. P.81.

failure of the USSR and world system of socialism, as well as a number of federal states (Czechoslovakia and Yugoslavia). Thus, the slogan of the right of nations to self-determination was pushed to its extreme form—i. e. “up to and including separation and creation of an independent state”.

Yet, it was not nationalism that killed the Soviet values, the Soviet way of living, and the Soviet ideology. The failure and destruction of the country were caused by inefficient Soviet economic model, atmosphere of political stagnation, and lack of social opportunities for the majority of population. Fleeing from the country, under various pretexts, of representatives of the cultural community, literary intellectuals, scientists, business people, and “ordinary” citizens was one of the distinctive features of the Soviet era⁶³.

Understanding of this helps to assess the challenges issued by nationalism, a doctrine which is still the same easy to embrace, convenient and comprehensible.

⁶³ A tragic symbol of that period was the 15-month old baby Holger who suffocated in the trunk of a car when his parents were trying to flee from the GDR in 1971. Various ways to flee from the USSR are described in detail in the film “East/West” directed by Regis Wargnier (1999).

Constitutional Nationalism

To counterbalance the doctrine of constitutional patriotism, the constitutional nationalism doctrine was formulated⁶⁴. The difference between constitutional patriotism and constitutional nationalism proved to be particularly important to the countries that had obtained independence due to the collapse (demolition) of federal states. The end of the 20th century was marked by the breakup of all the socialist federations—the Union of Soviet Socialist Republics, the Socialist Federal Republic of Yugoslavia, and the Czechoslovak Socialist Republic.

The differences between the concepts of constitutional patriotism and constitutional nationalism were demonstrated by the Czech Republic and the Slovak Republic that emerged as a result of the Hyphen War⁶⁵ and subsequent Velvet Divorce⁶⁶ at midnight, 31 December 1992. While the

⁶⁴ *Yeromina N. V., Seredenko S.* Constitutional Nationalism in Modern Europe: New Level of Threats.// NB: Problems of Society and Politics.— 2014.— № 3.— P. 1–42.

⁶⁵ The conflict over the spelling of the country's name: while the Czech leaders insisted on keeping the traditional one-word spelling "Czechoslovakia", their Slovak counterparts suggested using the hyphen — "Czecho-Slovakia". In April 1990, a compromise was stricken, and the official name of the country was changed to "Czech and Slovak Federal Republic" (CSFR).

⁶⁶ The parties that gained the majority in their respective republics in the course of 1992 elections failed to reach a compromise. The Czech Civic Democratic Party rejected the proposal of confederation, and, in July 1992, the Slovak National Council proclaimed sovereignty. In November 1992, the Federal Assembly, by a margin of just three votes, passed an act on the dissolution of the Czechoslovak Federation. That decision was made contrary to the opinion

Constitution of Czechia (Czech Republic) of 16 December 1992 was adopted on behalf of the “*citizens of the Czech Republic in Bohemia, Moravia and Silesia, at this time of the reconstitution of an independent Czech State, true to all the sound traditions of the ancient statehood of the Lands of the Crown of Czechia as well as of Czechoslovak statehood*”, the Constitution of the Slovak Republic of 3 September 1992 was adopted on behalf of the “*Slovak nation, bearing in mind the political and cultural heritage of [their] ancestors and the centuries of experience from the struggles for national existence and [their] own statehood... together with members of national minorities and ethnic groups living on the territory of the Slovak Republic*”.

The differences between the two approaches—nation based on “co-citizenship” and constitutional nationalism can be identified by analyzing the language of constitutions.

Article 116 of the Basic Law for the FRG defines who shall be considered a German; similarly, the Constitution of Turkey defines who shall 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.”⁶⁷

“Everyone bound to the Turkish State through the bond of citizenship is a Turk.”

Comparing these two languages, one can clearly see an attempt to entrench the concept of citizenship-based nation with an additional ethnic component designed for those who, having kept their national identity, live abroad. Similar wording can be found in the Constitution of Azerbaijan which, instead of using the notion of Azeri nation,

of the country’s population (according to the results of the surveys conducted in Czechia and Slovakia the day before the act on the dissolution was passed, the majority of population in both republics were against separation (63% in Slovakia and 64% in Czechia).

⁶⁷ In the post-war period, the FRG only recognized one German citizenship, and the citizens of the GDR were not considered foreigners. Similarly, the Constitution of the GDR of 1949 (in effect until 1968) only recognized one German citizenship (Paragraph 4, Article 1).

enshrines a community defined as the “people of Azerbaijan” —i. e. “*citizens of the Azerbaijan Republic living on the territory of the*

Azerbaijan Republic and outside it who are subordinate to the Azerbaijan state and its laws.” (Paragraph 2, Article, The Constitution of the Republic of Azerbaijan of 1995).

Opposite to the examples above, constitutional nationalism envisages entrenching in the language of supreme laws of provisions that define the term “nation” based on ethnos rather than “co-citizenship”; categorize one ethnic group as titular distinguishing it from ethnic minorities; and granting advantages to such a titular ethnic group.

Examples of constitutional nationalism can be found in the constitutions of many states that emerged as a result of the breakup of former socialist federations:

“Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia... Republic of Serbia is a state of Serbian people and all citizens who live in it.”

(Preamble, Constitution of the Republic of Serbia of 2006)

“Proceeding from the will of the Slovene nation and residents of the Republic of Slovenia...”

(Preamble, Constitution of the Republic of Slovenia of 1990)

“Taking due account to the continuity of the Moldavian people statehood within the historical and ethnic framework of its growing as a nation...”

(Preamble, Constitution of the Republic of Moldova of 1994)

“Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, and shall facilitate the survival and development of their communities; it shall support their efforts to preserve their Hungarian identity... and shall promote their cooperation with each other and with Hungary.”

(Article D, Constitution of Hungary of 2012)

“The Republic of Croatia is hereby established as the national state of the Croatian people and a state of members of other nations and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews, and others.”

(Preamble, Constitution of the Republic of Croatia of 1990 as amended in 1997)⁶⁸

The Constitution of the Republic of Croatia provided a title and a plot to Rajko Grlić, the director of the film “The Constitution” (2016). The film tells the story of gradual embracing of constitutional values by members of two families living in the same apartment building but wary of each other: he is Croatian, a high-school history professor and a transvestite, taking care of his legless father, a Croatian Ustaša; she is a nurse, a wife of a police officer hiding her Serbian descent from her employer. The constant refrain of the film is the articles of the Constitution of Croatia the police officer is trying to learn by heart preparing for his professional test:

“The Republic of Croatia is a unitary and indivisible democratic and social state. Power in the Republic of Croatia is derived from the people and belongs to the people as a community of free and equal citizens.” (Article 1)

“Every human being has the right to life.” (Article 21)

“Freedom of conscience and religion and free public profession of religion and other convictions are guaranteed.” (Article 40)

And the most difficult part:

“Any call for or incitement to war, or resort to violence, national, racial, or religious hatred, or any form of intolerance is prohibited and punishable.” (Article 39)

If in the film the neighbors manage to overcome their narrow-mindedness and reach mutual understanding, in real life, none of the East European states (except for the case of German reunification) have ever used the doctrine of constitutional patriotism in their migration from

⁶⁸ In the previous Constitution of the Socialist Republic of Croatia of 1963 Croatia was seen as “*as the home state of the Croatian and Serb peoples and minorities living in Croatia*”. According to the Constitution of 22 December 1990, Croatia “*is the national state of the Croatian people and other nations and minorities, who are its citizens*”.

totalitarianism to democracy, not even in the form of “describing” the processes of transformation.

The relative success of this doctrine in Germany can be explained by the existence in the FRG of a mature system of civil rights, the appeal by the state authorities to the common historical traditions and roots of both parts of the German people, the acknowledgment of the differences between the “Wessies” and the “Ossies”, and the significant funds allocated to the new lands by the federal German government. None of these factors was present in any other country of the Eastern Bloc. That is why the establishment of new political regimes and new state identities in Poland, Hungary, Romania, Slovakia, on the ruins of Yugoslavia, and in the Baltics was always accompanied by the rise in nationalism, strict restriction of the ethnic minorities’ rights up to the limitation of citizenship rights (non-citizen resident status in Latvia and Estonia). It is the former Eastern Bloc states that are the most nationalist members of the European Union, and even among them the stance of Poland and Hungary is considered radical.

It is not as if the ideas of constitutional patriotism failed in these states—the ideas of common civil identity and solidarity were not even offered to these communities. From the perspective of the theory itself it is fully justified: you cannot offer ideas of civil unity to a society, whose parts (communities) are wary of each other, have phobia of each other and hold other prejudices. If the majority of East and West Germans were inclined to reach common understanding of their history and achieve consensus in the characterization of its different periods, the “titular” and Russian-speaking communities of Latvia and Estonia have not yet found a reconciling and unifying way to comprehend both their past and the prospects of their future coexistence. It is particularly illuminative, given the anti-centrist position of the Russian-speaking minorities in these countries in the period after the collapse of the Soviet Union.

