CONSTITUTIONAL PATRIOTISM AS AN ALTERNATIVE TO NATIONALIST CONSTRUCTION OF POLITY

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ABSTRACT

In my thesis I deal with 'constitutional patriotism', the concept introduced by Jurgen Habermas. Primarily, I am interested in applying that concept on ex-Yugoslav Republics. These states replaced the communism with 'constitutional nationalism', which is an ex-Yugoslavian variant of liberal nationalism. This concept privileges the members of one ethnically defined nation over other population in a particular state, and as such, does not fit into liberal constitutional framework. Furthermore, as a solution to this problem, I will offer two alternative strategies. First strategy is liberal nationalism, and the second one is 'constitutional patriotism'. In my thesis I will show that constitutional patriotism is the best organizational form for states of Former Yugoslavia.

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INTRODUCTION

After the fall of the Berlin Wall in 1989, liberal democracy appeared as the best form of social organization. The collapse of socialism in Eastern Europe was perceived by many as "the end of history". In the first years after the collapse, everyone expected it to be a matter of time for the previously socialist states to become organized according to the principles of liberal democracy, i.e. according to the manner of their Western neighbors. However, communism in Eastern-European states was not replaced by liberal democracy but by 'constitutional nationalism', which was expressed in its most open form in the states Former Yugoslavia.

Constitutional nationalism is the concept introduced by Robert Hayden, and which is related to states with a constitutional and legal structure, which privilege the members of one ethnically defined nation over other population in a particular state. This concept is actually, as I will show in my thesis, an ex-Yugoslavian variant of liberal nationalism. Therefore, in my thesis I will show that constitutional nationalism does not fit into liberal constitutional framework, i.e. that it can not ensure basic principles of liberal democracy, such as universalism of human rights, equality before the law, and the rule of law. Therefore, I will argue that constitutional nationalism is not appropriate constitutional solution for multiethnic societies, especially those in the region of former Yugoslavia.

Furthermore, as a solution to above mentioned problem, I will offer two alternative strategies. First strategy is liberal nationalism, which basic standpoint is that, on the one hand, some forms of nationalism are compatible with liberal democratic norms, and, on the other, nationalism is indispensable to the viability of liberal democracy, since it ensures citizens

attachment to their own state. Therefore, liberal nationalists understand the concept of nation state as the only feasible and attractive concept of political organization.

Second strategy is constitutional patriotism, a concept introduced by Jurgen Habermas. According to this concept, constitution, as an embodiment of universal moral principles, would play a pivotal role in political organization of the state. Constitutional moral principles, such as universal liberal principles of freedom and the rule of law, represent a shared civic ethos on which citizenry should build their collective identity and loyalty to their community. In this concept the national identity is not neglected, but it is subsumed to sub-political level. In my thesis i will show that constitutional patriotism is the best organizational form for states of Former Yugoslavia.

In the first chapter, I will present the basic principles of liberal constitutionalism, which serves as theoretical background to further distinctions. The focus will be on the relation between basic principles of liberal democracy and collective identities. Furthermore, I will deal with fusion between modern state and nation.

In the second chapter, I will deal with the concept of 'constitutional nationalism' through examples of states of Former Yugoslavia. Moreover, I will show that a liberal political identity and a nation-state framework can not go together for the case of these states.

In the third chapter, I will deal with liberal nationalism, as alternative strategy for solving the problem of above mentioned states. My hypothesis is that the idea of the modern nation-state cannot respond to the demands of modern plural societies since it tacitly relies on the pre-political unity. Consequently, it cannot ensure equal political rights for all citizens of a state.

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In the fourth chapter, I will present constitutional patriotism, as the best political organizational model for modern plural society, and the best solution for states of Former Yugoslavia. In order to prove that, I will show that a morally based political alternative to nation-state is possible. Furthermore, I will show that universal moral values are sufficient for managing plural societies, i.e. that they are able in the same time to ensure legitimacy for democratic process, political integration of citizens of different ethno-cultural backgrounds, and loyalty to state's polity.

In the last chapter, I will deal with national past and its relation to formation of identities. Moreover, I will primarily deal with nations with highly compromised national past. The focus will be on the critical reflection on the nationalism and war, which made a moral break and unfixable damage in national identity, as the necessary preconditions in building an new identity.

CHAPTER 1: ORIGINS OF THE LIBERAL CONSTITUTIONALISM AND THE FUSION OF THE MODERN STATE AND NATION

The idea of constitutionalism has its roots in the period of Enlightenment, which celebrated three things: popular sovereignty, universality of the human rights, and the autonomy of human reason (Kommers and Thompson, 1995: 25). The basic idea of liberal constitutionalism is to restrict the scope of politics in favor of individual liberty. According to modern liberal theorists, everyone is born free and equal, and by nature possesses certain inalienable rights. These natural rights of woman/man are in the political community translated into the political rights of the citizen, and they cannot be denied to anyone living permanently on the territory of the state. The purpose of legitimate political power is the promotion and the protection of these rights. These liberal rights are predominantly individual rights.

After the bourgeois revolutions in the 18th century, secularization and democratization of the modern state destroyed the concept of royal sovereignty and its legitimacy based on divine authority, replacing it by popular sovereignty. The popular sovereignty means that all legitimate authority is in the hands of the people. Therefore, popular sovereignty rests on the consensus achieved by free and equal individuals, which is based on the unity of a democratic procedure to which all consent. The expression of this consensus is embodied in the constitution. It represents the basic principles according to which parties in contract regulate mutual relations. All parties will give their assent to these principles, since they are in the equal interest of all. In this sense, democratic procedure itself is the source of legitimation. Since that period, modern state is understood as the democratic constitutional state, which is, as Habermas points out, ″...*a voluntary political order established by the people themselves and legitimated by their free will-formation*″ (Habermas, 1999: 112).

The above mentioned principle of popular sovereignty is drawn from the Kantian concept of individual autonomy**.** Namely, according to Kant, those to whom the law is addressed can acquire autonomy only to the extent that they can understand themselves to be the authors of the laws that bind them (Habermas, 1994: 112). Therefore, individuals acquire freedom only as participants in legislative processes. Furthermore, this political order is legitimate when it safeguards the autonomy of all citizens to an equal degree. Since the democratic process itself has to be legally institutionalized, the principle of popular sovereignty requires the fundamental rights without which there can be no legitimate law at all.

Another essential part of modern constitutionalism is the idea of equality. This liberal idea requires the same fundamental rights for all individuals - guaranteed by the constitution, and the laws, which should be equally applicable to all people. Equality under the law grants freedom of choice and action to each individual. Therefore, it is this conception of equal liberty that lies at the heart of contemporary liberal constitutionalism. Since each person is an autonomous individual, each is entitled to equal concern and respect. Moreover, since *″…the principal expression of human autonomy is the capacity to formulate and pursue a life plan, each of these too must receive equal concern and respect″* (Kommers and Thompson, 1995: 36). In order to respect these premises*, ″[g]overnment must be founded on neutral principles of justice designed to be acceptable to all, independent of any particular conception of the good. Its purpose is to provide a neutral framework that can accommodate an unspecified multiplicity of ways of life″* (Kommers and Thompson, 1995: 36).

To conclude, modern constitutionalism requires imposing limits on the powers of government, devotion to the rule of the law, and the protection of fundamental rights. In this concept, constitution is the highest law of the country and its main role is defense and

enforcement of basic liberties and rights.

1.1Tension between Liberal and Collective Identity

The principle of popular sovereignty is inseparably connected with the constituent power of the nation. The constituent power is understood as the power of collective body, which exercises its right to self-rule (Preuss, 1994: 148). The empirical subjects of this power are the people. The question that Preuss sets is ˝whether the constituent power must have a preexisting collective identity to be able to act as secularized god and serve as the ultimate source of political legitimacy for a constitution (Preuss, 1994: 148). More concretely, the question is how can individuals be asked to be loyal to the state on whose territory they live, since the power is of secular origin and everyone is equal? Furthermore, on what basis can they be expected to be loyal to some particular state and not to some other?

Therefore, for modern state were questionable notions of motivational and driving forces of political processes. This was so since, as Habermas argues, ideas of popular sovereignty and human rights were dry i.e. they were not powerful enough to be the driving forces of political processes (Habermas, 1999:113). The case was that the only more or less clear answer to above set questions has been offered, since the end of the eighteenth century, by nationalism, i.e. this lack of driving force was accommodated by the modern idea of the nation. Regarding this issue, Habermas in his analysis of the early modern nation-state concludes:

> *˝Only a national consciousness, crystallized around the notion of a common ancestry,*
> *language, history, only the consciousness of belonging to 'the same' people, makes*

subjects into citizens of a single political community - into members who can feel responsible for one another" (Habermas, 1999:113).

In the same line with Habermas, Rosenfeld argues that ″without some predominant identity, such as that of sovereign nation of the constitutional self, it is difficult to imagine how one could justify the imposition of constitutional order″ (Rosenfeld, 1994: 4). Therefore, with the French revolution, nation became the bearer of sovereignty and ″the first truly modern form of collective identity [which] provided the cultural basis for the constitutional state (Habermas, 1999:113).

Consequently, the nation changed its meaning from a prepolitical entity ″into a constitutive feature of the political identity of the citizens of democratic polity″ (Habermas, 1996: 494) From that period, two meanings of nation - ethnic community and people of the state - have intertwined. Therefore, this ″imaginary community″ laid the foundation for the ethnic and cultural homogeneity, which made modern nation-state possible. Moreover, this fusion of state and nation enabled social integration and political mobilization of its citizens, and reconciled republican ideas with the large territory of modern European states. The result was a conditional relation between ascribed national identity and acquired democratic citizenship (Habermas, 1996: 495).

