

CHALLENGES OF MULTICULTURALISM

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Challenges of Multiculturalism

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Challenges Of Multiculturalism

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CONTENTS

CHALLENGES OF MULTICULTURALISM

I Introduction	7
II Multiculturalism in the European Political Discourse	9
1. Milan Podunavac: What is Good about Multiculturalism?	11
2. Lidija Basta: Fleiner Can Constitutionalism Become „More Communitarian, Less Individualist“, and Remain Liberal?	21
3. Thomas Fleiner: Territorial Concept of Multiculturalism – Legacy and Challenges of Switzerland	35
4. Miodrag Jovanović: Minority Territorial Autonomy in Eastern Europe – a Closed Chapter?	47
5. Alpar Lošonc: Late capitalism, Europeanization: Dusk of Multiculturalism, or Something Else?	63
6. András Jakab: The Concept of the Nation	
7. Kristin Hennard: The Intractable Relationship Between the Concepts „Integration“ and „Multiculturalism“	107
8. Biljana Đorđević: On the Relation between Constituent Power, Constituent People, and National Minorities in Serbia	125
9. Bojan Žalec: Multiculturalism, Liberalism and Christianity: Some Elucidations	141
III Political Structure of Multiculturalism in Southeastern Europe	161
1. Vojislav Stanovčić: Multiculturalism and Consociation – South East European Perspective	163
2. Drago Rokсандić: Multiculturalism, Interculturalism and Transculturalism in Southeastern Europe: Legacy and Challenges	181
3. Nermina Mujagić, Asim Mujkić: Multiculturalism in the Ideology of Ethno-nationalism	189
4. Davor Marko: Minority Languages in a Public Multicultural Space: „Ghettoized“ vs. „Integrated“ Minority Media	199
5. Ivana Jelić: Minority Rights Protection and Majority-Minority Relations in Montenegro	209
6. Nikola Beljinac: Political Structures of Multiculturalism and Majority-Minority Relations: the Case of Serbia	221
7. Tijana Dokić: Multiculturalism and Collective Memory	231
8. Duško Radosavljević: Political Representation of Minorities and Preservation of Multiethnic Identity of Vojvodina	247

I INTRODUCTION

As recent debate on collective identity and security of national state demonstrates, multiculturalism represents a problem today for both politics and political theory. Multiculturalism is not the central principle of the European state. Given the process of state and nation building, it is not surprising that multiculturalism is regarded as heretical novelty rather than traditional principle. The modern European state presupposes that peace and stability in the state is based on a common, dominant culture. That strategy is strongly backed on the liberal conception of a political nation, arguing that there is equality of law and rule of law. Equality by law is upgraded by the cultural hegemony of the dominant nation. In the sense of culture, the nation state is not neutral, but in terms of law constitution of the political nation it is colorblind and has no sense for otherness.

This volume of papers delivered at the International conference „The Challenges of Multiculturalism: SEE Perspectives in the European Discourse”, held in Belgrade (22-24 March 2012), focuses on the challenges of multiculturalism and politics of recognition from the perspective of political societies today. The volume particularly explores the implications of the recent European debate on multiculturalism and the strategies on how new democracies deal with the imperative of diversity. The first part of volume („Multiculturalism in the European political discourse”), written mostly in terms of normative political theory, tries to provide answers to: „What is good about multiculturalism?” The second part of the volume is written from an empirical and comparative perspective („Political structure of multiculturalism in SEE”), providing the answer to another question: „What have we learned from the European experience and what would be the innovation of regional political legacy?”

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Belgrade, 29 January 2013

Milan Podunavac, Editor

II MULTICULTURALISM IN THE EUROPEAN POLITICAL DISCOURSE

What is Good about Multiculturalism?

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In legendary vision of the United States as „orchestration of mankind”, Horace Kallen produced probably the most beautiful picture of a democratic, pluralist and cultural society. According to his view, just as every instrument „has its appropriate theme and melody in the whole symphony, so in society, each ethnic group may be a natural instrument, its temper and culture may be its theme and melody, and harmony and dissonance and discord of them all make the symphony of civilization”¹. Although, not everyone agrees with such an idealistic vision of multicultural utopia, one may agree that freedom of cultural expression is an essential precondition of democratic political society. Elsewhere, multiculturalism has become an integral part of contemporary politics and even more, as resent contestation both in political theory and public discourse demonstrate, multiculturalism has become the subject of divergent interpretations, very specific political and ideological battleground with far reaching theoretical and political consequences. It is my intention to raise mostly in language of political theory some of them and provide modest normative justification of multiculturalism. In order to sharpen my normative and theoretical position I will make the distinction between the terms „multicultural society” and „multiculturalism”. The first one refers to the fact of cultural diversity, the other, „multiculturalism”, to the normative response to that fact. Only the latter belongs to the field of political theory. In modern societies, particularly liberal and democratic ones, cultural diversity poses a challenge, trying to understand how it might be possible for people of different ways to live together. They have demanded not simply recognition of their claims to just share the social pie, but more importantly, recognition of their distinct identities as members of particular cultural communities within the society. My present argument focuses narrowly on normative question of political and constitutional theory. The central issue is briefly this: Should citizens’ identities as members of cultural, ethnic, or religious groups publicly matter, and if so, how can collective identities make a difference within the frame of a democratic society? Are collective identities and cultural membership politically relevant, and if so, how can they legitimately affect their distribution of rights and the