Nevertheless, these “new independent states” are gradually coming to understanding how vital the values of constitutional patriotism are. Interestingly, even hard-core nationalists turn to these values. Thus, widespread response was attracted by the lecture of Svatoslav Vakarchuk (lead vocalist of the Ukrainian rock-band Okean Elzy, deputy of the Verkhovna Rada (parliament) of Ukraine in 2007–2008) at a media forum in Lviv, 27 May 2016. The key message of the lecture was as follows:

“We should stop building a state based on the patriotism of blood and begin building a state based on constitutional patriotism.

“Our country is a patchwork consisting of small pieces of other countries where people have had different ancestry, languages, religions, styles of life vision of the future.

“When someone living in a rural community in Kharkov Oblast (region of Ukraine), not far from the border of Belgorod Oblast (region of Russia), starts feeling that he or she is mentally, intellectually and socially closer to those living in a border village of Lviv Oblast than to their Russian neighbors, it will mean that we have a political nation.”⁶⁹

Similar ideas were voiced by Marju Lauristin, one of the leaders of the Popular Front of Estonia, a movement that played a crucial role in Estonia’s secession from the Soviet Union. The results of the social research “Me. World. Media” (Estonian “Mina. Maailm. Meedia”, “MeeMa”) demonstrated that

“the Estonian state is well regarded by Estonians: it is warm, multicolored, friendly, and rising..., while for the young Russians who were brought up and educated here, the state is synonymous with negative phenomena which may be symptoms of isolation and alienation: slow, cold, unfriendly, declining.”

No need to be an experienced politician to come to the following conclusion:

“It is obvious that the state needs the young generation to be committed to Estonia... The refusal... to take this offer can be explained by the fact that the Estonian Society is still guided by the idea of the Estonian state as the only national property, not seeing the danger for this state in such alienation of the youth.”⁷⁰

Of course, it is hard not to understand that this statement is just a reaction to the comprehension of the danger for the state and the society that is caused by the alienation of young people. However, this comprehension does not rule out the conclusion that constitutional patriotism in its third reincarnation comes in the form of many different doctrines and slogans designed and applied by ethnically, religiously and culturally complex states which are in the process of searching for their modern national identity.

⁶⁹ http://www.20khvylyn.com/opinion/mind/opinion_18181.html

⁷⁰ Lauristin M. On Usefulness of Constitutional Patriotism / Postimees. 2009–26 October.

Constitutional Patriotism as a European Abstraction

The list of success stories of the constitutional patriotism doctrine includes its successful application to a number of political tasks such as establishment of Germany's new national identity in the post-war period and German reunification in the 1990's. The followers of this doctrine tried to build on its success by using it in an absolutely different state and legal context in order to shape shared identity and collective solidarity of different member-states of the European Union.

The European Union engaged in a unique experiment: if previously products of comprehension of universal constitutional values by different states' politicians and experts had been enshrined in national constitutions, i. e. constitutional laws of specific countries, in this case first the European Charter of Fundamental Rights of the European Union and then the Maastricht Treaty gave a push to the development of the first international (or more precisely supranational, applicable to the EU states) constitutional law.

Thus, the fourth reincarnation of constitutional patriotism is the European (EU-wide) constitutional patriotism.

The main argument against the European constitutional patriotism is as follows: there can be no European constitution, because there is no constituent subject—European people⁷¹. This argument is based on the German

⁷¹ This thesis is presented in detail in works by the German legal scientist Dieter Grimm (in 1987–1999, judge at the Federal Constitutional Court of Germany). For more details see: *Dieter Grimm*, 'Does

tradition of “cultural nation”: if there is no common culture, history, consciousness, etc. there can be no single nation (people) to create a constitution.

The main counterargument is the “category of measure” designed to establish if there is such community or not, idea of formation of a “European political nation”.

Another important argument against the European constitutionalism is the lack of a single political space making impossible efficient Europe-wide public discussions. According to the authors of this thesis, the existing European political media are insufficient to enable a real discussion of the topics related to the shaping of a common political system. Proceeding from the assumption that common European institutions are far from perfection, the critics of European integration suggest that the discussion of the European constitution should be postponed until the necessary tools have been developed.

Anyhow, in the 21st century, the applicability of constitutional patriotism has been considered in the context of the whole European Union, rather than specific European states, and as part of the discussion on its constitution.

For the first time, the possibility that the Europeans can give up national patriotism and acknowledge the priority of the democratic principles enshrined in the Constitution of the European Union was allowed for in the Treaty of Nice of 2004. However, in the Treaty of Lisbon of 2007⁷² the term “constitution” was not used, and in Paragraph 2 of Article 4 the emphasis is made on Union’s respect to the “national identities of the member-states”⁷³.

It is extremely important to define national identity, which is respected by the Union as “inherent in their (member states’) funda-

Europe Need a Constitution?’, *European Law Journal*. Vol. 1 (November 1995): 282–302; Dieter Grimm, ‘Treaty or Constitution?’, in *Developing a Constitution for Europe*, ed. Erik OddvarEriksen, John Erik Fossum, and Agustín Menéndez (London: Routledge, 2004); *Die Zukunft der Verfassung II: Auswirkungen von Europäisierung und Globalisierung*. Suhrkamp, Berlin 2012; *Europa ja—aber welches? Zur Verfassung der europäischen Demokratie*. C. H. Beck, München 2016; *Constitutionalism—Past, Present, and Future*, Oxford University Press 2016.

⁷² The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community was signed at the EU Summit of 13 December 2007 and became effective 1 December 2009.

⁷³ The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.

mental structures, political and constitutional, inclusive of regional and local self-government, to come to the conclusion that it is constitutional, rather than cultural identity, that is meant by the Treaty of Lisbon. This conclusion is made by “EU’s leading expert in constitutional law” Armin von Bogdandy, according to whom, “...*the biggest difference between the terms “identity” defined in the Maastricht and Amsterdam treaties is in increasingly noticeable shift away from cultural and linguistic criteria, and its transformation into content of national constitutional order, i. e. constitutional rather than cultural identity.*”⁷⁴

Shared constitutional identity is always about consensus on values where a certain set of values is declared “shared”. If the shared principles of international law are enshrined in the United Nations Charter and Declaration on Principles of International Law of 1970, the “shared European values” are set forth in the Preamble of the Charter of Fundamental Rights of the European Union⁷⁵ and the Treaty on European Union:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Article 2

Being so abstract this legal content gave full vent to the creativity of experts in the various aspects of integration processes who engaged in making a list of common European values. Thus, Michael Emerson, who in the 1990-s for five years represented the European Union in Russia, by analogy to the Bible, articulated his “Ten Commandments of the European Union”:

1. *Democracy and human rights*—their legal definitions are formulated by the European Convention and the European Court of Human Rights and included in the Constitution of the EU and the Copenhagen Political Criteria for joining the EU.

⁷⁴ Venice Commission on Constitutions, Constitutional Amendments and Constitutional Justice: collection of analytical materials of the Venice Commission of the Council of Europe /compilers T. Y. Khabrieva, R. A. Kurbanov, V. I. Lafitsky; eds T. Y. Khabrieva.—M.: Institute for Legislation and Comparative Law under the Government of the Russian Federation, 2016.— 576 p.—P. 565.

⁷⁵ Signed in Nice 7 December 2000 and came into effect in December 2009, together with the Lisbon Treaty.

2. *Providing common legal framework to ensure the four freedoms*—common market, and freedom of movement, residence and employment for the citizens of the European Union.
3. *Social cohesion*—basic social security and access to healthcare.
4. *Multinational society and abhorrence of nationalism*—the society has to obtain qualities combining regional, national and European features.
5. *Secular governance and multiculturalism*—the Muslim minority of Europe has been trying to pursue a multicultural approach in religion.
6. *Anti-totalitarianism and anti-militarism*—in foreign and internal policy, but without pacifism.
7. *Multilateral order in international affairs*, as well as in European affairs.
8. *Multi-tier governance*—normally based on a federative three-tier system (where the European Union is subordinate to national and state bodies) with mandatory supranational EU government.
9. *Openness* to all European democracies.
10. *Continuously changing and evolving frontiers of the European Union*, instead of division on a friend/foe basis—i. e. the European Union as a federative neo-Westphalian state⁷⁶.

Unlike the Commandments in the five books of Moses, the Commandments revealed to Michael Emerson are far from unambiguity and confine themselves to abstract reasoning. Nevertheless, the Europe-wide constitutional patriotism can be seen as quite promising unifying doctrine for the European Union. This theory has gone beyond the frontiers of the European continent and is considered now as a compelling legal form of civil loyalty of an increasingly “multicultural” society, as well as a way to conceptualize civil identification at a supranational level⁷⁷.

Interestingly, Jacques Derrida, one of the main opponents of Jurgen Habermas, endorsed his article glorifying unification of Europe based on common rational principles and the intention to adopt a European constitution, although he had always been quite skeptical in regard to any ideas of unity or consensus.

⁷⁶ *Emmerson, M.* Existential Dilemma of Europe//Bulletin of Europe.— 2005.— № 15.— P. 41–65.