Furthermore, Habermas claims that the nation is Janus-faced (Habermas, 1999:115). On one hand, the voluntary participation of citizens in political processes is the source of democratic legitimation, and, on the other hand, the inherited nation is founded on ethnic membership that secures social integration.

Therefore, citizens constitute themselves as a political association of free and equal persons by their own initiative, while nationals already find themselves in a community shaped by a

shared language, culture, religion, history etc. Understood like this, citizenship is double-coded in the sense that its legal aspect, defined in the terms of civil rights, also implies membership in a ethno-culturally defined community. Therefore, the concept of the national state is built on the tension between universalism of an egalitarian legal community and the particularism of an ethnic community. According to liberals, as long as universalist understanding of nation prevails over its particularistic part, this ambiguity remains harmless.

To conclude, the fact of belonging to the nation is generator of solidarity between persons who had previously been strangers to one another. Thus, the achievement of the nation-state allowed a new mode of legitimation based on a new, more abstract form of social integration. So, the nation-state allegedly responded to both of challenges (legitimation and integration) by politically mobilizing and uniting its citizens. Therefore, ″democratic participation generated a new level of legally mediated solidarity via the status of citizenship while providing the state with a secular source of legitimation″ (Habermas, 1999:112).

1.2 Who are the 'We' or who are 'the People'? Collective Identity Question!

Before the process of constitution making, the group must clarify who is subject to constitutional determination. In other words, they have to decide who is the member of the group and who is entitled to participate in the decision- making process which all eventually comes down to the question of criteria of citizenship. In this sense, the constitution-making process necessarily implies the question of identities of the constitutional subjects. Moreover, the form of the new constitutional order depends on the character of the constitutional subject. As I have illustrated above, the concept of nation is one way of shaping the identity of the constitutional subject.

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However**,** this claim is still not enough to define the subjects of constituent power, since it is not clear what (or who) constitutes the nation. Preuss contrasts two different conceptions of the nation (or two different grounds of the nation). The first one is the so‑called 'French' or 'civic' concept, which says that the nation consists ″of the totality of its citizenry″ (Preuss, 1994: 151*)*. The basic idea is that citizens are all those individuals who live on a particular territory, and who are subjects to a universal legal system that on one hand defines their rights, and, on the other, establishes and constraints political authority. Further, in this reading, liberally defined citizenship is the source of the nation: nation is the collective composed of citizens, i.e. of those who are equal before the law. This concept assumes that the formation of a social group rests on the individual's decision to participate in the group. This is an individualistic approach, formulated by contractual theories of Rousseau and Locke, which says that it is up to each individual to decide whether to enter a particular society or not. The point is that the legitimacy of sovereign rests on an act of delegation by each and every individual who participates in social contract.

The second concept, following Preuss typology, is the 'ethnic' concept of nation. According to this understanding, the nation is a pre-political, pre-statist community constituted on the grounds of origin, race, language, religion, culture, history, and the like. Preuss characterizes it:

> *″It is the self-determination of the ethnos, directed against alien influence, rather than the political self-rule and freedom of the demos, which is directed against political oppression and social inequality″* (Preuss, 1994: 152).

Therefore, these two concepts differ with regard to direction of self-determination. According to 'ethnic' concept, a nation can exist independently of the state. As such, it must be

distinguished from a nation state, which is a political organization that incorporates nation based on the idea of citizenship. Therefore, whereas in the 'civic' concept the nation is the entirety of the demos, in the ethnic concept, the nation is the group defined in terms of acquired ethnicity. Consequently, while the nation, in ethnic usage of the term, finds its identity in common culture and descent, nation of citizens finds its identity in the practice of citizens who actively exercise their right to political participation and public communication.

According to Habermas, ″the identity of the political community depends primarily on the legal principles anchored in the political culture and not on an ethical-cultural form of life as whole″ (Habermas, 1996: 513).

Regarding the above described distinction between the identities of the constituent subjects, it remains to be answered what should be the essence of the constituent power, the 'irrationality of the blood' (Preuss, 1994: 160), or the contract based on the consent of free and independent individuals? Preuss' answer is that the idea of modern constitutionalism follows the principles of the 'civic' concept, i.e. he supports the separation of exclusive national feelings from the structure of government and the rights of individuals given from the constitution. Moreover, 'civic' model strips from the term nation exactly those prepolitical and irrational connotations, which characterizes the second usage. Therefore, Preuss concludes that creators of constitution must keep out prepolitical elements from the structure of politics.

CHAPTER 2: CONSTITUTIONAL NATIONALISM IN FORMER YUGOSLAV REPUBLICS

In following chapter I will concentrate on states established after the breakdown of socialist Yugoslavia. According to Preuss, constitutions are typically made in post-revolutionary time, i.e. after regime change. Consequently, one of the tasks of the constitution is liberation of social forces, which were suppressed by the old regime. Moreover, it also creates the political and institutional preconditions for the emergence of totally new social and political actors. In case of the former Yugoslav republics, the ideology of the universal liberation of the working class was replaced by the ideology of total national sovereignty. Therefore, new political actors with nationalistic agenda recaptured the constituent power, which was regarded as being unrestricted by any rules or superior order. The separate nationalist political movements were justified on the grounds of self-determination. 1974 Yugoslav Constitution, regarding the right to secession, referred not to populations or citizens of republics, but on the ethnically defined nations. Therefore, it was the nation and not the republic that was recognized as the bearer of right, albeit in a clearly ideological manner, derived from the old Leninist concept of national self-determination.

Consequently, new states created the systems of 'constitutional nationalism', by which Hayden means ˝a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state˝ (Hayden, 1992: 655). According to new constitutions, rights were guaranteed not to abstract citizens (what is the case in liberal constitutions), but to members of groups who are defined according to their national affiliation. As a close reading of the constitutions demonstrates, a group identified as the bearer of rights is not a minority group, but the titular nation. This system presents the departure from the fundamental constitutional democratic norms, those which view the individual citizen as

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the basic subject of constitutions. This notion is exactly what challenges the liberal character of these states. The consequence is that these states fail to realize the basic liberal ideas and requirements, rights universalism and equality before the law. The point is that the constitution as the highest law of a country, defines individual, collective and political identities, as well as the character of the state. Since constitutional nationalism was based on the sovereignty of an ethnic group rather than on that of equal citizens of the state, it was a mechanism for institutionalizing an unequal position for minority group. As long as it contains a nationalist definition of the political unit, members of minorities will be neither legally nor politically protected.

Moreover, citizens are dichotomized between those who are the "same" and homogeneous, and those who are "different". Accordingly, it is implied that the identities of non-dominant ethnicities are historically and culturally outside this homogeneous national body called "Our nation". What is at stake here, according to Dimitrijevic, is exclusionary interpretation of the identity of the political community, ″which would impose dominant (majoritarian) identity at the expense of the right of others (minorities) to be different″ (Dimitrijevic, 2002: 250). The problem is that these ethno-nationalist states are not built as ethically, politically, and legally neutral polities. They are formed in order to promote the particular collective good of a particular (majority) group, ″which in consequence divides people along the lines of their ethnic affiliation″ (Dimitrijevic, 2002: 252). Since the concept of equal citizenship search for state neutrality, state partiality or promotion of the collective good of majority group, opens the space for discrimination of minorities. Dimitrijevic claims that ″these states are built around two competing and in principal mutually exclusive postulates″ (Dimitrijevic, 2002: 252). On one hand, they have built liberal democratic legal and political

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institutions. On the other hand, since their partial ethnic identification of the state, their working capacity as liberal states is from the beginning at stake. Dimitrijevic points out that ″these states, being defined in ethnic terms, are in principle incapable of meeting demands of legitimacy, equality, and minority protection″(Dimitrijevic, 2002: 252).

There is another aspect regarding the identity issue. The problem appears since titular majorities fear minorities inhabiting their states. Dimitrijevic says that this existential fear is ″a systematic consequence of the way the state is defined and of the correspondent status of minorities in such a state″ (Dimitrijevic, 2002:252). The fear Dimitrijevic talks about is the consequence of majoritarian perception of all those who do not belong to majority ethnic group. The state is perceived and justified as the home of the majority ethnic group. Dimitrijevic argues that ″majority tends to understand loyalty to the state as loyalty to their own nation: we are loyal to the state because it is our home″ (Dimitrijevic, 2002: 254). Moreover, I claim that national identity is constituted partly in relation to all other groups. The essence of this relation is very nice described by Salecl:

> *"It is necessary to emphasize that with all nationalism, national identification with the nation ('our kind') is based on the fantasy of the enemy, an alien who has insinuated himself into our society and constantly threatens us with habits, discourse and rituals which are not of 'our kind'. No matter what this Other 'does', he threatens us with his existence. The fantasy of how Other lives on our account, is lazy, and exploits us, etc. is repeatedly recreated in accordance with our desire″* (Salecl, 1994: 20-21).

It follows that the positive self-understanding of one's own nation implies exclusion of everything what is regarded as ″other″, foreign, unfamiliar. But, this relation has another perspective. From the perspective of those who can not recognize themselves as members of

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titular nation, they unavoidably understand the state as something that belongs to 'them', and not to 'us'. Therefore, we can say that this relation of mutual distrust is some kind of Prisoner's Dilemma situation. Dimitrijevic argues that ″this is the condition of distrust which bears potential for developing into group or even inter-state conflicts″ (Dimitrijevic, 2002: 254). Therefore, while national identities provide a basis for political solidarity between persons who had previously been strangers to one another, they are at the same time underpinning conflict among nationalities.