1 Kallen Horace, *Culture and Democracy in the United States*, N. York, Boni and Liveright, 1924, p. 124.

recognition of legal claims? I would like to remind you that this problem has preoccupied liberalism and the communitarian binary in the political theory in last decade of last century, in a span over ten years. At the level of that binary opposition, opposing sides present themselves as follows: liberalism generally marks „Entitlement” which in turn, stresses the „universal” values of reason, neutrality of public institutions and the ideal of universal citizenship rights, „unitary”, „autonomous” and „abstract” universalism. The communitarian side of binary generally marks group identity and membership, citizens’ virtue and stresses the normative status of political community. Though, that theoretical contestation is almost behind us, I would stress two important fruits of that debate. First one is the importance and centrality of citizenship for the political theory, another one very specific form of transformation of liberal communitarian conceptual apparatus into the terrain state and nation building, and democratic theory. In the first step it is my intention to frame the alternative approaches to politics of citizenship, using as starting point Kymlicka’s „liberal multicultural thesis”² According to this hypothesis, states can adopt multiculturalism policies by fairly recognizing the legitimate interest of minorities in their identity and culture, without eroding liberal and democratic values. Starting from such underlying assumption, I would attempt to challenge what is identified as dominant „culturalist discourse” which in some way shares Kymlicka himself. Seen from such a perspective, „multiculturalism” signifies a social condition in which, together with the politicization of culture, a general culturalization of the political language has taken place. The proclaimed egalitarian and multicultural ideology has mostly legal and political backing. Political theory has developed highly normative account of multiculturalism that idealized a theory of distinctly liberal, republican and democratic form of citizenship in the sense which Nancy Frazer sums up concisely: ‘citizen’ and ‘citizenship’ are powerful words. They speak of respect, of rights, of dignity. We find no pejorative uses. It is weighty monumental, humanist world. Multiculturalism, as extending form of citizenship, can be defined as specific form of „citizenization”. Shortly put, the multicultural discourse makes three major contributions to contemporary political theory. First, it makes a number of key conceptual points about the nature of rights and citizenship. Second, it demonstrates the advantage for normative democratic theory paying attention to the many ways in which constitutional democracies recognize minority cultural rights. Third, it launches effective critique of the idea that state can be culturally neutral. It puts both liberalism and democracy to the test. I would follow this line of arguments.

Passive citizenship and passive tolerance

Within broader construct of liberal polity, there are at least two different conceptions of how a liberal polity deals with the cultural pluralism. The first one is built on politics of indifference. An important strand of liberal polity lends support to this reaction. That reaction is strongly backed on liberal conception of political nation, arguing that ethos of liberal polity is based on three fundamental pillars. Firstly, there is equal-

2 Will Kymlicka, „Multiculturalism in normative theory and in social science”, *Ethnicities*, 2011.

ity before the law and rule of law in the state. Every citizen enjoys equal right, regardless of their ethnic affiliation, and no one is above the law. Secondly, at the same time, the state is not culturally neutral. „Rule of law and equality before the law, which in this respect act as constraints are not harmed by the important fact that the nature of our political community is dictated by the tradition of particular political community and not by the tradition of native ethnic minorities. Culturally, nation state is not neutral, but in terms of law“³ constitution of political nation is colorblind and has no sense for language of difference. The reasonable reaction to the question about in what sense should our distinct cultural identities publicly matter and how to recognize distinct cultural identities is misleading. It suggests that our lack of identification with institutions that serve public purpose and the impersonality of public institutions is the price that we, as citizens, should be willing to pay for living in a society that treats us as equal, regardless of our particular ethnic religious, racial or sexual identities. It is not only the neutrality of sphere, but also the institutions of education and the civil society that protect our freedom and equality of citizens. And therefore public institutions should not strive to recognize our particular identities in treating us as equal and free citizens.⁴ The construct of the political nation, which belongs to dominant stream of liberal nationalism, is supplemented with the principle of passive tolerance which represents the basic respond to cultural diversity, i.e. to cultural diversity within a liberal polity. Following J. Raz, it consists in letting minorities conduct themselves as they wish without being criminalized, as long as they interfere with culture of majority. To a considerable degree this means restrictions in the use of public space and public media by the minority. Two types of arguments are commonly advanced to support toleration: First, principal reason to restrict the use of coercion, and second, type appeal to considerations of the public peace, social harmony and legitimation of the system of government. The principle of toleration is supplemented by non-discrimination rights which are natural extension of the classical liberal conception of constitutional and political rights, but the basic assumption that political action should make no reference to any specific conception of the good life has far reaching consequences that affect both majority's and minority's way of life. „Usually non-discrimination rights are interpreted as to allow each community control over certain institutions. Under a regime of a non-discrimination country's public service, its educational system, and its economic and political arenas are no longer the preserve of majority, but common to all its members as individuals“⁵. Human rights including the rights to cultivate the native language and nurture the particular culture of minorities apply to all, but collectivities cannot enjoy permanent privileges.⁶ As argued by J. Habermas, constitutional democracy dedicates itself to the „equal rights of coexistence of minority culture with majority culture, but they guarantee survival to none“.⁷ Lastly, the concept of political nation

3 Tamas Caspar Miklos according to Janos Kis, „Beyond Nation State“, Social Research, No 1, Spring, 1996.

4 Amy Gutmann, „Introduction“ in *Multiculturalism* (ed E. Gutmann), Princeton, 1994, p. 4.

5 Joseph Raz, „Multiculturalism. Liberal Perspective“, Dissent, Winter, 67, 1994.

6 Janos Kis, „Beyond Nation State“, Social Research, No 1, Spring, 1996.

7 J. Habermas, „Struggles for Recognition in the Democratic Constitutional State“, p. 5, *ibid.*

provides the answer to most problematic and dangerous issue. Namely, under what conditions is the assimilation desirable within the system of a liberal polity and even regarded as „virtue“? Liberal nationalist answer this question with the argument that coerced assimilation is, of course, unacceptable. What the liberals would endorse is a voluntary assimilation. Assimilation is voluntary and conforms to the requirements of liberty when there are existing alternatives to it. The concept of a political nation grants this alternative, since it assures equality before law to every citizen and does not allow the state to interfere in private matters. If under such conditions someone chooses to join the majority, then other members of minority or the majority may deplore that decision, but they must acknowledge it as a free decision of the individual in question. Following that kind of argument there are „no collective rights“. Politics of indifference, backed on the concepts of passive citizenship and passive tolerance, shares a fundamental normative stance of negative liberalism. According to such a dominant view, liberalism has only one overriding aim: to secure the political conditions that are necessary for exercising personal freedoms. Apart from prohibiting interference with the freedoms of others, liberalism does not have any particular positive doctrines about how people are to conduct their lives or what personal choices they are to make. Shortly, just as negative liberty entails freedom from interference and nothing else, so negative liberalism protects the political conditions necessary for the exercise of personal freedom and nothing else.

Positive / political liberalism and democratic citizenship – J. Shklar and J. Rawls

In the first step of my argument I begin with the interpretation of liberal polity which is concerned to secure personal liberty and to limit power for the sake of combating any comprehensive ways of life and conceptions of goods. In the second part of paper I would move to more positive (political) understanding of liberalism, following the argumentation of J. Shklar from *Two Faces of Injustice* and *American Citizenship* and relate that kind of argumentation to Rawls *Political Liberalism*. I would argue that the concern for securing the social standing of all individuals as citizens, in turn, supports the democratic version of political (positive) liberalism and citizenship.