⁷⁷ *Müller J.— W.* Three Objections to Constitutional Patriotism//Constellations. 2007. Vol. 14. № 2. P. 195–206.— P. 195.

The doctrine of constitutional patriotism applied to the case of the European Union pursues the objective and is capable of addressing two challenges determined by:

- 1) Striving of a number of global forces to constitutionalize the international law⁷⁸ (in the future). Philosophically, the idea of European integration corresponds to the Kantian ideal state order based on giving up nationalism in favor of patriotism and cosmopolitanism. Constitutional patriotism applied to the model of European integration grants an ideological alternative to the numerous European political forces that keep on insisting on the republican (national) promise.

Constitutional patriotism is a radical democratic concept of deliberative democracy which tends to provide a rational basis for citizens' loyalty to their national constitution. This theory implies that the citizens who are ready to accept their constitution as rational and the underpinning rational arguments as justified perceive constitutional provisions as presentation of their legal and moral values⁷⁹.

Moreover, the society gives the "rationality" of a national constitution a higher priority compared to the "rationality" of the international law. In this sense, constitutional patriotism can come into collision with the principle of primacy of international law and direct applicability of the international law.

- 2) Economic globalization (de facto) which has already resulted in establishment of common European administrative and economic institutions with supranational authority. This in turn a) predetermined hard efforts of the European bureaucracy aiming to put in place various procedures to resolve economic disputes, mechanisms to achieve desired consensus, as well as models allowing to avoid the need to reach such consensus; b) gave an impetus to look for new forms of law-making and legal regulation of economic affairs; c) gave rise to discussions on forms of interaction between European judicial authorities, namely in the area of economic dispute resolution.

⁷⁸ See e. g. *Paulus A.L.* The International Legal System as a Constitution// *Ruling the World? Constitutionalism, International Law and Global Governance* /Ed. by J. L. Dunoff, J. P. Trachtman. Cambridge, 2009. P. 71.; *Klabbers J., Peters A., Ulfstein G.* The Constitutionalization of International Law. Oxford, 2009. P. 4.

⁷⁹ *Breda V.* Constitutional patriotism: A reasonable theory of radical democracy?// *Constitutional Patriotism & Identity* /Ed. by M. Zagor.—Canberra: Australian National University Press, 2013.—P. 12, 14.

Having gone beyond their purely economic application, these challenges reached the level of the European cosmopolitan approach to governance, law-making and justice. The concern of the European establishment over the necessity to choose between cosmopolitanism (in the form of constitutional patriotism) and republicanism (in the form of constitutional nationalism) is quite pragmatic, rather than philosophic in nature. It is determined by understanding that even the biggest of the European states are unable to compete economically or politically against the only modern superpower—the USA—with its vision of American exceptionalism and mission; or the world's biggest (provided that proper calculation methods are used) economy—China; or the growing economies of India and a number of other Asian states; or Russia with its efforts towards fair political and economic relations in the world.

To unify the different European states, the topic of values has been chosen. Can it be true that everybody in the European leadership elite (both at the Europe-wide level and in the capital cities of the leading European states) believe in the possibility to shape a common European identity to unite different communities, nations and citizens on the basis of shared values, or they only take the constantly voiced doctrine of common European values as a remedy against far-right nationalist ideas, proponents of which continuously challenge the political establishment in virtually all European countries (e. g. relatively successful electoral campaigns of the French National Front, or German Alternative for Germany, or Italy's Five Star Movement, or the Freedom Party of Austria)? Being in no position to answer this question, let us kindly proceed from the assumption that the authors of the modern mainstream values are sincere. All the more so, as the values of constitutional patriotism—as is proven by our analysis—can be very useful in capable political hands.

“Learning Sovereign” — a Constitutional Patriotism Requires Learning

Given that neither constitutionalism nor patriotism were invented by the Germans, other states and peoples turn to the doctrine of constitutional patriotism to pursue their practical purposes. Today, the advocates of the doctrine of constitutional patriotism are adapting it to meet the needs of integration of polyethnic or multicultural communities on different continents (Spain, Switzerland, Malaysia, Canada, etc.)⁸⁰.

Constitutional patriotism is in demand as a way to achieve value-based and political solidarity in complex societies, especially, in countries suffering from civil confrontation and looking for ways to overcome it (Lebanon, Bosnia and Herzegovina). In most cases, such

⁸⁰ *Gaik Cheng Khoo*. The Rise of Constitutional Patriotism in Malaysian Civil Society // *Asian Studies Review*, 2014. Vol. 38, No. 3, 325–344; *Reinkowski Maurus*. Constitutional Patriotism in Lebanon // *New Perspectives on Turkey*, Spring 1997, 16, pp. 63–85; *Cristiano Codagnone & Vassily Filippov* (2000) Equity, exit and national identity in a multinational federation: The ‘multicultural constitutional patriotism’ project in Russia, *Journal of Ethnic and Migration Studies*, 2000. Vol. 26. № 2, pp. 263–288; *Fossum John Erik*. On the Prospects for a Viable Constitutional Patriotism in Complex Multinational Entities: Canada and the European Union Compared // By ARENA, University of Oslo. Paper to be presented at the Annual Conference of the Canadian Political Science Association, Saskatoon, May 31, 2007; *Payero, Lucia* (2012). “Theoretical Misconstructions Used to Support Spanish National Unity: the Introduction of Constitutional Patriotism in Spain”. Presented at the European Consortium for Political Research Graduate Student Conference 2012, Bremen. Panel: Tackling Political Science Questions using Historical Cases; *Muro Diego, Quiroga Alejandro*. Spanish nationalism: Ethnic or civic? *Ethnicities*. 2005. Vol. 5 issue 1, pp. 9–29.

emergency application of this doctrine proves unsuccessful, and not only because of the shortcomings of the doctrine itself. As a matter of fact, its concepts can only be successfully applied in societies that are appreciative of its basic premises, including: respect to state institutions and recognition of supremacy of law in resolution of all and any disputes; critical reevaluation of history and human rights; and, most importantly, common (prevailing) understanding of importance of shared values and rules.

Low efficiency of the constitutional patriotism doctrine in those communities where it is truly necessary and could help resolve severe political crises gave rise to biting and sometimes derogatory criticism. Thus, the Australian professor John Milfull entitled his article devoted to this doctrine «The Rebirth of an Oxymoron: The Genesis and Functions of “Constitutional Patriotism”⁸¹».

Probably, understanding the vulnerability of his concept Habermas poses a question in the title of one of his articles: “*Constitutional Democracy: A Paradoxical Union of Contradictory Principles?*” In order to overcome this paradox, he insists that “constitutional patriotism requires learning”,

«Of course, the interpretation of constitutional history as a learning process is predicated on the nontrivial assumption that later generations will start with the same standards as did the founders... The descendants can learn from past mistakes only if they are “in the same boat” as their forebears. They must impute to all the previous generations the same intention of creating and expanding the bases for a voluntary association of citizens who make their own laws. All participants must be able to recognize the project as the same throughout history and to judge it from the same perspective.»⁸²

The idea of having to learn the principles of constitutional democracy was most clearly articulated by Gunter Frankenberg in his article “*The Learning Sovereign*” (“Der lernende Souverän”)⁸³. Frankenberg elaborates on one of the key priorities of the doctrine of constitution-

⁸¹ *Milfull John*. The Rebirth of an Oxymoron: The Genesis and Functions of “Constitutional Patriotism” Debate: Journal of Contemporary Central and Eastern Europe, 2007. Vol. 15, № 1. Pp. 107–114.

⁸² *Habermas Jürgen*. Constitutional Democracy: A Paradoxical Union of Contradictory Principles? // Political theory, Vol. 29 No. 6, December 2001 pp. 766–781.—P. 775.

⁸³ *Frankenberg Günter*. Der lernende Souverän // Kritische Justiz. Vol. 35, No. 3, 2002. pp. 297–311.

al patriotism—i. e. continuous open political communication among all the stakeholders of the democratic process. Only if there is such continuous reflection and discussion on how the state and society should evolve, how they should react to new challenges, which achievements and values should be granted constitutional protection, and which are to be transformed, the development of democracy is possible.

It is dangerous to restrict political communication, but the political communication itself must be in line with the rules set by the society. These rules have to be learned too.

The sovereign—i. e. the people or citizens are required to master the fundamental constitutional principles, and not only and not so much in theory, but also through their legal and political practices. Following the current educational fashion, practice-oriented learning can be suggested, in the course of which the sovereign acquires knowledge of the state and the way it functions and develops competencies necessary to govern this state.

This approach is in line with Japanese constitutionalism's premise of people's responsibilities which include skilled exercise of rights by the sovereign. The sovereign has the right to change an existing order and introduce new laws and rules up to amending a constitution. Granting such rights to the sovereign, the society cannot be guaranteed against potential abuse of constitutional law. This determines the need to limit the right of the sovereign to make changes, exclude some of the questions from his all-inclusive domain.