To conclude, constitutional nationalism both establishes and attempts to protect the construction of a nation as a bounded unity of language, culture and blood. This concept understands the nation as collective individual i.e. as an individual actor who has its own place in human community, against whom physical individuals have no standing. On the other hand, this approach excludes from equal citizenship those who do not belong to the titular nation. Therefore, the question is what kind of model these states should apply in order to meet demands of legitimacy, equality, and minority protection. Moreover, the question is whether political integration and loyalty can be achieved without stigmatizing 'the Other'?

CHAPTER 3: LIBERAL NATIONALISM

The problem I raised in the previous chapter is related to two distinct sets of principles: 1) liberal value of personal autonomy and its relation to collective identity; 2) democratic principles of inclusive collective self-government. While the first one requires clear boundaries, the second one urges the expansion of demos. These two sets of principles, which stand in tension with one another, are embraced in the term ″democratic citizenship″. One of the strategies, which attempt to resolve, or at least to minimize this tension, is liberal nationalism.

The standpoint of liberal nationalists is that liberal and nation-specific values are together embodied in a nation state which ensures equality before the law to all citizens. They advance two claims, one empirical and one normative. Liberal nationalists claim, on the one side, that nationalism solves the problem of social integration and that the basis of common political loyalty is the awareness of belonging to a pre-political community. In that sense, nationalism is understood as functionally indispensable to the viability of liberal democracy. ″The nationalist thesis's reference to shared nationality is a reference to a collective identity whose members' unity is grounded in some (imagined) shared non-political quality that non-nationals lack″ (Abizadeh, 2004: 239). Therefore, nations are conceived as collectives capable of action and with clearly defined boundaries.

On the other hand, they claim that liberalism solves the problem of justification - the problem of the conditions the state must satisfy in order that its demand of obedience to law be legitimate - by claiming that the state must ensure to all citizens equal freedom to pursue their own idea of the good life. Therefore, they second, normative claim is that some forms of

nationalism are compatible with liberal democratic norms, including equality of citizens before the law, specified in the form of equal constitutional rights.

The nation-state, which liberal nationalists have in mind, recognizes only one nation, which coincides with the collectivity of the citizens. To put it differently, they imply that a liberal democratic society can motivate support for democratic projects and effect social integration democratically only to the extent that its citizens are unified by a shared nationality. On the other hand, in reality more than one peoples live on the territory of most states. Therefore, it is questionable for liberal nationalists what is with the status of the members of other peoples within the nation state. Or liberal democratic social integration must simply be nationalist integration?

Regarding the above mentioned problem, liberal nationalists assume

˝…that the state can only treat its citizens as equals if each individual stands under the authority of the same laws. If the laws apply not to the individual, but rather to the community interposed between him or her and the state, then citizens belonging to two different communities will enjoy different treatments, and this is unacceptable under equality before the law˝ (Kis, 1995: 7).

Here we can see how the liberal argument of equality in rights is advanced to delegitimize the claim of the need for the special minority protection. Therefore, this argument still does not solve the problem in which pluralistic societies find themselves. The problem consists in the fact that under the pure equality before the law, the majority nation will impose its culture, language, religion etc., to minority groups. Moreover, the state will be identified with majority nation. But, liberal nationalists claim that if multiplicity of life forms were to acquire official recognition, the state would not be treating its citizens as equals. In order to solve this problem,

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they rely on the classical liberal solution, which consists in drawing a line between the public and the private domains. The argument goes like this:

> ″*As a citizen of the state, every individual is subject to the same rights and obligations. But in their private lives, which are pursued in a sphere lying outside of the state's jurisdiction, they are left alone to differ from each other and to join as many communities and associations as they want. Thus, people are free to cultivate their particular life styles and they can foster their particular culture in the private domain without this freedom demolishing political equality. The state can treat all of them as equals without depriving them of their personal liberty″.* (Kis, 1995: 8-9)

Therefore, in a liberal nation state, the public sphere belongs to expressions of a homogenous national culture, while the other groups have the private sphere for pursuing their cultural and religious practices. Therefore, according to liberal nationalist, the hegemony of majority nation culture is acceptable as long as the members of minority groups can practice their culture in their private life. On the other hand, it is exactly this liberal nationalist's emphasis on culture that makes distinction between 'civic' and 'ethnic' nationalism, which I discussed in first chapter.

The strategy consists in making distinction between 'civic' (non-ethnic) and 'ethnic' versions of nationalism, and rejecting latter. While ethnic nationalism is understood as exclusionary on genealogical grounds, the civic version ″is in principle 'open' to anyone willing to adopt its national culture″ (Kymlicka, paraphrased in Abizadeh ,2004: 232*)*. But still, the point is that ″[i]ts aim is cultural homogeneity″.(Smith, quoted in Abizadeh, 2004: 236) I claim that this distinction is too simplified, since every nation has an 'ethnic core', and strive to impose its own culture or way of life to other national groups. Since there is no neutrality

between the ethnic groups that make up population of some state, I claim that, from normative point of view, there is no difference between 'civic' and 'ethnic' nationalism, and from empirical point of view, it is a difference between assimilation on one side, and exclusion and oppression on the other.

The Law on Croatian Citizenship from 1991 is a good illustration of such kind of policies. According to Section 4 of Article 8 of this law, a foreign citizen may acquire Croatian citizenship by naturalization if she proves that she is proficient in the Croatian language and Latin script. Section 5 of the same Article says that she will acquire citizenship only if a conclusion can be drawn from her conduct that she adheres to the laws and customs prevailing in the Republic of Croatia and that she accepts Croatian culture (Hayden, 1996: 794). The point is that if someone wants to be accepted in Croatian society, she must (in public) behave in accordance with Croatian customs and she must accept Croatian culture. The question is, correctly raised by Robert Hayden, ″how does one conduct oneself to show such acceptance″ (Hayden, 1996: 794).

Therefore, my first objection to liberal nationalist's model goes like this: according to this model, the principle of equal respect for each person holds only in the form of legally protected autonomy that every person can use to pursue her own life plan. This understanding of individual autonomy is one-dimensional, i.e. it ignores half of the concept of autonomy (Habermas, 1994: 112) Second dimension understands autonomy in the Kantian sense, which means that a person acts autonomously when the principles of her actions are also chosen by her. This is a republican idea of self-rule, which presupposes appearance in public and participation in public deliberations.

According to Hannah Arendt, the term public has two closely interrelated meanings. Its first meaning is about appearance in front of others. She claims that ″everything that appears in public can be seen and heard by everybody and has the widest possible publicity″ (Arendt, 1958: 50), Therefore, appearance in front of others constitutes reality for human beings. The second meaning of the term public refers to ″the world itself, in so far as it is common to all of us and distinguished from our privately owned places in it″ (Arendt 1958: 52). The world in this context is presented by human artifacts, permanent things that gather us together, which serve as mediators for social relations. To sum up, these two meanings can be integrated by seeing the public sphere as a space that facilitates co-presence, i.e. the sphere of reality.

Therefore, liberal nationalists, preserving public sphere for expressions of just their own culture, neglect the existence of different cultures in their society. Or, to put it in the context of Arendt's theory, they erase minority cultures from reality. Moreover, if we understand the public sphere as the domain where political culture and collective identities supposed to be created, hegemony of the public sphere by majority nation will lead to homogenization of the community and forced assimilation of minority groups. In this sense, equality before the law is achieved only *de jure,* but not *de facto*. As Janos Kis well argue,

> *″[n]ationalism is a strategy for determining the identity of the citizenry, but at the same time and inseparably of this it is a strategy for limiting the competition for "political goods." Thus, it describes the nation identified with the state in such a way as to guarantee distinct political advantages to the members of the nation against those who do not belong in their midst″* (Kis, 1995: 6)

My second objection is related to liberal nationalist empirical claim, about nation's integrative capacities. Analyzing Smith's book ″On Nationality″, Abizadeh concludes that ″the

mobilizing power of the nation comes, even in the civic model, from shared ethnicity, i.e. myth of common descent (Abizadeh, 2004: 236-237). From this follows that ″it is ethnicity and not the nation per se, that provides motivational power, and the nation can mobilize its citizens only in so far as it draws upon ethnicity″ (Abizadeh, 2004: 236). Therefore, here is a paradox in which liberal nationalists found themselves. On one hand, they reject ethnic nation because of its exclusiveness. On the other hand, they claim that the idea of the nation is the only driving force, which can ensure social integrity and attachment to particular polity. Since it is ethnic solidarity which is grounded on affective ties, Abizadeh concludes that ″civic nation can only motivate by reference to reward″ (Abizadeh, 2004: 237-8). Therefore, Abizadeh concludes that, what will solve the motivation/integration problem in the context of liberal nationalist theory is not the cultural particularity itself, but ″the solidarity grounded in some non-political quality distinguishing nationals from foreigners″ (Abizadeh, 2004: 240).

To conclude, liberal nationalism is a concept capable of encouraging trust, solidarity, and commitment among compatriots, on the one hand, and the loyalty to particular polity, on the other. Furthermore, we cannot deny that nationalism played significant role in emergence of modern states, providing them with its integrational and motivational capacities. On the other hand, it is trivially true that not many contemporary nation-states are ethnically homogenous: highly pluralized structure of contemporary societies contradict the traditional nationalist ideal that each nation should have its own state. With its 'one-way-directed' policies, liberal nationalism promotes and legitimizes political exclusion and assimilation of those who does not fit into nationally defined model.

Therefore, there is a need, well described by Clarisa Rile Hayward, ″to find a way of finding a citizen-identity that would serve both to individual's psychological need to belong

and the polity's need for allegiance, trust and solidarity, while fostering tolerance toward and respectful engagement with those defined as outside the civic ″we″ (Hayward, 2004: 7). In order to solve above set problem, some theorists, preceded by Jurgen Habermas, introduced the theory, according to which citizen-identity should not be rooted anymore in particularistic cultures, but in shared liberal-democratic principles, institutions, and practices.