In contrast to the negative liberalism, positive liberalism is committed to securing the basic liberties, those liberties necessary for the integrity of an individual, rather than the liberty per se. But, the concern of positive liberalism does not begin and end with protecting the basic liberty. Positive liberalism not only limits the liberties that liberal polity must protect, it also holds the government responsible for securing conditions that enable people to make effective use of their liberty. Positive liberalism gives priority to basic liberty, not the liberty per se. It also secures the basic opportunity for all members of society, those opportunities that are necessary for living a decent live. In this sense, I would add that the relationship between negative and positive liberalism parallels that between negative and positive liberty. There are different interpretations between positive and negative liberties, but I would put aside the strongest one which is openly hostile to positive liberties. The two concepts of liberty are importantly distinct,

but the positive liberty which includes freedom to be educated or to be protected from different forms of oppression, discrimination and starvation, often adds to negative liberty, because freedom from interference is insufficient for good life. Although Judith Shklar begins by insisting that liberalism is a single value political theory, resting exclusively upon personal freedom, she slightly transforms that basic normative stance into *injustice* extending political mandate of liberalism from protection of personal liberty to securing of opportunities to all individuals to exercise effectively their freedom. In defending such forms and degrees of social inequality, as they expose people to different forms of oppressive practices, she moves beyond the negative liberty to the defense of basic opportunities which are in the sense of positive liberty. Positive liberalism protects certain specific liberties, those that are essential for people to exercise their capacity to conceptualize a good life and a sense of injustice. Analyzing the lack of access to adequate health care for children as failure of government to save people from unnecessary suffering, represents a state which J. Shklar defines as „passive injustice“. Passive injustice consists of „civic failure to stop private and public act of injustice“. Positive liberalism provides a better basis for criticizing such governmental inaction as injustice as it does not provide opportunity to all individuals. I would argue that expansive understanding of injustice tracks Shklar’s arguments in *Injustice* far better than negative definition of negative liberalism in *Liberalism of Fear*. On the other side, as Shklar demonstrates, every credible concept of positive liberalism assumes a context of constitutional democracy. Shklar’s arguments for expanding actions of government in *Injustice* explicitly presuppose a constitutional democracy. Positive liberalism gives us reason to doubt that democracy is solely instrumental to securing other, more essential values, but here she puts two kinds of rights in the same footing. In modern societies, democratic rights are primary public expression of equal standing of individuals who share a common state. Rawls recognizes this when he places political freedom among the basic liberties that are protected by first and prior principle of justice. Among the basic freedoms included by Rawls in priority by liberty are political liberties: the right to vote, run for public office and other distinctively democratic freedoms. In *Lectures on the History of Political Philosophy* is this even clearer. He relates his lecture to the „tradition of democratic constitutionalism“ that has inspired his own theory. It leads us to a very fundamental question: To what extent does the constitutional democracy and liberal polity make room for democratic activity on the part of citizens? The answer to such a fundamental question leads us to more expansive (robust) concept of *citizenship*. In *American Citizenship*, Judith Shklar gives us arguments which comply far better with the liberal construct of citizenship. I would set up that kind of theory as *axiomata media* between liberalism and republicanism. Shklar’s *American Citizenship* demonstrates a very specific family which is in contemporary political theory defined as liberal republicanism.

„The ballot has always been certificate of full membership in society, and its value depends primarily on its capacity to confer a minimum of social dignity.“ The ballot *certifies* full membership. It *confers* social dignity. It is not only contingently related to democratic citizenship. It is regarded as more than just means of promoting a person’s particular interests, and as something other than means of self-realization. It is a sign

of recognition and of representation of social standing. Democratic citizenship, writes Judith Shklar, „has never been just a matter of agency and empowerment, but also of social standing as well. The struggle for citizenship in America has been overwhelmingly a demand for inclusion in the polity, an effort to break down excluding barriers to recognition, rather than an aspiration to civic participation as deeply involving activity“.⁸ That expanding normative stance gives us new light on very fundamental relationship between liberalism/constitutionalism and democracy.

Democratic liberalism and good citizenship

The democratic version of positive liberalism or democratic constitutionalism, in terms of Rawls, recognizes the relationship of liberalism and democracy as intimate, and not merely as a marriage of convenience. Democratic liberalism counts the political freedoms of constitutional democracy as among the liberties that are basic to public representation and recognition and, thereby, expressing the dignity of persons. Equal rights as discussion in *Citizenship suggests*, don't have instrumental role. They publicly affirm the equal civic status of adult members of our society. Unequal voting rights, on the other side, serve the opposite purpose. They are taken as an obstacle to those who are given less political rights. For woman or African American to be considered something less than citizens was in itself an injustice. *Without the rights one is less than a citizen*.

The lack of public representation of an equal citizen is only part of problem that democratic liberalism needs to address. The full value of political rights cannot be realized without their effective exercise. Voting rights signify less if they are continually unused, especially if their disuse by a disadvantaged minority reflects the widely perceived fact that their exercise would not gain the minorities basic opportunities of education, of health care and productive work to which they are entitled. For political rights to realize their full value, they must also have potentially good consequences for law and public policy. Otherwise, political rights are likely perceived as sham and may begin to lose their value as representing and recognizing dignity and social standing of citizens. Following that kind of argument, equal voting, truly competitive elections, public accountability, publicity of laws and public policies, and other procedural and democratic practices are necessary but not sufficient to constitute a defensible form of democratic liberalism. A democracy that is restrained only by democratic procedures would be too unlimited to secure other liberal values. For that reason, we have already introduced these constrains as part of the positive liberalism. In that sense, constitutional principles of basic liberties and basic opportunities rightly constrain democratic decision making. Constrains are ideally self-constrained, informing the political decision making of citizens along with legislator, judges and other public officials. Democratic liberalism, therefore, depends on constitutional restraint that goes beyond the defense of democratic values alone.

The ideal of democratic liberalism is, therefore, more than simply self-government. It is a deliberative and constitutional self-government: it is a popular rule that delibera-

⁸ J. Shklar, in, „How Limited is Liberal Government“, in *Liberalism and Moral Life* (ed. N. Rosenblum), Chicago, 1988, p. 89.

tively constrains itself or is appropriately constrained by respecting the basic liberties and basic opportunities of all individuals.