There are questions to which the principle of absolute power of the sovereign—the people in this case—does not apply. The sovereign rights of the people are limited! These limitations result from historical experience, if you wish, and represent the historical lessons learned by the people. Examples of such historical lessons include the prohibition to change the republican form of government in France and Italy, and the constitutional right of being in “democratic opposition” in Portugal (when the Portuguese Constitution was revised in 1976, the respect of this right was specifically enshrined in Article 288).

Following the tradition, the Basic Law for the Federal Republic of Germany of 1949 reads that all state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. Thus, the power of the people is limited. This limitation is illustrated by acknowledging Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 (Weimar Constitution) as an integral part of the Basic Law (Article 140). Remaining effective, these articles entrench

the principles of freedom of religion and establishment of religious communities, non-existence of Established Church, and relationship between churches and the state.

This reference to the Constitution of the Weimar Republic is made despite the denial of the previous experience of state development in the process of adoption of the Basic Law for the FRG of 1949. This demonstrative conservatism is explained by the high price Germany paid over the hundreds of years of religious animosity⁸⁴, prior to putting in place the constitutional formula of “positive neutrality” of the state with regard to churches and, in the first place, towards two main ones—Lutheran and Catholic⁸⁵. Indeed, it was time to “get back into business again”⁸⁶.

As we know from the history of constitutional law, some provisions are defined once and for all and are not subject to change. They cannot be changed even if the people wish to do so. It is in this way that the status of the Greek Orthodox Church is entrenched in the Constitution of Greece. It is undisputable and not subject to alteration, just as the principle of immutability of the constitutional provisions that enshrine the fundamentals and form of government (parliamentary republic), as well as fundamental constitutional principles of equality before the law, freedom of religion, division of powers, and protection of individual rights and freedoms. Similar to Greece, not subject to change are several sections of the Constitution of Romania of 1991 (Article 148. Limits of Revision):

“(1) The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the Republican form of government, territorial integrity, independence of the judiciary, political pluralism and official language shall not be subject to revision.

(2) Likewise, no revision shall be made if it results in the suppression of the citizens fundamental rights and freedoms, or the safeguards thereof.”

⁸⁴ During the Thirty Years’ War (1618–1648) Germany lost more than 6M of its civilian population.

⁸⁵ According to 2002 data, the populations of German Catholics and Lutherans have become equal—26M each.

⁸⁶ The last phrase of *Mother Courage* from Berthold Brecht’s piece “*Mother Courage and Her Children. A Chronicle of the Thirty Years’ War*” (1939).

The concept of unlimited sovereignty of the people was presented in an extremely dangerous form in Article 108 of the Constitution of the USSR:

“The highest body of state authority of the USSR shall be the Supreme Council of the USSR. The Supreme Council of the USSR is empowered to deal with all matters within the jurisdiction of the Union of Soviet Socialist Republics, as defined by this Constitution.”

And in Article 104 of the Constitution of the RSFSR:

“The highest body of state authority of the RSFSR is the Congress of People’s Deputies of the RSFSR. The Congress of People’s Deputies of the RSFSR is empowered to consider and deal with all matters within the jurisdiction of the RSFSR.”

Following the logic of non-limitation, 12 June 1990, the 1st Congress of People’s Deputies of the RSFSR (1 May—22 June 1990) passed the Declaration of State Sovereignty of the RSFSR and thus removed the cornerstone from the foundation of the Soviet Union’s statehood⁸⁷.

In many ways contrary to constitutional patriotism, the Western scientific literature offers the term “religious patriotism” as a derogatory description of hysterical patriotism, where the truth, justice, and equality are sacrificed for national interests and national security—i. e. extreme form of patriotism similar to religious bigotry.

This form of patriotism should not be confused with another phenomenon, the fact that for many nations that have not embraced the concept of secular state religious faith is crucial for their national identification. Undoubtedly, one of the most outstanding examples of this phenomenon is Israel.

Yosef Ben Shlomo in his “Introduction to the Jewish Philosophy” explains the notion of people’s responsibilities as follows:

“The right of the people to live on their land is inseparable from the responsibilities vested in them by God. If the people fail to obey the will of God, the land will belch such people out.”⁸⁸

⁸⁷ Having defined sovereignty as “a natural and necessary prerequisite for the existence of the Russian statehood” (Article 2), the Declaration of 12 June 1990 entrenched as political, economic and legal guarantees of Russia’s sovereignty full authority of the RSFSR and supremacy of the Constitution of the RSFSR and laws of the RSFSR on the entire territory of Russia, and suspended the laws of the USSR, which came into collision with sovereign rights of Russia (par. 2, page 5 of the Declaration).

⁸⁸ *Ben Shlomo Y.* Introduction to the Philosophy of Judaism. Jerusalem, Tarbut, 1994. — 104 p.

Leaving out of the equation speculations of Jewish philosophers regarding the status of the Jews as the God's Chosen People, as well as their higher purpose (The same author says, "The special nature of the people of Israel reflects in the status of a people whose greatness is in comprehension and ethical values, rather than in their numerosity. The historical mission of the people of Israel is to help the world out of darkness."), a profound philosophical idea becomes obvious: the people bear responsibility to the past and future generations.

In a historical context, the term state-forming people does not only mean current generations living on a certain national territory and sharing the same culture and values, but also all the previous generations that for ages were contributing to the formation of this people, as well as those generations that will come next. This philosophical approach may seem to be quite far from real-life state and legal practice, but only at the first glance. It is from this approach that the fundamental duties of the people and the authorities elected by the people derive, such as: ensuring the integrity of the state and its territory, preserving the ethnos, enabling its cultural, economic and political development, establishing good relations with the neighbors, and asserting its rights among other peoples of the world.

According to Dolf Sternberger, "Democracy is an element of the constitution. Moreover, it is its fundamental element, since it is the people and only the people, first of all in their electoral capacity, that legitimize existing state authorities, and it is the elections that actualize the democratic element of the constitution."⁸⁹

Constitutional patriotism, not as a doctrine, but as a feeling of engagement (solidarity) of the citizens can be developed and cultivated. This feeling should be learned, including learning at school. But, unfortunately, not only at school. The difficulty of unification based on shared values is confirmed by numerous examples of revolutions, biographies of prominent individuals, and destinies of political movements.

In the context of a training course on constitutional patriotism, there can be demand for training modules that are offered in teaching another doctrine—democratic (liberal) nationalism. This doctrine is centered around trust among the members of the society and their

⁸⁹ Sternberger D. *Constitutional Patriotism//Political Philosophy in Germany: collection of articles* /J. Isensee *et al.* M.: Modern Notebooks, 2005. P. 309.

“willingness to lose” resulting from such trust, as David Miller puts it⁹⁰. It brings us to shaping in the society of the culture of political discussion, democratic procedures of political debate and crisis resolution—or “agonistic democracy” in the terminology of Jacob Burckhardt⁹¹.

Modern culture of political discussion requires learning three practical skills:

- a) readiness to admit defeat;
- b) preparedness for social learning; and
- c) readiness to be reconciled to the history.

Readiness to admit defeat is an inseparable part of the process of democratic political communication. It symbolically expresses itself in a tradition, according to which it is the loser in the elections that has the right to be the first to congratulate the winner.

It is particularly difficult to admit the defeat, if it is caused by the makeup of the electoral system⁹², or if the gap between the votes pro and contra is minimal⁹³. Blind adherence to the logic of majoritarian

⁹⁰ Miller, D. *On Nationality*. Oxford: Clarendon Press. 1995. P.96–97.

⁹¹ The term “agonistic” originates from the Greek word “agon” (dispute, struggle, competition) and was used by Jacob Burckhardt in his work “The History of Greek Culture” (*Burckhardt Jacob. Griechische Kulturgeschichte: Bd. 1–4. Berlin/ Stuttgart, 1898–1902*) published after his death.

⁹² The history of US elections knows at least 5 cases, when the candidate with a smaller number of votes was elected president of the United States. In 2000, George W. Bush won presidential elections after numerous recounts of votes and hearings in court. The results of voting in the state of Florida played a decisive role: after the first vote counting, Bush had an advantage of slightly more than one thousand votes; vote recounting was stopped by decision of the Supreme Court of the United States in the evening of 12 December 2000 (5 judges voted for this decision and 4 judges voted against it). 13 December, Albert Gore admitted defeat by saying “this is America and we put country before party”. Later Gore had another opportunity to demonstrate his statecraft wisdom: as vice-president of the United States he presided over the joint session of the United States Congress which was to ratify election results, and it was him who overruled the objections of members of the House of Representatives who were reluctant to accept the outcomes of the elections. In 2018, the situation was less dramatic, although Donald Trump became president of the United States despite having lost 2,9M votes to Hillary Clinton.

⁹³ E.g., the results of the second referendum on Quebec sovereignty (30 October 1995) were as follows: 50,58% (2,362,648 people) of voters voted against Quebec separation from Canada, and 49,42% (2,308,360 people) voted for the separation and creation of a sovereign state. The decision on the British exit from the European Union was made in a referendum 23 June 2016 by the majority of 51,89% of votes. It is unlikely that those who voted for Brexit stood against the unity of constitutional and political values of their country or other EU countries. Geographic analysis

democracy in which “the winner takes it all” is based on the belief that the political process is carried out honestly, and that the other party will continue to follow the same rules if the winners and losers swap places. Another important condition for the requirements of majoritarian democracy to be met is relative homogeneity of communities: it is much easier to admit defeat understanding that the community comprises culturally uniform units.