This 'revolutionary concept' is called 'constitutional patriotism'.

CHAPTER 4: CONSTITUTIONAL PATRIOTISM

4.1 The Tension Between Universalism and Particularism Revisited

According to advocates of constitutional patriotism (Habermas, Cronin, Laborde, Mueller) pluralistic democracies must cultivate a post-national or post-conventional form of identification because nationalism is burdened by an inherent ambivalence that fosters discrimination in the pluralistic communities. They claim that the political conception of the nation has kept from its pre-political version a tendency to stigmatize other ethnic groups as aliens, inferiors or enemies. This tendency resulted in double-coding of citizenship, as a legal status, on the one hand, and as membership in ethnoculturally defined community, on the other. ″This internal tensions of nationalism, waving ″between egalitarian brotherhood and anti-egalitarian exclusion″ (Kis, 1995: 6) discredits its role in modern democracies. Therefore, ″the question is whether modern democracy is essentially compromised by this inherent ambivalence of nationalism″ (Cronin, 2003: 3)?

I claim that modern democracy is compromised by nationalism, since in pluralistic societies it can not ensure equal citizenship for all its citizens. Since hypothesis is that pre-political notion of nation should not be any more the platform for forming a collective identification, another question that follows is whether there exists a functional equivalent for the fusion of nation of citizens with the ethnic nation? The complexity of this problem is well formulated by Jurgen Habermas: ″Whereas the nation of citizens is the source of democratic legitimation, it is the inherited or ascribed nation founded on ethnic membership that secures social integration″ (Habermas, 1999: 115). Therefore, even the republican concept of the nation of citizens has problems with motivational and integrational notion of democratic process. On the other hand, nationalistic or communitarian concept of nation has problem with legitimacy,

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since the citizens, or ″we the people″ is defined in ethnic terms, and consequently, does not guarantee equality for all citizens.

The question that should be raised here is whether it is possible to reconcile these two conflicting concepts, which obviously depend on each other? Or more radical, whether it is possible to implement morally based political alternative to the given concept, which would ensure both legitimacy and social solidarity, without excluding and marginalizing minority groups. Moreover, there is the question on the possibility of a legitimate political order beyond the nation-state. As a solution to this problem, Habermas offers the concept of ″constitutional patriotism″, which I will present in following pages.

Before I will go deeper in the concept itself, first I would like to explain the meaning of the term itself, i.e. the interdependent relation between terms 'constitution' and 'patriotism'. In this concept the idea of constitution plays a pivotal role. Therefore, the constitutional arrangement, and not the particular ethnic culture, is understood as the common political good of the citizens, regardless of their ethnic belonging. The main purpose of this constitutional arrangement is to ensure an alternative normative basis of the life together. ″The constitution puts into effect precisely those rights that individuals must grant one another if they want to order their life together legitimately by means of positive law″ (Habermas, 1994: 107). Moreover, ″[t]his conception presupposes the notion of individual (subjective) rights and individual legal persons as the bearers of rights″ (Habermas, 1994: 107). The principal task of the constitution is to define the rights-based morality of the state. In order to fulfill its role, the constitution must be the product of common efforts of whole citizenry ″to identify and to realize the principles of justice and the ideas of the common good″ (Kis, 1995: 26).

Furthermore, the task of this concept is to foster an alternative form of loyalty that will be, on the one hand, compatible with universal values, and, on the other, able to accommodate context-specific ethics of a particular society and its members. For that reason, advocates of constitutional patriotism introduced the conception of patriotism, which should replace nationalism. In order to fulfill its role, patriotism should be sufficiently akin to nationalism to attract popular loyalty. On the other hand, it has to be able to solve all controversies attached to nationalism, namely, it must be firmly anchored in universalism of fundamental rights, while at the same time going beyond a 'mere' tolerance of ethnic and cultural differences. The central claim, which differs these two concepts, is that ″patriotism means the political loyalty of citizens to free polity they share, whereas nationalism is a matter of ethnicity and culture″ (Canovan, 2000: 415). Consequently, it follows that central problems constitutional patriotism has to solve in order to successfully replace civic nationalism are problems related to matters of identity and loyalty.

The process of forming a new form of a collective identity is focused on the legal-political status of citizenship instead on ethnocultural belonging. Moreover, Habermas claims that this is possible by using moral and political choices other than national identity. Constitutional patriotism represents such a post-national form of political identification and attachment for common political community. Therefore, Habermas' aim is a creation of a rational form of collective identity which would be purified of chauvinism that has plagued national identification. Moreover, Habermas claim that this can be achieved only through reflexive and critical examination of nation's tradition and past. This notion will be central issue in my last chapter.

As I already mentioned, there is a need in self-governed societies for a high degree of cohesion. What is revolutionary in Habermas's concept of constitutional patriotism is the assumption that a democratic order, in order to achieve social integration, does not need to be rooted in the ″the nation″ as a pre-political community. According to Habermas, institutional order, which would embody universal values such as liberty, equality, dignity, equal respect etc., would suffice to make citizens attached to particular polity.

The next problem constitutional patriotism deals with is the foundation, and moral political and legal justification of the monopoly of coercion. This is the question of political legitimacy and its essence could be summarized as follows: ″how and on what conditions it might be possible that individual members of a modern society,…, could all come willingly to comply with various that none chose″ (Michelman, 2001: 254). In the nation-state concept, the force of state was justified in the name of the nation, i.e. on the citizens' loyalty to the nation. Habermas' assumption is that patriotism of the citizens of a modern democratic state should rest on loyalty to constitution, and not on loyalty to their ethnic particularity.

Furthermore, Habermas's concept of constitutional patriotism is potentially consonant with the nation-states as long as national identity does not rest on an exclusionary attitude to 'others', and is subordinated to civil rights. Moreover, concept of nation cannot be easily rejected since it is modern product of shared political culture and social participation. Central to constitutional patriotism critique is ″bad nationalism″, at the core of which there is a prevalence of an ethnic solidarity over universal liberal values. Consequently, the aim is to solve the ambiguity of the concept of nation by depriving it of its status of the foundation of polity.

Therefore, Habermas does not reject concept of the nation, but he just wants to make it politically irrelevant and to direct our affects toward the universal principles. Such theoretical deployments represent what Patchen Markell calls '*a strategy of redirection'* (Markell, 2000: 39). This strategy claims ″to make affect safe for liberal democracies″ by redirecting our attachment and sentiment from the ethnic component to the civic one. While the ethnic attachment could lead to the exclusionary attitude towards 'others', the civic turn out to be purified of all these negative consequences by subordinating national affects to sub-political level. This 'strategy of redirection', as I will show bellow, appeared to be the most controversial notion in Habermas concept, since the relation between universality and particularity is not clear on the 'first ball'.

In Habermas's concept, political justification depends just partly on the civic attachment to universal principles. According to him, political justification depends, as well, on citizens' attachment to concrete community. This ambiguity of sources of attachment resulted in criticizing of his concept. Critics of Habermas's work on constitutional patriotism, divided in two counter streams, have articulated two principal sets of challenges to his theory. First stream (Markell, Hayward) claims that constitutional patriotism is not thin enough. Markell claims that ″[t]he universal principles toward which constitutional patriotism is supposed to direct our affect are not self-sufficient, but both depend on and are threatened by a supplement of particularity that enables them to become objects of passionate identification″ (Markell, 2000: 40). Hayward argues that civic attachments can never be purely political, since it is always through the lens of particularistic identities that people interpret and develop our affective attachments to constitutional principles (Hayward, 2004: 11). Both conclude that these particularistic identities can motivate intolerance of and aggression toward their others.

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Therefore, constitutional patriotism too fails to solve the problems inherent to civic nationalism.

Second stream (Canovan, Miller) claims that constitutional patriotism is too ″thin″. They argue that constitutional patriotism is not able to produce attachments, which would be strong enough to ensure loyalty and political integration.

Therefore, to sum up, major criticism goes like this: constitutional patriotism by itself is not enough to secure specific loyalties; it tacitly presupposes substantive (and not procedural) cultural identities; and finally, it rests on untenable distinction between political and subpolitical identities and cultures.

4.2 The Unity of Political Culture in the Multiplicity of Subcultures

According to Habermas, the main problem with nation-states is the fact that majority culture claims to be recognized by all citizens as the common political culture (what is completely legitimate from liberal point of view). According to Habermas, majority culture represents just one of the subcultures, which are supposed to coexist and interact under equal conditions within the same political community. However, in sharp difference to communitarianism he claims that ″the level of shared political culture must be uncoupled from the level of subcultures and their prepolitical identities″ (Habermas, 1999: 117-118), which means that common political culture should not be dominated by majoritarian or some other culture.

The main assumption is that political culture of each country crystallizes around its constitution. In the context of Habermas theory, we deal with republican constitution, which embodies universal principles of popular sovereignty and fundamental rights. Furthermore, we

form our identity by accepting and interiorising principles embodied in the constitution. According to Habermas, each national culture should develop a distinctive, its own interpretation of those constitutional principles from the perspective of nation's history and tradition, which will represent its own political culture. It follows that this interpretation can not be ethically neutral. Consequently, these self-interpretations form the identity of particular political communities.

To put it more clearly, this permeation of the constitution by ethics means that every single political community is specific regarding its history and tradition. But, what the constitution is about, are universal liberal principles of freedom and the rule of law, and this is what makes the inner morality of the constitution. The fact that these principles are universal means, on one hand, that they are essential for every human community, and, on the other, that they are generally accepted as the core values of liberal democracies. As such, they represent a shared civic ethos which is embedded in the constitution. And moreover, it is exactly this civic ethos on which citizenry should build their collective identity and loyalty to their community. On the other hand, the process of constitution-making is open to influence by the society's political goals. In addition, constitutional processes ('living constitution'), understood as the processes of continuous reflection and practical interpretation of the universal constitutional principles, are always taking place in the context of 'our' specific political culture. ″For that reason every legal system is also the expression of a particular form of life and not merely a reflection of the universal content of basic rights (Habermas, 1994: 124).