Democratic liberalism takes politics beyond the protection of negative liberty, but, at the same time, the constitutional limits that democratic liberalism places on self-government should make it clear that democracy does not promise self-realization through the political participation. It leads us to the core of our argument, namely, to the concept of *good citizenship*. Good citizenship is according to the ideal of democratic liberalism „*not call for perfect republican virtue*”. By the lights of democratic liberalism, citizens are free to devote their lives for politics, but no one is required to do so. Democratic liberalism rejects the idea that civic virtue requires a life devoted to politics, which transforms our identity into that of a true citizen. Shklar writes: „There is very little evidence to show that there are many Americans who contemplate such transformative politics with interest, let alone enthusiasm. The paradox of an ideal democratic citizenship that has no appeal to the people is supposed to favor is not without irony”.⁹

Good citizenship by ideal of democratic liberalism also reflects group identity and nationalism in very different forms. That argument is quite clear and individualistic. The source of citizens' standing must not be their ethnic, religious or racial identity, but their integrity and dignity as persons. At this point J. Shklar introduced the rights of the „other” and the construct of ‘stranger’. She argues that although a liberal democracy could not secure equal liberties and opportunities for everyone throughout the world, each liberal democracy must at minimum desist from violating the rights of people who live beyond its borders. Liberal democracy owes more than just negative duties to the people who live beyond their border, but if liberalism respects the basic liberties of all individuals, regardless of their nationality, it can counter the most prevalent form of nationalism. What are then the implications of democratic liberalism? The rights of democratic citizenship expand the limits of liberal government beyond those of negative liberties and non-democratic forms of democratic liberalism. For the rights of democratic citizenship to be meaningful, citizens must be able to govern themselves, but they must do so within constitutional limits which respect all liberal values, not just democratic one. A law or policy that fails to safeguard the basic liberty or secure the basic opportunity is unjustified on liberal grounds, regardless whether it has been democratically authorized. At same time, any restrictions of equal political liberties that are not necessary for safeguarding constitutional rights are also unjustified. Democratic freedoms are among the basic liberties. To sum up shortly, liberalism and democracy are, therefore, tied together not by convenience or by love, but by both mutual respect of individual conceptions of good lives and a polity to share and shape on fair terms.

Constitutional democracy and politics of recognition

The above mentioned gives room (space) for expanding the construction of politics of recognition in public sphere in the way we find it in Habermas *Struggles for Recognition in Democratic Constitutional State*. Once again the central question is how

⁹ Judith Shklar, *American Citizenship*, Oxford, 1994, p. 3.

the democratic principle relates to constitutionalism (liberalism). In short, Habermas argues that equal protection under the law is not enough to constitute democracy. Not only we have to be equal under the law, we must be able to understand ourselves as the other of law. That binary reminds us about importance of private and public liberty and give us new insight to internal relations between rule of law and democracy. „There is no law without the private autonomy of legal persons in general. Consequently, without basic rights that secure the private autonomy of citizens, there is also no medium for legally institutionalizing the condition under which these citizens of the state can make use of their public autonomy. That private and public autonomy mutually presuppose each other in such way that neither human rights nor popular sovereignty can have primacy over its counterpart”¹⁰ It does not override arguments that J. Shklar provides. By using different language Habermas expands the important idea of different conception of goods which citizens pursue. Democratic discussion enables citizens to clarify which tradition they want to perpetuate and preserve, constitutional democracy can thrive on the conflict generated by these discussion and live with their democratic solution as long as citizens are united by mutual respect for other rights. Starting from such conceptions, Habermas backed his conception of democracy in difference to both republican conception of the state as an ethical community and liberal conception of state as the guardian of the market state. In this sense, his discourse theory attributes normative connotation to the democratic process which is stronger than liberal, but weaker than republican. It takes from both side and fits them in new way. In agreement to the republican theory it stresses the importance of the process of political will formation and legitimacy. On the other side, it gives the importance to procedural side and constitutional restraints of such formation (rule of law). In regard to the problem of multiculturalism, Habermas starts from liberal communitarian binary in order to describe the relationship between universalistic core of constitutional principles and particularistic context of each community. Contrary to liberalism, he maintains that the legal order is „ethically impregnated”. Citizens share political culture by particular history. Contrary to communitarianism, he insists that constitutional state carefully keeps both the shared political culture and common civic identity separated from subcultures and collective identity which are, as consequence of equal rights of cultural membership, entitled by equal coexistence within polity. Starting from such an assumption, he sketches and argues that various aspects of liberal and communitarian theory can be combined to support shared civic culture, one which recognizes and accommodates cultural differences, while at same time providing a „neutral” public sphere in which various groups can compete, communicate and carry on their democratic project. His position is still clear on the normative priority of individual rights over collective goals, including „goods” which depend on the maintenance of collective identities. Even if collective rights are compatible with individual design of modern legal order based on subjective rights, it would not make any sense to employ them for survival projects enforced by the state. The reproduction of traditions and cultural forms is an achievement which can legally be enabled, but by no

¹⁰ J. Habermas, *Inclusion of Others*, Polity Press, Cambridge, 1988, p. 130.

means granted (Habermas, 1995). Accordingly, constitutional democracies respect a broad range of cultural identities, but they guarantee survival to none. Such a kind of defense of multicultural society is still, in the normative sense, based on claims what is good for individuals and not on some concepts of group rights. Communitarian/civic republican argument undermines that fundamental binary and provides more expansive defense of multiculturalism.

Republican solution

It is commonplace in political theory that, according to the republican reading, citizenship is constitutive for the identity of political community. On the other side, politics is conceived as reflexive form of substantial ethical life. Accordingly, citizens are integrated into political community like parts of a whole in such a way that they can develop their personal and social identity only within the horizon of shared tradition and recognized political community. This is rooted in collective practice of self-determination. The republican model of citizenship reminds us that constitutionally protected institutions of freedom are worth only so much what a population accustomed to political freedom and settled in the „we” perspective of active self determination makes out of them. The legally institutionalized role of citizen must be embedded in the context of the liberal political culture. This is why republicans insist that citizens must „patriotically identify with their form of life”. Following Charles Taylor and his description of two models of citizens (liberal and republican), republican is defined by „participation in self-rule as an essence of freedom (...) Full participation is an essential component of citizens’ capacity” (Taylor, 1989). Taylor and other republican authors (Viroli, etc.) stress the importance of identification of citizens with shared memory and shared tradition. „The issue is whether our patriotism can survive the marginalization of participatory self-rule? Patriotism is common identification with an historical community founded on certain values.(...) But it must be one whose core values incorporate freedom”¹¹ Maurizio Viroli in his *For Love of Country* developed almost same kind of argument. The critics of G. Kateb are paradigmatic. There are two important normative arguments I would like to add to the republican construct of citizenship and its relationship to multiculturalism. The first one is related to connection between nationalism and republicanism. Following the liberal argumentation, that kind of connection is just contingent.¹² Following the republican argumentation, that kind of relationship is conceptual. According to such a normative conception, constitutional principles can neither take shape in the social practice nor became the driving force for creating order of free and equal persons until they are not situated in the historical context of a nation of citizens in such way that they link up with those citizens’ motives and attitudes. That conception preclude us to explain how common the denominator of basic constitutional principles (something which Habermas defines as constitutional patriotism) can be formed in society which is backed both on

¹¹ Charles Taylor, „The Politics of Recognition”, in, *Multiculturalism* (Ed. A. Gutmann), Princeton, 28.