Tommaso Carletti, an Italian traveler who visited Russia in the end of the 19th century, asked himself a question and offered his version of an answer:

“Is it possible to establish in Russia a chamber of deputies similar to our Italian one, or French, or English? Purely popular governance is only possible in a country, where population is of the same tribe and where differences in culture, mental stature, morality, religious confession and spirit are not too big.

The representative form of government entails, in the first place, competition of principles: where there are no more than two or three different ideals, such a form meets the needs of the nation, otherwise, it is, in the words of Cattaneo, like a poorly lubricated wheel that spins noisily and sometimes only produces noise without spinning at all.”⁹⁴

It is the trust to democratic procedures and relative homogeneity of communities that underpin the “willingness to lose”.

In complex communities it is quite difficult to follow the principles of majoritarian democracy, which makes practitioners and theorists of political processes to shape way more complex structures of “consensus democracy”⁹⁵.

Preparedness for social learning is about understanding that not only specific individuals, civil society institutions, political parties or government authorities, but also the people as a sovereign must be open

of the choices made by the citizens of the United Kingdom indicated the phenomenon of “rural nationalism” as a reason for Brexit.

⁹⁴ *Carletti Tommaso*. Modern Russia: Essays by T. Carletti / Translation from Italian by Anna Volkhovskaya. Part. [1]-2.—St. Petersburg, printing house of M. M. Stasiulevich, 1895–1896.— 2 vol.; 24. [P. 1].— 1895.— VI, 208 p. Cit. ex: *Chernyayev N. I.* Necessity of Autocracy in Russia, Nature and Significance of Monarchical Principles. Sketches, articles and notes by N. I. Chernyayev. Kharkov. Printing house of “Southern Region”. 1901.

⁹⁵ See e. g. *Salmin A. M.* Modern Democracy: Establishment Essays, M.: «Ad Marginem», 1997, “Library of the MSPS” series (Issue № 8), 447 p.

to mastering new technologies, including the information technology, embracing new democratic procedures, enriching and transforming their views and traditions. This willingness to engage in social learning enables open political communication between all participants of the political process.

Readiness to be reconciled to the history. Some nations are lucky enough to draw their lessons at a relatively low cost: the Americans during the Civil War, the French while counting the heads of royalists, Jacobins and Girondists falling down one after the other from the guillotine in the Place de la Révolution (nowadays, the Place de la Concorde)—“*sur une place publique au nom du peuple français*” (in a public place, in the name of the French people). In subsequent periods, the leaders of numerous French revolutions would test their supporters’ commitment to their common principles by the same guillotine-proven method, which has not impeded the development of the model of co-citizens’ nation. With all due respect to “La Marseillaise” as the anthem of a great nation and truly hard-hitting piece of music, it is exactly the case when in order to enjoy the song it is better not to pay attention to the lyrics. Here is the first verse:

Arise children of the fatherland
The day of glory has arrived
Against us tyranny’s
Bloody standard is raised
Listen to the sound in the fields
The howling of these fearsome soldiers
They are coming into our midst
To cut the throats of your sons and consorts

The term “chorus”, which in the case of other countries’ anthems is used to define the part of the lyrics repeated after each verse, is difficult to apply in this particular case: the French word “refrain” better corresponds to the content. As expected, the refrain is repeated after each verse, and there are seven (!) of them in the French anthem:

To arms citizens
Form your battalions
March, march
Let impure blood
Water our furrows⁹⁶

⁹⁶ Hardly predictable would be reaction of the opponents of French national teams in team sports, if they came to grips with the meaning of the words sung by French athletes before matches and if they took word-for-word the call of the French

Despite all the bloodiness of the French history⁹⁷, the French have managed to make organically coexist in their political culture and transform into national pride all the great names of their history, including monarchs, those who overthrew them, those who then restored the monarchy, and those who up to the days of Napoleon III struggled to revive the Republic.

Other peoples had to pay for their shot of constitutional patriotism with national humiliation and destruction of state: for the German nation such a history lesson was the Third Reich and Auschwitz, for the split Russian nation it was communism/Stalinism (the GULAG) and the still lasting catastrophe of the collapse of the country in 1991. In the bloody race for unanimity of values the Soviet Bolsheviks won by a clear margin: having started from testing for loyalty to the “Values of the Party”, first among the leaders of the left-wing opposition (Trotsky, Zinoviev) and then among those of the right wing (Bukharin, Rykov, Tomsky), they later concluded their crusade for “common values” with mass repressions among ordinary party members and The Great Terror.

“to let [their] impure blood”. The Russian version of the same song, entitled “Workers’ Marseillaise”, which along with “The International” was an anthem of Russia in the period between 23 February 1917 and 8 January 1918, was slightly less bloodthirsty and called for self-sacrifice:

“And it goes on behind the bloody dawn
The sun of freedom and the brotherhood of mankind.
We buy peace with this last fight,
With our blood we buy the happiness of children.”

⁹⁷ Commonplace is the false belief that the history of Russia is exceptional in its bloodiness. The crimes of Stalin’s regime, mass repressions, atrocities of the Civil War, more than 27 million killed in the Great Patriotic War—this is how the 20th century is characterized from the perspective of the Russian history. Given the complexity of Russia’s pre-revolutionary history and a huge number of victims, we have to admit that Ivan IV the Terrible ordered to execute dozens of thousands of people, and of his six (allegedly) wives killed “only” one, while other two were admitted to the veil. However, in the same period, king Henry VIII of England executed two of his six wives and divorced from another two. Only for vagabondism his heiress Elizabeth I executed more than 80 thousand of her subjects. Nikolas II, nicknamed by Soviet historians “the Bloody” or “Palkin” (from the Russian “palka” (stick or club); the nickname given to him by Alexander Herzen), when suppressing the Decembrist revolt, sent five of them (!) to the gallows; 120 people were sentenced to hard labor in Siberian exile. Slightly earlier, during the French revolution, only by way of decapitation by guillotine more than 18 thousand people had been executed. We believe, however, that different nations’ tragedies and losses suffered by them in the course of history cannot and should not be subject to a simple arithmetic comparison.

While Russia is still engaged in the debate on the necessity to bury the mummified body of the founder of the Soviet state Vladimir Ulyanov (Lenin)⁹⁸, Spain, for example, continues to discuss the question of reburial of Francisco Franco—it is suggested that the remains of “El Caudillo” be exhumated and removed from Vale de los Caídos (Valley of the Fallen), and that the place be transformed into memorial commemorating the victims of the Franco Regime⁹⁹.

In his Address to the Federal Assembly of the Russian Federation of 25 April 2005, president of the Russian Federation Vladimir Putin pronounced a phrase that is key for the evaluation by the Russian citizens of the events of the early 1990's:

⁹⁸ The spectrum of opinions is broad varying from the position of G. V. Bykov voiced by him at the Congress of People's Deputies of the USSR of 1989 (according to him, “displaying the body of Vladimir Ilyich Lenin in his Mausoleum in the Red Square is an expression of people's will and people's memory, and we must keep them for ages”) to the mystic “Russia will not obtain happiness until Lenin's body is buried”. Thus, in 2017, the Synod of Bishops of the Russian Orthodox Church Outside of Russia made a statement in which it was noted that “one of the symbols of reconciliation of the Russian people with God could be freeing of the Red Square from the remains of the principal oppressor and tormentor of the 20th century and demolition of all his monuments”. According to the survey conducted by the Russian Public Opinion Research Center (VCIOM) in 2016, the majority of Russians agree in principle that the body of Lenin should be buried. Of them 36% said that the body should be moved to a cemetery the soonest possible, while 24% suggested waiting for the generation of people for whom the image of Lenin is dear to be gone; 32% spoke in favor of keeping the status quo. (RIA “Novosti” <https://ria.ru/religion/20170313/1489926601.html>). This contradictory situation could be overcome by admitting that it is quite weird having on the main square of the biggest and most beautiful country of the world, a country considering itself stronghold of the Orthodox faith and traditional values, the mummified body of one of its statesmen displayed as a tourist attraction. Of course, the same displaying of mummified remains in public can be considered as a punishment for crimes (obviously, from the perspective of the laws of the Russian Empire, the activities of V. I. Ulyanov (Lenin) and other members of his family (first of all, his brother Alexander, one of the leaders of the terrorist organization “Narodnaya Volya” (People's Will) who was arrested and sent to the gallows for the preparation of an attempt upon the life of the Russian Emperor Alexander II) were anti-state and criminal in nature; the damage done to Russia by the ideas of Marxism-Leninism is also quite obvious). However, although such posthumous punishment was practiced by a number of European states in the early medieval period, this practice became outdated at the dawn of bourgeois revolutions.