For example, understanding of Croatian tradition is impossible without taking into consideration it recent socialist history. Significant for that part of its history were notions of brotherhood and solidarity. The consequence of institutionalizing of these values was welfare

system with strong accent on social rights. Consequently, when regime changed in 1990, the new state preserved its role in securing social rights to its citizens and put them into constitution (for example, rights to free medical care). On the other hand, according to the American Constitution, such a right does not exist. The point is that both countries are liberal democracies, and both of them have built their constitutions in accordance with universal principles, with differences in interpretation, i.e. differences which originate from different national traditions.

Maybe more clear example is one regarding relation between state and church. In Germany, every citizen is asked whether or not she belongs to some particular religious community. If she does, the state will tax her and give the money to religious community she belongs to. On the other hand, Croatia has a contract with Vatican according to which Croatian state taxes every citizen, no matter whether she belongs to catholic community or not, and gives the money to Catholic church in Croatia, according to a contract between the Church and the state. Therefore, the point is that both countries, according to their constitutions, guarantee to all citizens freedom of practicing their religion, which is universal principle in liberal democracies. And this is the principle which is embodied in the constitution. Everything else could be understood as an interpretation of that particular principle. In Croatian case, it is obvious that it favorites the Catholic Church, what is legitimate according to constitution, as long as it does not oppress the other religious communities. Although, it is obvious here that Croatian approach is illiberal, what shows how Croatia defines its community. As Habermas would say, ″[t]he social make-up of the population of a state is the result of historical circumstances extrinsic to the system of rights and the principles of the constitutional state″ (Habermas, 1994: 126).

Therefore, there is a set of rules, norms and values that are essential for all liberal democracies. This set is at the top of hierarchy, as basic principles that all citizens should interiorize and according to which we have to form our identity. And this is the notion of rationality, which Habermas has in its mind. By rationality, I understand the process of choosing the principles, which would be chosen in Rawlsian original position, which would represent the *common denominator* (Dimitrijevic, 1999: 9), and which could not be reasonably questioned by anybody. The principles chosen in this way should be the platform for the common political culture.

Habermas's understanding of common political culture deserves to be quoted at some length in some points. Namely, he claims that ″[t]he shared political culture in which citizens recognize themselves as members of their polity is also permeated by ethics″ (Habermas, 1994: 134-135). I hope I explained above what he means by this. Furthermore, he argues that

> ″[a]t the same time the ethical substance of a constitutional patriotism cannot detract from the legal system's neutrality vis-à-vis communities that are ethically integrated at a sub-political level. Rather, it has to sharpen sensitivity to the diversity and integrity of the different forms of life coexisting within a multicultural society. It is crucial to maintain the distinction between the two levels of integration. If they are collapsed into one another, the majority culture will usurp state prerogatives at the expense of the equal rights of other cultural forms of life and violate their claim to mutual recognition″ (Habermas, 1994: 134-135).

So, the main point here is that there are two levels of integration. First level, I will call it political, is the integration of each citizen into political community which is shaped by the

universal principles embodied in the constitution. The second level is, according to Habermas, sub-political, and it represents integration into ethnically, culturally, linguistically specific community.

> *″The ethical substance of a political integration that unites all the citizens of the nation must remain ″neutral″ with respect to the differences among the ethical-cultural communities within the nation, which are integrated around their own conceptions of good″* (Habermas, 1994: 137).

As Habermas rightly points out, these two levels of integration have to be separated. The important point is that political integration includes all citizens equally. Furthermore, it has to be stressed that Habermas understands national identity as a category which belongs to second level of integration. In this sense, Habermas strictly separates national identity from politics, and reject nation-state as a model for plural societies. Two levels of integration must not be collapsed into one another, since, as Dimitrijevic correctly points out, the concept of nation-state ″is in plural societies always reduced to the zero-sum game in which minorities always lose″ (Dimitrijevic,1998: 14).

Furthermore, Habermas argues that

> *″[t]he neutrality of the law vis-à-vis internal ethical differentiations stems from the fact that in complex societies the citizenry as a whole can no longer be held together by a substantive consensus on values but only by a consensus on the procedures for the legitimate enactment of laws and the legitimate exercise of power″* (Habermas, 1994: 134-135).

To put it more simply, every sub-political group, integrated by second-level integration, has its own set of values which are derived from its own ethnic, cultural, or religious specificity.

For illustration, I will give one radical example: assume that on a desert island, one Amish and one colorful lesbian family have to organize their common life. It is hard to imagine that they will find common consensus on values, since in each case someone will lose his/her individual freedom. Instead of it, they can preserve their individual freedom of pursuing their own way of life only if they will achieve consensus through dialogue. And this is exactly what Habermasian understanding of democratic deliberative politics is about. It is about organizing common life through action, through mutual recognition, through mutual respect.

Therefore, our two families can organize their life together only through appeal to universal moral principles, and by a consensus on the procedures for the legitimate enactment of laws to which each side will consent and which will be in the equal interest of all. The point is that ethical questions cannot be evaluated from the moral point of view. Therefore, beside the consensus on basic principles, ″all persons must be recognized as members of ethical communities integrated around different conceptions of the good″ (Habermas, 1994:133). This conclusion has another important consequence. If it is possible for our two families to reach agreement through consensus on procedures, there is a question whether we need a cultural homogeneity as a precondition for achieving consensus? Habermas's response is that

> ″...prior background consensus based on a homogeneous culture is not necessary, because democratically structured opinion-and will-formation make possible rational agreement even between strangers. Because the democratic process guarantees legitimacy in virtue of its procedural characteristics, it can if necessary, bridge gaps in social integration″ (Habermas, 1994: 137-8).

Therefore, Habermas concludes that

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"[t]hanks to it procedural properties, the democratic process has its own mechanism for securing legitimacy; it can, when necessary, fill the gaps that open in social integration, and can respond to the changed cultural composition of a population by generating a common political culture" (Habermas, 2001: 73-74).

Therefore, nationalistic theories notion of cultural/ethnic homogenity as a necessary catalyzing condition for democracy becomes superfluous. Moreover, democratic process is embedded in a common political culture, but this doesn't imply that it goes on behalf of realizing national particularity. Above described political culture overcomes sub-political understanding of the term itself. Moreover, it implies the inclusive practice of self-legislation, based on procedural consensus, which includes all citizens equally. In this sense, political space is open for the inclusion of citizens of diverse cultural backgrounds. ″Citizens who are politically integrated in this way share the rationally based conviction that unrestrained freedom of communication in the political public sphere… is used in the equal interest of all″ (Habermas, 1994: 134-135).

Finally, I believe that I succeeded to provide a response on the first two objections to constitutional patriotism, namely, that constitutional patriotism tacitly presupposes substantive cultural identities, and that it rests on untenable distinction between political and subpolitical identities and cultures. Firstly, I argued that democratic process itself ensures the conditions for all citizens to identify on equal terms with the political culture of their own country. Secondly, I showed that in order to achieve this aim, the majority culture had to give up from its historical identification with a general political culture. Therefore, there is still a third objection, which should be examined, and which says that constitutional patriotism cannot secure social integration and specific loyalties to institutions**.**

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In this section, I will argue that the notions of integrity, solidarity and loyalty are results of the same process, which secures the legitimacy. Therefore, the first step is to explain the conditions under which political decisions should be considered legitimate expressions of the citizenry. Therefore, the focus is on the accountability and responsiveness in the decision-making process.

This implies the idea of popular sovereignty. According to Habermas, ″[t]oday, the public sovereignty of the people has withdrawn into legally institutionalized procedures and the informal, more or less discursive opinion-and will-formation made possible by basic rights″ (Habermas, 1996: 505). This process is made possible by a network of different communicative forms, which provides a model of deliberative politics. Habermas further argues that ″deliberations in decision-making bodies must remain porous to the influx of issues, value orientations, contributions, and programs originating from a political public sphere unsubverted by power″ (Habermas, 1996: 505). In that sense, public sphere plays the main role in actualizing popular sovereignty, and, consequently, in facilitating or blocking the decision-making process. ″In the public sphere citizens could recognize each other as equal and free, engage in democratic learning processes and subject each other's claims to the very universal principles that they endorsed patriotically″ (Mueller, 2006: 288). In this sense, effective access to this communication process among free and equal citizens is exactly what citizenship is consisted of.

The idea of citizenship, understood like this, requires a notion of two-dimensional (public and private) autonomy. This is a proceduralist conception of rights ″according to which the democratic process has to safeguard both private and public autonomy at the same time.

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Safeguarding the private autonomy of citizens with equal rights must go hand in hand with activating their autonomy as citizens of the nation″ (Habermas, 1994: 128).

To conclude, a political order can achieve legitimacy only if political institutions are perceived by citizens ″as democratic forums of self-rule, where debate is inclusive and comprehensible, representatives fully accountable, and decisions publicly justified″ (Laborde, 2002: 601). Therefore, constitutional patriotism requires a well functioning public sphere, in which citizens will be motivated to participate and which will enable to each citizen to adopt ″the we-perspective of active self-determination″ (Laborde, 2002: 601). Consequently, political integration of this type will ensure citizens loyalty to the common political culture.