¹² G. Kateb, „Courage”, *Social Research*, Spring, 2004, Vol. 71, No 1.

diversity and integrity of the different forms of life coexisting and on which is by itself plural and multicultural. That is point where liberal pluralism and republicanism make crossroads. In the first case, nationalism fulfills the „empty space” of ethical life, and in the second, that space is still „ethically overload”. For both conceptions, a just society ought to be built up to create and enforce political structure that allows members of all communities to feel at home in that society. And to make everyone to feel at home, the state must recognize that people are culturally different and have developed legal procedure and policies on the respect for those cultural differences. That normative position has far reaching consequences. First one deals with concept of modern state. The defense of multiculturalism and, therefore, requires the abandoning of the modern consent-based nation state and implicitly commits one to some kind of consensual, rather than non-consensual foundation of citizenship and membership, based on consensus of groups that makes up multicultural state. Following that kind of argument, multiculturalism requires a political society to recognize the equal standing of all stable and viable cultural communities existing in that society. In such construct of political society, the state consists, if it is multicultural, of diverse communities and belongs to none of them. Such concepts, in the broader framework of moral foundation of multicultural society, open the space for an active role of state which can be always problematic, both in recognizing the values of different cultures and in formulating policies; and secondly, with more moral consideration, it opens the relations to those cultural groups which undermine the recognition of other groups and their individual basic liberties. It is particularly problematic when consensus-based state presupposes the changing of beliefs and traditions of groups. Once again, we have a binary kind of the normative answer. First one argues that such change has already constituted a threat to the integrity of such a culture, and the other, which belongs to the consistent moral defense of multiculturalism, would argue that such a change would be a moral improvement. In any case, there is a certain sense in which a consistent defense of multiculturalism involves a partial (and I would argue – justified) attack on some components of several cultural traditions, that is, those which are intolerant towards other individuals and groups, demonstrating intolerance, abusive practice and discriminatory attitudes, and those which deny freedom or equality to some of their members. Social learning, democratic education and deliberative politics can be prime cure for that very fundamental tension of every political society.

Can Constitutionalism Become „More Communitarian, Less Individualist”, and Remain Liberal?¹

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I – Mapping the Issues: Identity Politics and Minority Rights – Has Liberalism an Answer to It?

In the first decade of the new millennium the debates flagged on the role of religion in public sphere and in civil society as a more focused aspect of the identity-politics discourse. Typically, that is the case as regards the identity-politics relation to modernity in general and post-modern constitutionalism in particular. Cultural themes dominate the political debate on equal footing with economic issues, to say the least, and they cannot be divorced. The attribute „post-modern” instead of „multicultural” implies here that liberal constitutionalism has been facing structural, indeed epochal challenges. Arguably, among systemic dilemmas that post-modern constitutionalism has been facing, the multicultural challenge posed to the citizenship, putting in question the particularity of universalism even within a given nation-state, is notorious². The two others regard the relationship between the rule of law and welfare state³, and the emergence of supra-national constitutionalism without „constitutional demos”, including the role of national constitutions in the era of regional integration⁴.

- 1 A revised text of the contribution during the Symposium in honour of Prof. Ulrich K. Preuss, Hertie School of Governance, Berlin, 23rd March 2011 – On this occasion, the author would like to convey her gratitude to Ulrich K. Preuss for years of lively and enriching discussion on the themes of common scholarly interest, and for his always motivating and supportive friendship.
- 2 L.R. Basta Fleiner, **Fédéralisme, multiculturalisme et droit humains: le principal défi pour les politiques post-modernes**, in: M Borghi, P. Meyer-Bisch (eds.), **Société civile et indivisibilité des droits de l’homme**, Editions universitaires Fribourg (CH), 2000, pp. 179 – 189.
- 3 L.R. Basta, „Constitutions and Peace within States: Minorities, Human Rights and the Welfare State”, in Fleiner (Ed.), **Five Decades of Constitutionalism**, IACL 4th World Congress, Institut de Fédéralisme, Helbin & Lichenhahn, 1999, pp. 47-86.
- 4 More: J.H.H. Weiler, **The Constitution of Europe**, Cambridge University Press, 2000. and **Federalism and Constitutionalism. Europe’s Sonderweg**, in: **Federalism in a Changing World** (n. 1), pp. 171-200. See also A. Jyranki (Ed.), **National Constitutions in the Era of Integration**, Kluwer Law International, The Hague – London – Boston, 1999.

The Arab Spring gave a new impetus to this fascinating and polyphonic scholarship debate on the relationship between constitutionalism and post-modern state, law and politics in general⁵, and the relationship between identity politics and modernity, in particular. In his farewell lecture of deep thoughtfulness⁶, Ulrich K. Preuss teases out the argument that there is only one standard of modernity. He is bringing together Eisenstadt's paradigm of „multiple modernities”⁷ and Habermas' narrative on „the like ‘dialectics of tradition and modernity’, which is known from Europe. The shaping power of a self-confident adoption of modernity with the use of one's own resources generates, if it succeeds, a plurality of modernities”⁸. Preuss offers the following conclusion: „We may say that we live in an age of ‘multiple constitutionalism’, and one of them may well be an Islamic-Arab constitutionalism – less individualistic, more communitarian, and arguably more religious”. At the same time, however, he rightly recalls: „Group members' life controlled by the groups” remains „unacceptable for constitutionalism”.⁹

Here I would like to put the latter of the above-cited arguments of Preuss in context with the examples from Belgium and Switzerland. However, in order to claim that, conversely, a „less individualistic, more communitarian and arguably more religious” constitutionalism – let alone the latest developments in the Arab countries having experienced the „Arab spring” – leads to groups' control of group members' life, thus running the risk of selling the equality of citizenship too short.

The Flemish community in Belgium decided to merge the institutions of personal federalism with those of territorial federalism. This policy decision of constitutional relevance not only forbade the French speaking individuals to have French speaking schools on „Flemish territory”; the Flemish community also decided – on behalf of all the Flemish individuals – that they could not have, even if they would wish so, bilingual schools on the Flemish territory. Is this still constitutionalism, embracing dialectically both tradition and modernity? Apparently, not! On the contrary, this is rather a communitarian „correction” of the principle of equal citizenship.