⁹⁹ In August 2018, the government of Spain decided to rebury the remains of Francisco Franco <https://ria.ru/world/20180824/1527191510.html>

«... The collapse of the Soviet Union was a major geopolitical disaster of the century. As for the Russian nation, it became a genuine drama. Tens of millions of our co-citizens and compatriots found themselves outside Russian territory. Moreover, the epidemic of disintegration infected Russia itself.»¹⁰⁰

Out of Russia, this position is mercilessly criticized by those¹⁰¹, who found in this event nothing less but signs of the “end of history”. If the title of the Article “The End of History?” by Francis Fukuyama published in “The National Interest” magazine in 1989 contains a question mark while anticipating that:

“The triumph of the West, of the Western idea, is evident first of all in the total exhaustion of viable systematic alternatives to Western liberalism... What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind’s ideological evolution and the universalization of Western liberal democracy as the final form of human government,” the title of the book by the same author published after the collapse of the USSR in 1992 does not have a question mark and is articulated freely and easily “*The End of History and the Last Man*”¹⁰².

Much to the surprise of the whole world, Russia has managed to survive this end of history. But the country faced the need to discover its new national identity, national idea, and national image.

¹⁰⁰ <http://www.kremlin.ru/events/president/transcripts/22931>

¹⁰¹ Speaking to those who criticize this assessment of the collapse of the USSR by citizens of the country, it could be worthwhile recommending them to imagine that the same happened to their countries. I wonder, what would the reaction of the Americans be, if the USA split into 50 sovereign states, or how would the Germans react to Bavaria’s withdrawal from the FRG? I suspect that many people in this world would welcome the “liberation” of Texas and California from the imperial stranglehold of Washington as a very fair and rightful event. But this would hardly be the end of history.

¹⁰² *Fukuyama F. End of History?//Questions of Philosophy. — 1990. — № 3. — P. 84–118.*

Constitutional Patriotism — the Russian Version

In the end of the 19th century, P. Mancini and N. O. Kuplevaski described national consciousness as the main nation-making feature. Modern researchers added collective historical memory and collective historical responsibility to it

Russians are well known for their habit to observe and empathize with the global political processes, even those developing very far from the Kremlin. “*What has the UN decided regarding Honduras?*” this question asked by Soviet drywaller Nikolai (actor Evgeniy Leonov) to plumber Afonya (actor Leonid Kuravlev) in the feature film “Afonya” directed by George Danelia (1975) sounds very naturally. I do not think that this feature of the Russian national character can be used in the investigation of Russia’s “meddling” in the American or any other presidential elections, but it has been confirmed once again that the Russians regard the role of their country in the global history really highly.

The survey “*We Made History: Citizens of 35 Countries Overestimate Their Nation’s Role in World History*”, which was conducted by American social scientist and covered students from 35 countries¹⁰⁵, shows that “the world’s biggest narcissist is Russia... whose citizens believe that their country contributed on an average to 60,8% of events

¹⁰⁵ We Made History: Citizens of 35 Countries Overestimate Their Nation’s Role in World History. The survey was conducted in 2007–2008 and then enriched with the surveys of 2010 and 2013. For details, see: <https://www.sciencedirect.com/science/article/pii/S2211368118300202>

of the global history.”¹⁰⁴ Number two is Great Britain with 54,6%, and number three is India with 53,9%. Residents of neutral Switzerland, the last country on the list, still believe that their country contributed to 11,3% of global events. “*On some level, you could say this narcissism and collective memory is bad because it can promote racism, nationalism, xenophobia,*” said William Hirst, a psychologist at the New School in New York.

“You might ask why Mother Nature even gave us this kind of memory. But there are advantages to it, as well. It is what promotes common understandings of our past, what grounds our identity as a country or people.”¹⁰⁵

James V. Wertsch illustrates differences in collective memory with the results of a survey conducted among Russian and American students. When asked to name the most important events of World War II, American students listed: a) the atomic bombing of Hiroshima and Nagasaki in August 1945; b) the attack on Pearl Harbor 7 December 1941; c) the D-Day, 6 June 1944; d) the Holocaust; and e) the German invasion of Poland in September 1939. Russian students generated a different list of most important events, which included: a) the German attack on the Soviet Union on 22 June 1941; b) the Battle of Moscow in winter 1941–1942; c) the Battle of Stalingrad in winter 1942–1943; d) the Battle of Kursk in summer 1943; e) the Siege of Leningrad in 1942–1944; and f) the Battle in Berlin in May 1945¹⁰⁶.

These results (conspicuous is the total absence of matches) demonstrate how differently Russians and Americans view their own and each other’s contributions to their common victory in World War II. These differences become even more obvious when one purely terminological detail is kept in mind: in the Western historiography, the American landing operation in Normandy, in which British, Canadian and Polish troops also took part, is called the D-Day; in the Russian history this date is known as the “opening of the second front”.

Each of these terms is very little known by the respective other party. Americans can hardly come to terms with the fact that in Russia

¹⁰⁴ *Wan William*. America is a nation of narcissists, according to two new studies//The Washington Post. 2018. July 3.

¹⁰⁵ *Cit. ex: Wan William*. America is a nation of narcissists, according to two new studies//The Washington Post. July 3.

¹⁰⁶ *Wertsch James V*. Memory in Mind and Culture. Cambridge University Press. 2009. P. 144–145.

the largest-scale landing operation in the history is not included in the list of the most important events of World War II, but even more painful for them is the fact that Russians perceive it as a “second front”, where “second” means “secondary” or “less important”. Moreover, Russian historians mostly discuss the topic of the second front in the context of its delayed opening by the allies. The main fighting line of World War II is the one that Americans usually call “the Eastern Front”, while the citizens of the USSR and Russia have always called it “the Great Patriotic War”.

Getting back to the speculations of Jurgen Habermas and Joschka Fischer regarding the footholds of national democracies, it is worth analyzing, why the events of the autumn of 1612, when people’s militia led by Kuzma Minin and Dmitri Pozharsky ousted a Polish-Lithuanian garrison from the Kremlin, were proclaimed historical basis of constitutional patriotism in Russia.

Celebration of the 4th of November as Russia’s main national holiday brings out purely negative emotions among Polish historians and general public. Similarly, in Russia there is no unanimity in the evaluation of the reasons, dangers and consequences of the overcoming of the “Dark Years”. Indeed, neither the enthroning in Russia of any one of the Lzhedmitriys (False Dmitriys), nor the accession to the Russian throne of the Polish prince Wladyslaw would have meant the loss by Russia of its cultural or national identity (after all, known in the Russian history as Catherine the Great is an empress born as Princess Sophie Auguste of Anhalt-Zerbst from the capital of Pomerania Stettin (now Szczecin, Poland).

The Medieval period of history abounds in wars between neighbors, in the course of which representatives of victorious Royal families were enthroned. Therefore, neither the events of this period, nor the reference to them in modern Russia can be deemed to contain any anti-Polish context. Admitting that in those days Russia and the Polish-Lithuanian Commonwealth were competing for leadership in the region, it is unlikely that modern Russia sees in the feudal victory over Poland something meaningful from the perspective of nation-building. Similarly, it is unlikely that a basis for national identity can be found in the enthronement in Russia of the Romanov dynasty, which occurred in 1613 in the course of overcoming of the “Dark Years”. Given all this, what is there in the events of the autumn of 1612 that is so important to Russia?

Extremely important is not the ethnicity of the invaders, nor the enthronement of a member of a Russian boyar family, but the fact that

facing the pressure of foreign invasion and treason of the elite different strata of the Russian society—tradespeople (district elder Kuzma Minin), noblemen (prince Pozharsky), the Church (the position of Patriarch Hermogenes and the sermon of archpriest Savva calling to prevent occupation by Catholics and Uniates—united to defend their national statehood. Slogans of the people's militia had nothing to do with freedom, equality, fraternity, removal of serfdom, rights of tradespeople, *etc.* Basic for the future nation-building was the idea of protection against foreign invasion and preservation of national independence. This idea would run like a golden thread through Russia's entire history.

Unity of people's sovereignty and unity of the civil nation are fundamental elements of constitutional patriotism.

At the same time, considering constitutional patriotism as an absolutely liberal legal and philosophic doctrine does not preclude analysis of potential risks or threats that may derive from using it in the Russian state or legal practice. Let us identify most probable of those potential risks: 1) constitutional patriotism can be used to explain why it is critical to keep unchanged the political constellation as of the date of adoption of the constitution or to keep unchanged the constitution itself; 2) exaggeration of constitutional patriotism; 3) constitutional patriotism can come into collision with the principle of supremacy of international law.

None of these three risks of constitutional patriotism is critical for the Russian constitutional and legal doctrine. Moreover, the Constitution of the Russian Federation of 1993 proper contains mechanisms minimizing the potential negative effects of constitutional patriotism. At the same time, the lack of ideological unity poses no threat to constitutional patriotism. According to Daniel Sutter, "*constitutional consensus is unlikely to die in the absence of ideological consensus.*"¹⁰⁷ That is why constitutional consensus, which determines the lifestyle of the state and society, is based on constitutional ideology, which may not be boiled down to ordinary mathematical addition or mixing and matching pieces of different political ideologies. The ideology of constitutional patriotism, although it can borrow elements from political ideologies, has an absolutely different nature and on top of that it is self-sufficient. Last but not least, given the constituent nature of the Constitution of the Russian Federation, it would be quite fair to position constitutional patriotism as basis for constitutional consensus, framework and criterion of the legitimacy of power.