″The general point is clear enough: for democracy to be effective, universalist principles must be woven into the fabric of local conversations in ways that resonate with the political self-understanding of society in question. Liberal-democratic ideals need to be articulate, interpreted, implemented and contested within particular political context to be culturally significant and politically effective.″(Laborde, 2002: 602)

The next step is step is the question of solidarity. The assumption of advocates of constitutional patriotism is that ″solidarity with fellow citizens and affective attachment to the polity flow from participation in this system of political cooperation″ (Cronin, 2003: 4). In this context, the assumption is that participative, active citizenship could be the focal point of social ties of mutual responsibility. Moreover,

″[t]he strength of the democratic constitutional state lies precisely in its ability to close the holes of social integration through the political participation of its citizens″. In a complex society, it is the deliberative opinion- and will-formation of citizens grounded in the principles of popular sovereignty that forms the ultimate medium for a form of abstract,

legally constructed solidarity that reproduces itself through political participation"
(Habermas, 2001: 76)

Calhoun argues along the same line with Habermas, claiming that it is a public sphere which constitutes a form of social solidarity "through exercise of social imagination and forging of social relationships" (Calhoun, 2002: 287). Another plausible argument is that the bare fact that the public sphere is a place where people meet is sufficient to ensure sociability and solidarity. Public discourse figures in two ways in the creation of new forms of social solidarity. Firstly, shared participation in public sphere enables to all citizens to choose the institutional forms and character of their lives together. Secondly, "the mutual commitments forged in public action are themselves a dimension of solidarity" (Calhoun, 2002: 277). " Among the various forms of social solidarity (families, communities, nations), the public sphere is distinctive because it is created and reproduced through public discourse" (Calhoun, 2002: 287).

Namely, it is significant that advocates of constitutional patriotism (Cronin, Habermas, Calhoun) address questions of legitimacy and solidarity together. Therefore, I conclude that the process of democratic deliberation in the public sphere gives, on the one hand, legitimacy to democratic process, and, on the other, ensures solidarity between participants. Moreover, it also ensures loyalty to particular polity, since it is itself also the product of the same process. Moreover, Cecil Laborde claims that "citizens strive to sustain their political culture and institutions, because these represent their way of collectively realizing universalist ideas" (Laborde, 2002: 599). Basically, he claims that the bare fact that this is "their way", "their realization", i.e. something they have created, makes these institutions and political culture closer to their "hearts and minds". Consequently, this will in the same time

ensure citizen's identification with their institutions, and establish motivational platform for political participation. Their attachment to these institutions will be political and feelings that will motivate them will be the pride in having built these institutions and in possessing them now. In this context, the stress is on active notion of ″doing″ and ″creating″ a common political culture and to it related institutions.

This aspect is what essentially distinguishes this concept from ethnic one, which relies on passive being. Therefore, Laborde claims that ″[t]he best way to defuse the illiberal tendencies of cultural nationalism is not vainly to seek to depoliticize it but, rather, to subject it to liberal-democratic norms″ (Laborde, 2002: 600). What he actually claims by this is that the sense of specificity is inherent to every political community. Therefore, if every community has a need to be identified with something, it is better to canalize its forces to common political project, namely, common political culture. Moreover, there is a constitutional framework, which should constrain and ″regulate what it is permissible to do in the name of culture″ (Laborde, 2002: 600).

Therefore, the attachment constitutional patriotism relies on is political in its character and feelings, which will motivate citizens to be loyal to their institutions, will make them proud in having built these institutions and in possessing them now. In this context, patriotism is attachment based on a political achievement, and not on belonging.

CHAPTER 5: IDENTITY AND MEMORY

I will start this chapter with one story from the recent Croatian past, which raised a storm in Croatian political and public life in general. The story goes like this: Mirko "Norac, a retired general of the Croatian Army and regarded by many as a war hero, was a witness in a case prosecuted before the Rijeka County Court. The case first focused on Tihomir Oresković, who was charged with organizing the massacre of 40 Serb civilians in Gospic in October 1991. Norac started to move from the witness bench to the dock after four witnesses testified that he took an active part in the massacres."[1] The important point here is that The Hague Tribunal stated that it did not have a warrant for Norac and was leaving the matter to the Croatian judiciary. His arrest sparked massive demonstrations across the country, as demonstrators demanded that the government drop all charges. Citizens in his hometown of Sinj blocked roads, and there was large demonstration in Split, where some 80,000 to 200,000 people (depending on different media estimations) gathered under the banner ″We all are Mirko Norac″. Norac's arrest also fueled opposition to the government's policy of cooperation with The Hague Tribunal. Many felt that Croatians were being exclusively accused of war atrocities, while Serbs – whom they perceived as the initiators of the war – were getting off more easily.

The second role in this story, not less important, was played by Ika Škarić, a judge in Croatia who – despite threats to her own life and threats of rightist nationalist demonstrations – condemned General Mirko Norac and his colleagues to twelve years in prison for crimes committed in 1992 against the civilian population. Therefore, this, obviously very brave woman, during the night became an ethical hero. Important dimension of the whole case is that, in the moment when sentence was proclaimed, Croatia 'rediscovered' itself as a state

[1] Eastern European Constitutional Review, Vol.10, No. 2/3, Spring/Summer, pp.13

under the rule of law**.** For that reason, it was especially important that Norac was not delivered to The Hague, but condemned in Croatia itself. It was not just the case that Croatia proved that it did not need international tutelage anymore, but it also showed that it chose to confront with vampires of the past.

Another important dimension of this act was well described by prominent Slovenian philosopher Slavoj Žižek, which deserves to be quoted at some length.

> ″*The true dimension of the act proper consisted in the shift from the impossible to possible: before the sentence, the nationalist right, with its veteran organizations, was perceived as a powerful force not to be provoked, and the direct harsh sentence was perceived by the liberal Left as something which 'we all want, but, unfortunately, cannot afford at this difficult moment, since chaos would ensue' – after the sentence was proclaimed,…, nothing happened: the impossible turned into the routine. If there is still any dimension to be redeemed of the signifier 'Europe', then this act was 'European' in the most pathetic sense of the term*″* (Žižek, 2004: 30).

Claiming 'nothing happened', Žižek refers to absence of riots. On the other hand, something really happened. Since that moment, Croatia started it hard walk through its own, by war compromised past. On the very beginning of that trip, Croatia was divided on two opposite sides, united around two 'heroes'.

One side identified itself with Mirko Norac, 'war hero', 'great Croat', represented by his supporters as a victim of contra-Croatian conspiracy. United under the banner ″We all are Mirko Norac″, these people actually tried to preserve conditions under which country has lived since 1990. Riding on the wave of aggressive nationalism, Croatian government, using measures of bureaucratic and physical ethnic cleansing, homogenized the country and made it

home for one ethnic group. Therefore, by building a collective identity around the figure of a war criminal, these people just supported something that was part of the common Croatian identity till that period. Killing innocent Serbian civilians in Gospić, as a General of Croatian Army, Norac was not killing in the name of all Croats. But, as long as Croatian authorities have not accused him, these crimes were part of Croatian collective identity.

On the other hand, all those who identified with Ika Škarić, that modest judge from Rijeka, consented to make a clear break with highly compromised past, and to start building a new identity. Therefore, Ika Škarić was important in a sense that she showed the way to Croatian citizens, i.e. she showed that it was possible to think and act in terms of an alternative understanding of collective identity.

Dealing with the past, understood as a process of reflective dealing with political and cultural identites, is since that period very present in Croatian public life. In this regard Croatia bears some resemblance of the *Historikerstreit* (″Historians' Debate″), which took a place in Germany in 1986. I believe that we can draw many parallels between these two cases. Therefore, in order to understand better what is actually at stake in Croatian case, I will reach out for some conclusions that could be made from the German one.

From 1945 and collapse of Third Reich onwards, Germany has coped with the burden of the Nazi past. The key bone of contention was the demarcation of the German national identity, together with the establishment of other elements of social cohesion against the background of Nazism. That the Nazi regime and the Holocaust are subjects that still evoke strong emotions, it was especially obvious during the *Historikerstreit.*

Historikerstreit was an intense debate about the way Holocaust and Third Reich should be interpreted in history and about their "lessons" for the present and the future. The

whole case started with a 1986 essay by Nolte in a prestigious daily paper in which he argued that, 40 years after the end of the war, Germans should be allowed to embrace their past without a permanent sense of guilt, i.e.

> ″the time had come for the Nazi regime to be undemonized, to be reevaluated as a period that may have been unusually, perhaps unprecedentedly, horrible, but not one that stood outside the course of historical development, nor one that could not be understood in the terms applicable to other eras and other applicable systems″ (Baldwin, 1990: 4-5).

Therefore, Nolte wanted to place the Nazi period and its crimes within the framework of the twentieth-century history, and, in that sense, to normalize it by comparing it with other genocides (Soviets, Turks, Cambodians). But this was just a first step. Furthermore, Nolte claimed that the Bolsheviks were actually those who 'invented' a form of mass extermination. Therefore, the conclusion was that there was nothing so special about Nazi regime; neither Germans were the first, nor they were the only one who implemented above mentioned methods. Moreover, Nolte claimed that Hitler had feared that the Bolsheviks would turn against Western Europe. According to him, ″[t]he Nazi dictatorship and the Holocaust should be understood first and foremost as reactions to the Bolshevik threat″ (Baldwin, 1990: 7). 'Consequently', Nolte concluded, in some weird way, that Hitler was provoked to commit a similar crime against Jews.

Nolte was actually trying to reestablish a continuity of German history by almost passing over unbridgeable break, which happened during the period between 1933 and 1945. In order to do that, he claims that ″there was something un-German about Hitler ideas, that their worst aspects were but imitations of features better exemplified by other peoples: the British

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who conquered empire without scruple, the Americans who exterminated the Indians, the Jews with their consciousness of race″ (Baldwin, 1990: 10).