In the same vein, the role of the religion „in public sphere of civil societies” is not only a constitutionalist issue in the Arab world. In the western European societies, such demands have become more articulated and more focused, including the demand that migrants' religious identities should be recognized also in public sphere and public institutions. For instance, a teacher in state schools in Switzerland has claimed the right to wear the scarf as part of her individual freedom¹⁰. The extremely controversial campaign-

5 Vidi inter alia: P. Dobner and M. Loughlin, **The Twilight of Constitutionalism?**, Oxford University Press, Oxford New York 2012; N. Kirsch, **Beyond Constitutionalism**, Oxford, Oxford 2010.

6 U.K. Preuss, **Constitutionalism in a globalized and fragmented world: failed states, deeply divided societies and the political emancipation of the Arab world**, keynote lecture at the Symposium.

7 http://www.havenscenter.org/files/Eisenstadt2000_MultipleModernities.pdf

8 J. Habermas, „Er zeigt auf unseren blinden Fleck. Wie Kenichi Mishima die Welt bewohnbarer macht.” **Frankfurter Allgemeine Zeitung** Nr. 41, 18. Februar 2011, S. 33. On the other side, in his article „Struggles for Recognition in the Democratic Constitutional State” Habermas argues that the principle of recognition is not immanent to liberalism. See: A. GUTMANN (Ed.), **Multiculturalism**, Princeton University Press, Princeton, New Jersey, 1994, pp. 107-148.

9 Supra, note 5.

10 The European Court of Human Rights upheld the decision of the Federal Court of Switzerland (Dahlab v. Switzerland, 2001). The decision banned any religious symbols with „proselytizing effect”, including headscarf, in public institutions as a clear violation of constitutionally proclaimed

ing and acceptance of the Anti-Minaret initiative by the Swiss people and cantons reflects a growing defensive conscience of domestic traditional religious identities and its political abuse by the political right wing that Switzerland has been facing¹¹.

How to balance in such cases religious freedom of two or more different religious communities, and how to balance their group rights with an individual religious freedom, including the right to be an atheist? More notably, is it possible to extend individual religious freedom to a group right of a religious community, and if so: Can we then still talk on constitutionalism that should as a matter of principle reject the right of a group to control and subdue individual rights within this group?

That having been said, the thesis on „multiple modernities“ notoriously calls for a question to be raised and for an answer to be sought, namely:

How to modify constitutionalism without putting in question its inherent premises, which – indeed – could be summed up in the principle of individually based equal citizenship?

The question reveals both my starting hypothesis and my line of argumentation:

Multicultural societies with deep ethnic cleavages based on ethnic, linguistic and, today more and more religious diversities cannot achieve the dialectics of tradition and modernity by means of inherently liberal constitutionalism.

In order to substantiate my major argument – that constitutionalism cannot accommodate multiculturalism and remain liberal – I shall discuss some of pertinent scholarship discourse (II), different human rights constitutional politics (III), and the ramification of the tension between individual and group rights for the Council of Europe monitoring system under the Framework Convention for the Protection of National Minorities – FCNM (IV).

Undoubtedly, this approach builds on the hypothesis that multiculturalism persists as an endemic, anti-liberal challenge to constitutional democracy. Fragmented societies, in order to become democratic, demand the revision of the major liberal democratic principle, namely, that majority as such is the legitimate expression of the sovereign will of the people. This has been done in a two-fold manner: First. It is obvious that even liberal multiculturalism (Kymlicka) questions the intrinsic premise behind the modern nation state, which is that only a society homogenized in (one) identity can lead to political consensus as democratic consensus. Second. The demand of communitarian multiculturalism (Taylor) that ethnic, religious, and cultural group identities should not only publicly matter, but that also groups as bearers of rights should be

secularism in the Canton of Geneva. See also: K. M. Young, „Freedom of Religion and Public Schools: A Comparative Analysis of religious Garb in the Classroom“ in S. Besson and others, **Human Rights at the Center**, n.p., Geneva 2006, 459. In Germany, too, half of 16 states (Länder) have laws that prohibit public school teachers (and other servants in several of these states) from wearing the headscarf at work. The laws were all introduced in the last five years, following a 2003 Constitutional Court ruling that restrictions on religious dress are only permissible if explicitly laid down in law. The other eight German states have no such restrictions. More in: „Germany: the Teacher Head Scarf Case“ **International Journal of Constitutional Law** (thematic issues), Oxford University Press, (2005) 3(1)

11 „Une affiche anti-minarets jugée raciste“ in *Swissinfo*. N.p., 6 Oct. 2009. Web. 22 Oct. 2009. http://www.swissinfo.ch/_la_une/_affiche_anti_minarets_jugee_raciste.html?siteSect=105&sid=11314753&cKey=1254899878000&ty=nd.

promoted, makes an epochal departure from the underlying constitutive principle of modern politics, namely, that of neutrality of public sphere against ethnic, cultural and religious group identities.

Interestingly enough, the constitutionalization of (a procedure for) secession, including those resulting out of ethnic conflicts, can nonetheless be plausibly argued with constitutionalist liberal arguments. The truth of the matter is, however, where already provided for (Ethiopia), its main objective is to discourage session. This may well be the main reason why constitutionalizing secession, as claimed by M. Jovanovic, has the potential of being beneficial for at least three values of liberal-democratic constitutionalism: the Rule-of-Law Value, the Extension-of-Democratic Rights Value, and the Peace-among-Communities¹². Nonetheless, although obvious, these benefits do not suffice that a constitutionalization of secession brings substantialized benefits also to group identities of minority communities in a new state. Such benefits must go beyond procedure, and – to a great extent also against – liberal concept of individual tolerance, as I will try to show more in depth down in the text, when discussing constitutional politics of human rights.

II – The Scholarship Narrative

The last decade of the 20th century opened a new chapter on constitutionalism. The well known, indeed a-historical and impressively simplifying argument of Fukuyama on the „end of history” and Western liberal democracy as „the final form of human government”¹³ was also replicated in the new discourse on constitutionalism. Today, Fukuyama himself believes no more that constitutional democracy is „a finished concept” and a standard of constitutional good, providing also answers for major problems of post-modern polity. Meanwhile, it became obvious that the factors still challenging constitutionalism are not only those produced by the (non-)practice of constitutionalism and definitional challenges, including the debate on post-modern constitutionalism.