¹⁰⁷ Sutter D. Calculation of Self-Interest and Constitutional. Consensus: The Role of Ideology // Constitutional Political Economy. 1998. № 9. P. 323–333.—P. 323.

To comprehend constitutional patriotism, it is very important to address the following questions: Does this concept rule out regular reviewing of constitutional approaches and views? Isn't it dangerous to follow the principle of preservation of the existing constitutional and legal regime as prescribed by the doctrine of constitutional patriotism?¹⁰⁸

Constitution is not only a legal document. Its ideas are subject matters of economics, social studies, political science and sociology. The Constitution of the Russian Federation of 1993 is a document that determines the prospects of future development of the national identity which do not rule out the danger of exaggerated constitutional patriotism. Jurgen Habermas points out,

“Having grown to the level of a national culture, the culture of the majority must break its historical bonds and differentiate itself from the political culture, if all the country's citizens are to be able to equally identify themselves

¹⁰⁸ Analyzing in today's circumstances constitutional principles of organization of the system of state authorities and local government, one inevitably has to address the following question: Does Russia really need a constitutional transformation, or the problem is in how its potential is being fulfilled? Very interesting are the results of a survey conducted by the Russian Public Opinion Research Center (VCIOM) in early December 2012, one year before the 20th anniversary of the adoption of the Russian Supreme Law. Thus, only 18% of respondents say that their knowledge of the Constitution is good; 59% have never read the Constitution but have a general idea of its provisions; and 22% does not know the content of the Constitution. At the same time, 45% believe that the current Constitution requires improvement through significant amendments and additions. The activities timed to the 20th anniversary of the Russian Constitution proved quite useful: by December 2013, VCIOM established growth in citizens' awareness of the content of the Constitution up to 58 points. However, a similar survey conducted in 2016 showed a reduction of this indicator to 46 points, which is lower than in 2009 (49 points):

The majority of citizens (72%) are familiar with the Supreme Law of Russia, however, 64% have only a general idea of its key provisions. The share of Russian citizens who have good knowledge of the Constitution is 8% (sampling average) (13% for citizens of Moscow and St. Petersburg, 14% for individuals with higher education).

Russians' opinions on the significance of the Constitution vary across the country: 34% say that this document is critical for the life of the society; 32% say that its role is not significant; and 27% say that the provisions of the Constitution are just a formality and that they are never complied with in real life.

At the same time, many respondents point out the importance of the rights and freedoms proclaimed by the Constitution. Most relevant to them are the right to health protection (51%), the right to housing (46%), and the right to life (46%, decreased from 61% in 2009). The importance of the right to education increased significantly—from 30% to 44% over seven years. Russians believe that the most violated rights are the right to health protection (34%), the right to labor (30%), the right to housing (29%), the right to social security (28%), and the protection of rights and freedoms (26%).

<https://wciom.ru/index.php?id=236&uid=115994>

with the political culture of their country. As the political culture successfully departs from the culture of the majority, the solidarity of citizens transforms on the abstract basis of “constitutional patriotism.”¹⁰⁹

In Russia, “spreading of the culture of the majority” can imply growth in both great-power and local nationalism. V. S. Solovyov distinguished “an internal contradiction between the requirements of true patriotism wishing to make Russia as good as possible, and false nationalist aspirations claiming that Russia is the best as it is.”¹¹⁰

Russia’s choice in favor of the doctrine of “constitutional patriotism”, rather than “constitutional nationalism”, enshrined in the Constitution of the Russian Federation of 1993 is one of the common explanations why the absence in the language of the Supreme Law of any reference to the nation-making role of the Russian people has been declared a “generic defect”.

Such complaints trace back to the Soviet and post-Soviet scientific literature, in which the nation was understood as a community based in the first place on ethnicity categorized as “nationality”. Unlike the English word “nationality”, which refers to citizenship, the Soviet and Russian legal term “nationality” means ethnic background.

No doubt, such interpretation of the term “nation” as an ethnic (cultural) community has the right to independent comprehension in the framework of a tradition that emerged in Europe in the age of establishment of national states. This tradition was not incident to the Russian pre-revolutionary state doctrine, according to which the Russian Empire granted rights to all its subjects distinguishing between them based on their confession. Association of the concept of national sovereignty with a certain ethnic group was proclaimed one of the pillars of the Soviet theory in the course of a discussion on “autonomy”, which took place when the principles of organization of the USSR were developed in 1922.

Since the early 1990, Russia has switched from the definition of nation as an ethnic community typical of the Soviet political literature to the European concept of nation as a civil community or community of all the citizens. We see more and more terminology, where the adjectives “national” and “state” are synonymous: national interests, national security, national television, national team, *etc.*

¹⁰⁹ *Habermas J.* Postnational Constellation and Future of Democracy // *Logos*. 2003. № 5 (39). P. 105–152. — P. 119.

¹¹⁰ *Solovyov V.S.*, 2 volumes, M., 1989. P. 444.

As to the notion of “nationality”, it is keeping its ethnic component provided that in a democratic state it is used in cultural and philosophic contexts without implying any legal or political effects, privileges or constrains. With guaranteed equality of all citizens, regardless of ethnicity or language, and prohibition of any forms of limitation of citizens’ rights based on racial or ethnic background (Article 19 of the Constitution of the Russian Federation), as well as striving to eliminate any improper ethnicity-based benefits or limitations, “nationality” as a category is expected to lose its practical relevance in the area of law and governance. Ethnicity is no longer mentioned in forms of documents to be filled out. Although we remember that the decision to allow mentioning ethnicity in passports and other identification documents at applicant’s discretion made in accordance with Article 26 of the Constitution of the Russian Federation (the right to determine and declare nationality) gave rise to a lot of debate, and in two constituent regions of the Russian Federation (Tatarstan and Bashkortostan) nationality is mentioned (at citizen’s request) in a supplement to passport.

In Russia, the establishment of the concept of constitutional patriotism will inevitably be accompanied by discussions on the role of the ethnic component in the national self-consciousness. There can be difficulties related to the promotion of the principles of constitutional patriotism in the ethnical constituencies of the Russian Federation, as well as in the context of potential allegations of undermining the exclusive role of ethnic Russians. It will be necessary to establish, whether the doctrine of national patriotism as a community of citizens based on constitutional principles is not a threat to those traditions and values that are attributed by ethnically oriented authors to one ethnos or group of ethnics.

It is enough to remember the project “Framework of State Cultural Policy” that established “traditional moral values of our country”, “They include, in the first place, honesty, truthfulness, orderliness, love of country, unselfishness, nonacceptance of violence, thievery, slander and envy, family values, chastity, benevolence and mercy, commitment, respect of elders, and honorable attitude towards work”. As a consolation to foreigners, it was admitted that all these moral values, although traditional for our country, were based on “norms and requirements developed by mankind and common for all the world’s religions as enablers of meaningful life of the society.”¹¹¹ However, claims that honesty and orderliness, love of country and unselfishness, nonacceptance

¹¹¹ Rossiyskaya Gazeta. 2014. — 16 May.

of violence and thievery in combination with family values and benevolence are typical of the French, Chinese, Japanese and even some citizens of the USA and Papua New Guinea, as well as Russians, disputed patriotism of the experts voicing such positions.

In fairness it must be said that such provisions have not been included in the final version of Decree of the President of the Russian Federation #808 “On the Framework of State Cultural Policy” of 24 December 2014. It gives hope that such speculations on moral superiority, which may be quite acceptable among artists and representatives of confessions, will not be recognized at the level of state policy.

The aspiration to “nationalize” moral values (hospitality, respect of elders, love to children, benevolence and various national flavors of conscience) is a characteristic of primarily poor states, whose citizens’ public conscience is being fed with an understandable compensatory concept: “We may not have democracy and be poor, but we love our children and respect our elders.” In fact, it is an attempt to exalt unobvious historical and moral achievements to compensate for the existing not very compelling quality of life.

Rich states promote the idea of exceptionalism for a different reason—their tools are notions, such as: soft power, cultural supremacy, state exceptionalism, moral right to use force in order to promote democracy, etc¹¹². It is not only regretful, but also dangerous for the world, unlike in the case of poor countries, where such behavior is primarily compensatory.

Russia also has philosophical and political schools of thought that are nationalist in nature, but they do not dominate. This is particularly important when it comes to entity factors determining the necessity to maintain national and state unity. Critical for the implementation of the main elements of constitutional patriotism in the Russian environment is understanding that in Russia it cannot have any national or ethnic orientation. It is inevitably nation-wide constitutional patriotism based on common views and values.