I have to say that I agree with Nolte about his first claim that in twentieth-century history the Holocaust is not the single crime against humanity, and that it can be legitimately compared to some other known cases of genocide[2]. But his basic intention is to relativise the German history in order to legitimize a new interpretation of the present, and this is where I disagree. However, my point is something else. In order to make my point more clear, I will give one example, which I found in James W. Booth article *″Communities of Memory: On Identity, Memory, and Debt″.*

> *″In 1992, Francois Mitterand, then president of the French Republic, was asked to lend his voice, on behalf of France, to the commemoration of the July 1942 roundup of Jews at the Velodrome d'Hiver…in Paris and their subsequent deportation to Nazi concentration camps. Specifically, he was asked to acknowledge the role of France in the persecution of Jews and others during the dark years of occupation.″* (Booth, 1999: 249-250)

This is what Mitterand said: ″The Republic, across all its history, has constantly adopted a totally open attitude (with regard to the rights of all its citizens). Thus, do not demand an accounting of this Republic (Conan and Rousso, quoted in Booth, 1999: 250). Therefore, Mitterand actually said that France was identical with republican France, which was identified with principles of *egalite, liberte, fraternite.* So, according to Mitterand, ″Vichy regime was a

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[2] Still, this remains a highly contestable issue. The controversy surrounding the question of the 'uniqueness of the Holocaust' is enormous. It was also one of the stumbling blocks of the *Historikerstreit.* According to Charles S. Maier, ″(t)he Holocaust was not mere wave of killing. It was a systematic effort to exterminate *all* the Jews under direct German control, and to pressure German allies or occupied governments to surrender the Jews temporarily beyond the reach of the SS. That effort at ethnic round-up and total extermination still separates the *furor teutonicus* from Stalinist terror.″ (Maier, 1990: 43) He wants to say that Stalinist regime was not 'final solution' for any particular group, as the Holocaust was.

parenthesis in the continuous history of the Republic, ″a new regime different and temporary″″ (Booth, 1999: 250).

To conclude, Mitterand line of argument goes like this: since that regime represented the break with French republican continuity, it cease to be ″French″ (″ours″). So, if that regime is not part of what ″French″ (″we″) are, French are not inheritors of this past, but this past belongs to Nazi Germany and the Vichy collaborators. Finally, French are not responsible and accountable for these injustices, which are not, consequently, the objects of French collective memory. Therefore, while Mitterand claims that the Vichy regime was 'un-French', Nolte claims that there was something *″un-German about Hitler's ideas″.*

My point here is that we have, on the one side, Nolte, who is trying to normalize German identity by comparing Nazi regime with some similar organizational forms, and who sees the causes of Holocaust somewhere in Siberia. On the other hand, we have Mitterand, who denies French responsibility for crimes committed in Vichy regime, since that regime was not compatible with French political culture. But, what is important to stress, is that both agree that these events are not actually something immanent to 'real' French/German national identity. I claim that both of them search for external excuses in order not to cope with compromised past, which is internal matter of national identity.

Here we can draw a parallel with Croatian case. There are two kinds of arguments which ″We are all Mirko Norac″ group uses in defending Croatian 'glorious', 'homeland' war. First argument says that Croatia was attacked by Serbs and that Croatians were just defending themselves. In such a kind of position, it was impossible to commit a war crime. Second argument says that Croatia should not prosecute its soldiers, since Serbia is also not doing that. Moreover, they started the war and they committed much bigger crimes.

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The three mentioned cases of dealing with difficult past allow for some parallels. Nolte admits crimes which happened during the Nazi regime, but thinks that these crimes should not be anymore burden on young generations of Germans. Mitterand also admits that there were some crimes, but these crimes are not part of French republican identity, and, as such, they have nothing to do with French people. And finally, ″We are all Mirko Norac″ group thinks that killing the Serbs is not the crime, since they attacked us. Consequently, Croatian past is clear and glorious. What connects these cases is reluctance to cope with the process of dealing with 'real', compromised national past.

In following pages I will present Habermas's reaction on Nolte's claims, which will be the introduction in broader context of Habermas's theory of dealing with past and building a new identity. As I already mentioned, *Historikerstreit* started by Habermas's reaction on Nolte's claims. First, Habermas accused Nolte for attempting to relativize the Nazi regime, to portray it as not essentially different from other totalitarian and authoritarian regimes. Second, he attacked his claim that Auschwitz was actually a reaction to the Gulag. Finally, Habermas accused him of wanting to revive ″a form of German national identity that was not embarrassed by the Nazi crimes″ (Baldwin, 1990: 6).

But what is here actually at stake requires some more explanation. The German response to Nazi period is developed through two-counter perspectives, conservative and liberal-socialist. While the conservative stream perceives Nazism as a unique phenomenon, which made a break with thousand-year history prior to 1933, and which emerged in the context of the Great economic Crisis, the liberal-socialist stream sees fascism as an outcome of the peculiar path of development of the German society from the 19th century, known as *Sonderweg,* which separated Germany from democratic-liberal western mainstream. The point

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is that left-wing intellectuals insisted on the notion that the modern German society bears historic responsibility for the crimes of the Nazi regime. On the other hand, conservatives insisted on the necessity of re-emergence of the German national identity through a revival of the alleged 'genuine', positive aspects of German history, since the cohesion of the nation is at stake. In this context, they claim that the obsession with guilt concentrated around Nazi past blocks a more balanced view on whole German history. The conservative demands are ironically summarized by Habermas:

"Without the memory of this national history, which has come under a "thought ban," a positive self-image cannot be created. Without a collective identity, the forces of social integration decline. The lamented "loss of history" is even said to contribute to the weakness of the political system's legitimation and to threaten this country's domestic peace and international predictability." And further: "But an appropriation of national history for purposes of facilitating identification requires that the status of the negatively catched Nazi period be relativized; for these purposes it is no longer sufficient to shunt this period aside; its significance must be leveled off" (Habermas, 1989, 235).

Starting discussion about treatment of the past, Habermas claims that present German situation differs from the one Germans found themselves in immediately after the war. Referring to Karl Jaspers' "The Question of Guilt", which dealt with issues of personal guilt of the perpetrators and the collective liability of those who failed to do anything (and, ultimately, of the whole German nation), Habermas claims that these issues "no longer fit the problem of later generations, who cannot be blamed for their parents' and grandparents' failure to act (Habermas, 1989: 232). On the other hand, there is the simple fact that subsequent generations also grew up within a form of life in which that was possible (Habermas, 1989: 232).

What is actually at stake here is national identity. The issue of national identity necessary involves a temporal dimension, i.e. the sameness of national community over the time. According to Booth, the question of sameness through time is at its core normative in character. ″This is so because it is this sameness or identity that makes possible the recognition of a community as a single subject of attribution through time, an agent or author capable of being held to account″ (Booth*, 1999: 250).* And it is exactly this 'sameness' that generate**s** our present form of life. Therefore, Habermas claims that

> ″(o)ur form of life is connected with that of our parents and grandparents through a web of familial, local, political, and intellectual traditions that is difficult to disentangle – that is, through a historical milieu that made us what and who we are today. None of us can escape that milieu, because our identities, both as individuals and as Germans, are indissolubly interwoven with it″ (Habermas, 1989: 233).

In that sense, Habermas concludes that German form of ″life is linked to the life context in which Auschwitz was possible″ (Habermas, 1989: 233), not by contingent circumstances, as the conservatives would say, but intrinsically. Since after-war generation was directly and collectively liable for all crimes committed in the Nazi regime, consequently, this liability - now in the form of moral duty to continuously reflect on the past, and to appropriate its lessons - carries over to the next and all future generations of Germans. Therefore, Habermas claims that today's German population should be proud of its constitutional state and its humanistic culture, but also should be responsible for crimes committed by their predecessors. For that reason, he claims that Germans are obliged to keep alive the memory of all victims killed by German hands.

˝After Auschwitz our national self-consciousness can be derived only from the better traditions in our history, a history that is unexamined but instead appropriated critically. The context of our national life, which once permitted incomparable injury to the substance of human solidarity, can be continued and further developed only in the light of the traditions that stand up to the scrutiny of a gaze educated by the moral catastrophe, a gaze that is, in word, suspicious. Otherwise we cannot respect ourselves and cannot expect from others˝ (Habermas, 1989: 234).

According to Habermas, the official self-understanding of the German Federal Republic, based on the premises described above, is questioned by the Right. Moreover, he claims that the Federal Republic in the postwar period made a significant step forward in the sense that it has become part of the political culture of the West. According to him, this is the great intellectual accomplishment of which his generation could be proud. This accomplishment was possible only in the form of patriotism, which I presented in the previous chapter, namely, constitutional patriotism. What is specific about this concept in the context of Federal Germany is the fact ˝that a connection to universalist constitutional principles that was anchored in convictions could be formed only after –and through – Auschwitz˝ (Habermas, 1989: 227). Moreover, getting even with the conservatives, he claims that ˝[anyone who wants to dispel our shame about this fact with an empty phrase like ˝obsession with guilt˝…, anyone who wants to recall the Germans to a conventional form of their national identity, is destroying the only reliable basis for our tie to the West˝ (Habermas, 1989: 227). Therefore, what is here at stake is German national identity and common political culture, which should be explained through the Habermas's concept of constitutional patriotism.

In the previous chapter, I explained Habermas's position, according to which each national culture should develop a distinctive, its own interpretation of constitutional principles from the perspective of nation's history and tradition, which will represent its own political culture. In the Habermas's concept, both culture and identities are not understood as something fixed or predetermined, but as flexible constructs, which are continuously being reproduced and remade. Moreover, his focus is on ˝the manner in which constitutional patriotism understands a community's ties with its past as the core of its identity and the source of moral burdens to be assumed˝ (Booth, 1999: 253). In this context, we can recognize two levels in the process of culture and identity formation, which stands in dialectical relation.