Paradoxically enough, it is again Fukuyama who points to notoriously systemic problems that liberal constitutionalism has been going through today, without having any answer for them. In one of his recent article on „Identity, Immigration, and Liberal Democracy”, F. Fukuyama argues that a more serious longer-term challenge other than terrorism liberal democracies are facing today concerns the integration of migrant minorities – particularly those from Moslem countries – as citizens of liberal democracies. „Europe has become and will continue to be a critical breeding ground and battlefield in the struggle between radical Islamism and liberal democracy”, since „radical Islamism itself is a manifestation of modern identity politics, a by-product of the modernization process itself.” He concludes, among others that liberalism cannot ultimately be based on group rights, because not all groups uphold liberal values.

12 M. Jovanovic, **Constitutionalizing Secession in Federalized States**, Eleven International Publishing, Utrecht, 2007, pp. 25-37.

13 F. Fukuyama, **The End of History?** in P. O'Meara, H.D. Mehlinger, M. Krain, **Globalisation and the Challenges of a New Century**, Indiana University Press, Bloomington and Indianapolis, 2000, pp. 161-180.

[...]Cultures that do not accept these basic premises do not deserve equal protection in a modern liberal democracy. Members of immigrant communities and their offspring deserve to be treated equally *as individuals*, not as members of cultural communities. Thus, there is no reason for a Muslim girl to be treated differently under the law from a Christian or Jewish one, whatever the feelings of her relatives¹⁴.

Here, Fukuyama raises indeed a critical question: How viable is the linking of collective identity with liberally understood democracy and human rights? His answer, at least in this article, is straightforward: Democracy and human rights policy based on liberal values are at odds with political accommodation of collective identity and group-differentiated rights. The underlying argument is obvious, although implicit: Democratic integration of collective identity is not possible in liberal terms.

II.1. Critical Universalism

Already in mid 90ties, an alternative, „critical universalism” that revisits constitutionalism (Y. Higuchi, M. Rosenfeld) was put forward as a pertinent counterpoint to the ahistorical understanding of constitutional democracy. The concept advocates pursuing of „something universal without losing the critical standpoint of always questioning the universality of that” (Higuchi, 2001)¹⁵. M. Rosenfeld’s narrative on the need of reinforcement of constitutionalism in the Western World (Rosenfeld, 1995) goes *mutatis mutandis* in the same direction. Among other things, he rightly warns of the inadequacy of procedurals and the extension of constitutional protection exclusively to negative rights, mapping strategic objectives underlying the reinforcement. In conceptual terms, constitutionalism should embrace fundamental substantive values, downplay the dichotomy between public and private and that between the individual and the group, and lend legitimacy to positive rights. Such objectives can be reached and constitutionalism enforced through the adoption of fundamental values as guiding principles¹⁶. The known „third renaissance of natural law” after the World War II, especially in judicial review, seems to have been voiced here. One could in consequence argue that peace and human dignity are such indeed „universalisable” values. On the other side, the variety in understanding of what is human dignity makes a stepping-stone for the two fundamentally different understandings of multiculturalism as a value to be promoted, including how it should be promoted. In one of his latest books, M. Rosenfeld further substantiates critical universalism as an approach to constitutionalism. Discussing constitutional models as different types of constitutionalism, he displays their varieties in bringing together „extra-constitutional identity” (set of values and principles establishing common identity (i.e., nation) and „common

¹⁴ Fukuyama, „Identity, Immigration and democracy”, *Journal of Democracy*, Vol. 17, No. 2, 2006, http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/journal_of_democracy/v017/17.2fukuyama.html

¹⁵ Y. Higuchi, *Le Constitutionalisme entre l’occident et le Japon*, Institute de Fédéralisme – Helbing&Lichtenhanh, Bâle Genève Munich, 2001, p. 60

¹⁶ Cf. M. Rosenfeld, *Reinforcement of Constitutionalism in the Western States*, in: Th. Fleiner (Ed.), *The Constitutional Development on the Eve of the Third Millenium*, IACL Third World Congress, Institut du Fédéralisme, Fribourg (CH), 1955, p.135 – 170.

constitutional identity” as a „commitment to commonly shared constitutional value” (i.e. constitutional consensus). Nonetheless, the pointing out, for instance, of Spain’s multi-ethnic constitution „as clearly distinguishable from that of a unitary mono-ethnic state” is an argument about different models of constitutionalism, which need not necessarily imply plurality of modern constitutionalism. Moreover, the conception of the identity of the constitutional subject being a precondition for constitutional democracy rather reflects an obvious inherent relationship in constitutionalism between the nation-concept and constitutional patriotism¹⁷.

The same can be said about Bellamy’s critical revisiting of political constitutionalism, as opposed to classical, legal constitutionalism. A somewhat „bold reading” of such political constitutionalism, which in fact builds on the British tradition of the supremacy of parliament as different from the *constitutio libertatis* of the American Founding Fathers, could claim that, in this case, a traditional sociological concept of constitution as a „system of relations among societal forces”¹⁸ has been embraced together with the medieval concept of mixed government, according to which different branches of power represent different strata of society, as power actors.¹⁹ Nonetheless, it would be wrong to draw thus a conclusion that such a narrative on political constitutionalism is turned towards the past. On the contrary, political constitutionalism, among others, calls for a critical reevaluation of the relationship between democratic constitutionalism and multiculturalism. The latter, as already said, challenges modern constitutionalism as such, the key question being: Can constitutionalism of a multicultural society remain both democratic and liberal, if the collective equality and collective freedom are put on equal footing with individual equality and individual freedom. Clearly, here we have in mind undeniably fundamental differences between liberal and communitarian interpretations of multiculturalism.

II.2. Liberal multiculturalism

W. Kymlicka’s paradigm on multicultural citizenship includes group-differentiated rights as part of notoriously liberal multiculturalism, falling short, however, of liberal coherence. It shows instead that full and effective equality of minorities cannot be attained by liberal means. Instead, constitutive principles and designs must go beyond liberal understanding of equality as absolute equality before the law that ends with equality of opportunities for all.

Kymlicka warns that liberal citizenship means more than tolerance, namely „the demand for legal recognition of the rights of ethnic, racial, religious, or cultural groups in virtually all modern liberal democracies”. At the same time, however, he goes on arguing that „(j)ustice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership, and certain group differentiated rights. A lib-

17 M. Rosenfeld, **The Identity of the Constitutional Subject. Selfhood, Citizenship, Culture, and Community**, Routledge, Abingdon 2010, pp. 147-209.