From our school days we all remember the words, “You may not be a poet, but a citizen you must be.” (“A Poet and A Citizen” by N. Nekrasov,

¹¹² “Last, best hope of earth” (A. Lincoln), “leader of the free world” and “irreplaceable country” (M. Albright and H. Clinton), “exceptional country” (B. Obama), “empire of liberty” (T. Jefferson), “shining city on a hill” (R. Reagan), “the greatest gift given to the world over centuries, if not its entire history” (M. Hirsch)—it is in these terms that the philosophy of American exceptionalism is explained. “To deny American exceptionalism is in essence to deny the heart and soul of this nation.” (M. Huchabee).

1856). However, by “citizen” the poet Nikolai Nekrasov meant unifying content different from that entrenched in the law “On Citizenship of the Russian Federation” of 2002. It is not about many people having the same standard national ID in their pockets. It is about the Russian language and culture, which have embraced the cultures of Russia’s many ethnic groups; it is about history and traditions; it is about thousand-year old tradition, set of values and way of life. The difference between «русский» (ethnically Russian) and «российский» (associated with Russia) cannot be properly explained in any foreign language and is part of Russia’s internal discussion¹¹³.

According to the European Convention on Nationality of 1997, “nationality means the legal bond between a person and a State and does not indicate the person’s ethnic origin.” This is particularly important for Russia as a polyethnic and multiconfessional country. We are used to seeing the ethnic patchwork of Russia with its multiple religions as a blessing, wealth and advantage. And rightly so. But it is necessary to understand that these factors add to the complexity of governance and development of state policy in the cultural domain, thus significantly increasing the responsibility of the state for the decisions it makes.

Russia’s main ally is the history of its nationhood. With all the intricacies related to the expansion of the territory of the Russian state (let us admit, the St. Basil’s Cathedral was not erected in Red Square to commemorate the signature of a power-sharing agreement between feudal Moscow and Kazan). Russia has never known interethnic or religious wars. Lenience or tolerance, if you prefer a more trendy word, was inherent in the peoples of Russia not out of kindness, but because of their instinctive understanding that otherwise they would be doomed to wars and dissipation of state. And Russia has such negative experience: in the beginning of the 20th century the country gave up the principle of unity formally proclaimed by the Treaty on the Creation of the USSR of 1922, which inevitably entailed discord, reciprocal reproaches and as a result collapse of the state seventy years after.

Unity is only possible if there is a magnet core capable of bringing all those diverse elements together. And it is not about purity of blood. It is about psychological compatibility.

Another constitutional and legal phenomenon requiring prioritizing is interpretation of the Russian civil nation. In simple words, it is about finding a “nation of the Russians—Russian nation” tradeoff. Constitutional patriotism is impossible in Russia if it only comes in the flavor

¹¹³ Both words are translated into English as “Russian”.

of “Russian national constitutional patriotism”. It is possible only and exclusively in the version of “Russian cultural patriotism”.

A similar approach was entrenched in Decree of the President of the Russian Federation V. V. Putin #204 of 7 May 2018 “On National Goals and Strategic Objectives of the Russian Federation through to 2024”: developing a national program in the area of culture, the Government of the Russian Federation “shall pay special attention to the need... to reinforce Russian civil identity based on moral and cultural values of the peoples of the Russian Federation.”

Afterword. “Are constitutional patriotism’s aspirations too good to be true?”¹¹⁴

The repertoire of Paul Robeson included two songs, which were very similar in their political tonality and references to the basic laws of two countries—the Soviet «Широка страна моя родная» (“Wide is My Motherland”) and the American “The House I Live In”:

“Wide is my Motherland,
Of her many forests, fields, and rivers!
I know of no other such country
Where a man can breathe so freely.
At our table, no one is excluded,
Each is awarded on merit,
In golden letters we write
The people’s Stalin’s law.
These great and glorious words
Will live through the years:
A person always has the right
To study, rest, and work.”¹¹⁵

“What is America to me
A name, a map, or a flag I see

¹¹⁴ “Are constitutional patriotism’s aspirations too good to be true?” Breda, Vito. “Constitutional Patriotism: A Reasonable Theory of Radical Democracy?”. Selected Works. Retrieved 6 November 2014. P. 14.

¹¹⁵ The lyrics of “Song of the Motherland” were written by Vassily Lebedev-Kumach in 1935. After the adoption of the Constitution of the USSR of 1936, the verse referring to “the people’s Stalin’s law” was added. In the 1950’s this verse was removed.

A certain word, democracy
 What is America to me
 The words of old Abe Lincoln
 Of Jefferson and Paine
 Of Washington and Douglas
 And the task that still remains.”¹¹⁶

It is unlikely that the authors of the American hit used the Soviet song as a basis. The similarity of messages and emotions these two songs are charged with only confirms the similarity of these two very different states and nations (as applied to the subject in question) in two aspects:

First, having started from scratch and being young from the historical perspective, the American nation was not formed on the basis of shared history, language, culture or religion, which were discussed in the section devoted to the notion of “cultural nation” (nation built on the basis of common culture). These circumstances predetermined the choice in favor of unity of values as a framework for shaping of a new nation. In this sense, the American constitution has played the role of a hub for such values.

The Soviet government also attempted to discard the previous history and start from scratch, but what did it have to unify innumerable ethnic groups that made up Soviet and autonomous republics, the number of which constantly changed? Of course, it was the communist ideology, but before the victory of communism and withering-away of the state Soviet people were to live in a state governed by a constitution—Soviet constitution.

Second, obviously, the political objectives pursuit by the Soviet and American cultural luminaries in the 1930’s and 1940’s were very close. Each of the parties in the ideological confrontation which gradually translated into the Cold War did not only strive after economic, military and political superiority, but was also keen to give the mankind an example of lifestyle based on a certain set of values, as well as consumption and cultural standards. The word combinations “Soviet way of living” and “American way of living” became fixed terms of political science. In both countries, the culture of patriotism (as cultivation of love of country) transformed into the ideology of patriotism, which proved responsible for the formation of layers of national cultures

¹¹⁶ The lyrics of “The House I Live In” exist in several versions. The first version was sung by Frank Sinatra in 1945, in a film with the same title. The version sung by Paul Robeson (lyrics by Lewis Allan) was recorded by Columbia Records in 1947.

comprising both pieces of garbage and true pieces of art. This does not cancel the applied political meaning of both.

Both American and Soviet ideology of patriotism implied not just loyalty, but allegiance, desirably as dramatic as possible, to the values that underpinned that ideology. The persecution of the dissidents in the USSR and the McCarthyism in the USA were fed by the same fear and suspicion of insufficient commitment of the citizens to the values preached by the government, while lack of such commitment meant lack of patriotism. This clearly confirms how true the position of Bernard Yack is:

“It seems that concentration on political principles as a basis of communal loyalty can make us treat each other with more rather than less suspicion... If the only reason why we trust each other is loyalty to some political principles, the establishment of trueness or untrueness of each other’s choice will concern us much more than now.”¹¹⁷

The competition of the Soviet and American ways of living ended in a flawless victory of the American version. The predetermination of the historical loss of the Soviet Union became apparent not in the middle of the 1980’s, when the country proved unable to maintain its military and economic parity with the West, but much earlier, in the middle of the 1960’s, when Russia/USSR stopped supplying symbols and legends to the global cultural market. The threadbare set of Soviet ballet, Soviet circus and Soviet space technology, nevertheless, was still capable of providing a cultural background sufficient to help the country preserve its status of a great power. Even if it is true that the Americans won the Cold War, they did it with Coca-Cola and mass culture, rather than nuclear missiles. And today a country claiming the role of a global power must present to the world its vision of a value-based cultural perspective, even if it is questionable and not generally recognized.

In developed countries, the communist ideology has become political underground. On the contrary, value-based (constitutional) patriotism is considered a promising concept applicable to multiple national communities.

However, it is highly desirable to avoid transformation of the doctrine of constitutional patriotism into ideology, since in practical terms such transformation will inevitably result in laying information

¹¹⁷ *Yack Bernard. Nationalism and the Moral Psychology of Community. Translated from English M., Publication of the Gaidar Institute, 2017.—p. 520—P. 74*

against neighbors and coworkers if, in the informers' opinion, they happen to be insufficiently loyal to the constitutional values and do not demonstrate zeal in living up to them. And rightly so, otherwise we may find ourselves engaged in a competition in the style of Vissarion Belinsky's "Literary Dreams (An Elegy in Prose)" (1834), which became widely known thanks to the actress Tatiana Doronina and her role in the film "Elder Sister" (1966). Here is her monologue slightly modified by the author (the word "theater" used in the original text is replaced for the word "constitution"):

"Constitution! Do you love the constitution the way I love it—with all your heart, with enthusiasm, with ecstasy, which is only possible in the passionate youth, greedy and appreciative of fine things? Or, in other words, can you really be free of loving the constitution more than anything else, except for the goodness and truth? Isn't it a real focal point of all the charms, all the fascination, all the seduction of fine arts? Isn't it an absolute ruler of our feelings, capable of exciting and bothering them at any time and in any circumstances, like a hurricane that causes sandstorms in limitless steppes of Arabia?"¹¹⁸

¹¹⁸ V. G. Belinsky. *View of the Russian Literature*. M., Sovremennik, 1988.

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