The first level is that of memory and the past, and the second one consists in building a new, constitutional-patriotic identity. Therefore, the first step includes the notions of ethics of remembrance and responsibility, i.e. reflexive and critical examination and contestation of nation's past and history, while the second one demands for openness and diversity. The point is that the project of building common political culture on the universal moral principles cannot go apart from the project of continuously contested memory. These two levels together are essential parts in the process of building what Habermas calls 'post-conventional identity'.

In German case, there is a question ˝what count as an authentic German identity after Auschwitz˝ (Cronin, 2003: 18). Of course, there is no clear answer to this question, although conservatives, by normalizing German past and relativizing Auschwitz, are trying to do exactly this, i.e. make an identity traditional or conventional. On the other hand, Habermas claims that Germans can create a rational collective identity only through the process of democratic deliberation.

Habermas's first assumption is that democracy can form the identities of citizens by detaching itself from its historical dependence on the concept of nation. However, this was not simply a matter of replacing national with postnational identity. Using the term 'post-traditional' or 'post-conventional society', Habermas does not imply that national tradition and other forms of conventional morality are simply superseded. What he has in mind is that they should be, at least partially, reinterpreted through the prism of the unversalistic claims that have been realized as basic rights and constitutional principles more generally. What is asked from citizens is to reflect upon particular traditions and group identities in the name of shared universal principles. This means that ″they have reflectively to endorse or reject the national traditions with which they find themselves confronted″ (Mueller, 2006: 287).

According to Mueller, accepting national tradition unreflectively means that ″we continue something as unproblematic, which others have started and demonstrated″ (Mueller, 2006: 289)*,* in our name too. Therefore, he suggests a dialectic process of identity making to the Nazi experience. Namely, our tradition has to be ″aufgehoben, that is, both transcended and negatively preserved…″ (Mueller, 2006: 289), what will result with post-traditional political identity. Such an identity could be based only on traditions that had been passed the critical filter of the nation's past (Mueller, 2006: 289). This means that ″previous unreflective identification should be replaced by dynamic and complex process of identity formation″*,* an important element of which is the continuous process of self-reflection.

Therefore, identity has to be based on continuous, dynamic and open process ″of public interpretations in the light of universalist norms, rather than ascriptive, pre-political criteria″ (Mueller, 2006:288). The basic questions, answers to which have to determine the character of the future identity are: ″'who do we want to be?' and 'how do we want to position

ourselves to our past in light of this identity' (Mueller, 2006: 288)*?* To answer on these questions and to build a common identity around the answers on these questions is possible only if we understand our identity in *procedural* terms, and this is exactly what Habermas's concept of constitutional patriotism offers. ″It is a matter of German citizens themselves to determine through this process which of their traditions they want to preserve, and whatever understanding of their identity emerges from this process can claim authenticity″ (Cronin, 2003: 18).

On the other hand, revisionists try to reconstitute a conventional national identity by relativising the Nazi period, i.e. they want to wash the Holocaust out of German present identity. Doing that, they neglect the friction, which arises out of the presence of the past. When Habermas claims that our identity is historically rooted, he does not take into account just a temporal aspect of the past, but also a moral one. In that sense, his understanding of national past differs from the conservative one. Our past is something ″into which we are thrown″, (Booth, 1999: 255) and as such it represent**s** something from which we cannot escape. Past also has its pedagogical function, in the sense that it serves as the 'storehouse of lessons', and as such, help us to avoid repeating injustices of the past. Consequently, it modifies us, marks us and puts obligations on us. On the other hand, it cannot constitute us completely, just partly. Other part we define for ourselves answering on the question *who do we want to be.*

Before the end, I will return to my three cases. Participants in all three cases chose different course of dealing with past than Habermas suggests. I claim that in all three cases participants, plagiarize the past by pretending that what actually happened, has nothing to do with their present identities. As long as we pretend that our compromised past has nothing to do with us, we are loosing part of ourselves. Moreover, it is our moral task to preserve

memories as part of our identities. ″To rob us of our memory is to destroy part of us, something essential who we are, something arguably as crucial to our identity as our physical person″ (Booth, 1999: 258).

At the end, one final remark regarding Croatian case. What characterizes Croatian relation to the recent history is selective reading of the past in order to preserve national continuity. The question is whether after the war any continuity is possible and morally acceptable. Or to put it differently, whether is it possible, after all these crimes that had been done in ″our″ name, i.e. in the name of ″the nation″, to create civilized community on the basis of a pre-political unity anymore? I claim that in Croatian case, the answer on both questions is, no. What Croatia has to do, can be summarized in few steps. First, it has to make a clear break with the demons of the past, in order to free the space for a new beginning. Second step should be a critical reflection on the nationalism and war, to define what has actually been done in the name of ″the nation″. Third step is the same one, which Dimitrijevic suggests for Serbia: ″it is necessary to give up the ideology of the nation-state and to make a fundamental break in the perception of identities, in order to create conditions that would enable the society to step into an era of democratic normalcy (Dimitrijevic, 1999: 8). And finally, the last step is a building of new collective identities on universal moral principles, rather than on national identity. I claim that Croatia has to implement these steps in order to become part of Europe (in Habermasian sense)   and I hope that I showed in this thesis that it was possible to conceptualize the democratic polity of citizens by using political and moral choices other than national identity.

CONCLUSION

This thesis showed that a traditional (conventional) mode of belonging, centered around pre-political unity, became obsolete. There are two reasons why this happened. On the one hand, the nation-state, which tacitly relies on this pre-political unity, cannot ensure anymore universal human rights and equality before the law to all its citizens. On the other hand, the development of modern liberal democracies has resulted in the general acceptance of universal moral principles. Today, every state, which considers itself to be a liberal democracy, has these principles embodied in its constitution. As such, these principles have become shared values and norms, indispensable for any democratic system. The general acceptance of these principles has opened the space for some alternative ways of organizing political communities, at least in theory.

One alternative is the constitutional-patriotic mode of belonging, the concept introduced by Jurgen Habermas and supported by many theorists. As I showed in my thesis, this concept is both feasible and a desirable way of organizing modern societies. Regarding feasibility, the major criticism says that constitutional patriotism will not be able to ensure both loyalty to a particular polity and the political integration of its citizens, something that a nation-state has been doing very well for more than two centuries. I think that this is an empirical question, on which we will never get the answer if we will not give a chance to constitutional patriotism. Moreover, I claim that the desirability of the concept itself lays exactly in the fact that pre-political modes of belonging produce very strong attachments and feelings, which can easily be transformed into hatred and aggression toward others. As such, it would be better to keep such kind of 'expressions' far away from politics.

From the same reason, it is not surprising that constitutional patriotism emerged in Federal Germany, a state in which nationalism, transformed into Nazism, and developed into the worst form. It is also not surprising that I choose this topic, since I am coming from the region in which three national groups, which have lived together for hundreds of years, killed each other. The Serbo-Croatian War is interesting, since participants resemble each other in many ways. Namely, Serbs and Croats share the same language; they lived in the same country for almost a hundred years[3]; their cultures and traditions, as their territory and history, are highly intertwined; they also believe in the same, Christian God, although they are divided into Orthodox and Catholics, a division which can be explained only by highly educated theologians. Therefore, we can say that as much as two nations resemble each other, a war is more bloody, which confirms the case from Rwanda.

Moreover, as I showed in my last chapter, national feelings are so strong that, even after such crimes were committed in the name of the ″Nation″, there are still many who are prepared to defend the idea of the nation till the 'last drop of blood'. Therefore, if the idea of the nation is able to produce so strong attachments, it deserves to be taken seriously. If we accept for a moment nationalistic discourse which says that ″[n]ations…grow up in a natural manner…as a result of the development of all those material and spiritual forces which in a given area shape the national being of individual nations on the basis of blood, linguistic and cultural kinship″[4], then we can say that it is also in the nature of nations to kill each other, which is exactly what history teaches us. World War II was the best example. It is really hard to find one European state, which did not compromise its national identity during the war,

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[3] Serbs and Croats have lived together in the same country before 1945. From 1918 till 1929 they lived in the State of Serbs, Croats and Slovenes, and from 1929 till 1941 they lived in the Kingdom Of Yugoslavia.
[4] This is a citation from Franjo Tudjman's book *Nationalism in Contemporary Europe,* quoted in Robert Hayden's article *Nationalism in the Formerly Yugoslav Republics,* pp. 663.

especially towards Jews. These states were 'lucky' that Nazi Germany committed such horrible crimes, so they could hide their own under the 'Nazi umbrella'. After the Holocaust, the concept of the nation-state, based on the pre-political unity, cannot be a viable concept, neither for Germany, nor for all (at least) European states. Therefore, I claim that the Holocaust was not just an extermination of Jews, but also a funeral for the idea of the nation and the nation-state. This is my empirical counter-argument to the nationalists' criticism of constitutional patriotism.

In the end, just few words about Croatia, which served me as a motivation and a good empirical case for making things clearer. Croatia, as distinguished from France, accepted to bear responsibility for the quisling regime in Word War II, although that regime was not elected by the people, and although that regime did not have the general public support, and although Croatians deliberated their own country by themselves, without the help of United States soldiers. As I showed in the last chapter, Croatia has started to deal with its compromised past from the last war, and this is the first step toward Habermasian Europe. Furthermore, I claim that, after everything that has been done in the name of the 'mother nation', Croatia has to give up its nation-state concept of organizing community, and to turn towards constitutional patriotism. If Croatia wants to became the state which can ensure universal rights and equality before the law for *all* of its citizens, constitutional patriotism is the only possible and desirable solution. Achievement of this would be finally something Croatians could be proud of, and something from which all other countries could learn, France included.

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