18 F. Lasal, **O pojmu ustava**, Beograd, 1907.

19 R. Bellamy, **Inaugural Lecture: Political Constitutionalism**, School of Public Policy Working Papers Series, No 26, UCL, London, 2007. <http://www.ucl.ac.uk/spp/publications/downloads/SPP-WP-26-Inaugural-Lecture.pdf>

eral theory of minority rights, therefore, must explain how minority rights coexist with human rights and how minority rights are limited by principles of individual liberty, democracy, and social justice”²⁰. Until today, liberal theory of multiculturalism, including that of Kymlicka, has not given any immanent explanations as to how minority rights can be effectively guaranteed if limited by individual liberty and majoritarian democracy, which are the fundamentals of the equal citizenship principle.

It is worth posing here the following question: If the conception of multicultural citizenship based on group-differentiated rights wants to remain liberal, how far can it go in accommodating cultural diversities?

Kymlicka highlights the differences between liberal and illiberal nation building, claiming that these are a matter of „degree”, in order to argue that, „what distinguishes liberal nation-building from illiberal nationalism is not the absence of any concern with language, culture, and national identity, but rather the content, scope, and inclusiveness of this national culture, and the modes of incorporation into it.”²¹ Here, it is worth reminding of what Will Kymlicka sees as major fears about citizenship in the face of minority rights, namely: loss of equal-citizenship status, fragmentation or weakening of citizenship identities, erosion of civic virtues and participation, as well as weakening of social cohesion and political unity. He also shows where to look for the reasons²². Kymlicka’s fears, in fact, convincingly show that the inclusiveness of liberal state relies indeed on a „thin” conception of nationhood. In other words, a normative basis of liberal theory of justice is too „tight” to include minorities as a state building element without at the same time putting into question the promotion of responsible democratic citizenship under liberal terms. Paradoxically enough, it is Kymlicka again who provides a critical argument that a liberal case for multiculturalism has no solution for a full democratic integration of minorities in a given society. He writes: „A fundamental challenge facing liberal theorists, therefore, is to identify the sources of unity in a democratic multinational state”²³. One may wonder whether it is not obvious enough, and Kymlicka might have been aware of that, in order to be democratic, i.e., legitimate, the sources of identity he is writing about must transcend the principle underlying his theory of group-differentiated minority rights, leading him to conclude that minority rights should be not only protected but also limited by principles of individual liberty, democracy, and social justice. In other words, the major contradiction in Kymlicka’s theory of multicultural citizenship is that his concept of group-differentiated rights does not go far enough to take into account that any sustainable nation building within segmented multicultural societies has to redefine the very fundamentals of liberal nationhood, in order to provide a proper framework for building trust and tolerance. Whereas liberal tolerance is that of individual freedom, formal equality and justice as equal distribution of rights, community-based cleavages can be accommodated only if tolerance as part of responsible citizenship goes much further, beyond-coexistence and respect, and takes the shape of a positive tolerance,

20 W. Kymlicka, **Multicultural Citizenship**, Oxford University Press, 1995, pp. 4-9.

21 W. Kymlicka, „Western Political Theory and Ethnic Relations in Eastern Europe”, in: W. Kymlicka, M. Opalski (eds.), **Can Liberal Pluralism be Exported**, Oxford 2001, p.59.

22 W. Kymlicka, W. Norman (eds), **Citizenship in Diverse Societies**, Oxford University Press, Oxford 2000, 30-41.

23 *Supra*, note 19, p. 192.

which would not only accept and protect but also promote main cultural diversities as intrinsic value. This is a critically important difference between liberal equality substantiated by positive measures in the form of affirmative action, and the second level of anti-discrimination, implying full and effective equality as the obligation to respect, protect and promote cultural identity. The latter claims additional rights for vulnerable groups in order that they become equal in rights, and not only have equal rights. This is how Ch. Taylor put it, when mapping out a case for communitarian multiculturalism. As a matter for fact, Taylor and other critics of liberal theory – among others, A. MacIntyre and M. Walzer – first and foremost questioned its universalist interpretation by J. Rawls, never declaring themselves as part of the communitarian movement. Although they „did not offer a grand communitarian theory as a systemic alternative to liberalism”²⁴, their major arguments nonetheless did point at systemic limits of liberalism faced with the pre-conditions for a democratic and rights-oriented identity politics.

Based upon his normative argument in favor of „politics of recognition” (1992), Taylor’s communitarian critique of liberal multiculturalism rightly targets its procedural commitment to equal representation of all individuals as „inhospitable to differences”²⁵. Authentically liberal, i.e., libertarian democracy cannot remain faithful to own underlying principles and accept the politics of group differences on a state-building level. It is, therefore, systemically incapable to accommodate multiculturalism claims on the values of diversities and collective rights as such. In order to effectively accommodate diverse cultural identities – be it ethnic, religious, or linguistic – a new constitutional politics of human rights is needed, which will replace the traditional liberal protection of identical liberties and opportunities for all citizens with a scheme of additional, special rights for minority cultural groups. On the other side, the liberal democratic defense of diversity is based upon a universalistic rather than a particularistic perspective. This makes understandable why one of the teleological reinterpretations of the modern constitution, which tries to revalue and re-legitimize the political symbolism of human rights, principally questions the invocation of (merely) *Liberté – Egalité – Fraternité*, but makes the case instead for an alternative constitutional paradigm of *Securité – Diversité – Solidarité*²⁶.

For me, these are convincing arguments to claim that an authentically liberal nation-state has principally failed to accommodate cultural diversities and has proven a fallacy for national minorities, be it constituted upon ethnic or civic understanding of nationhood as citizenship²⁷. Modern concepts of nation were precisely *the* attempt to answer the question on the legitimate bearer of the constitution-making power. At the same time, they all, with different principles in mind, tried to cover-up one and the same thing: that

24 „Communitarianism” in **Stanford Encyclopedia of Philosophy**, rev. 2012, p. 1, online publication: <http://plato.stanford.edu/entries/communitarianism/>

25 Cf. Ch. Taylor, „The Politics of Recognition” in: A. GUTMANN (Ed.), **Multiculturalism**, Princeton University Press, Princeton, New Jersey, 1994, pp. 25-73.

26 E. Denninger, **Vielfalt, Sicherheit und Solidarität: Ein neues Paradigma für Verfassungsgebung und Menschenrechtsentwicklung**, in: (derselb.) **Menschenrechte und Grundgesetz**, Beltz, Athenäum, Weinheim, 1994, pp. 13 - 72.

27 More on the differences between the two main concepts of nation, in: R. BRUBAKER, **Citizenship and Nationhood in France and Germany**, Harvard University Press, Cambridge, London 1992. Cf. also, L. GREENFELD, **Nationalism. Five Roads to Modernity**, Harvard University Press, Cambridge, Mass., 1992.

citizenship, as the major founding principle of the modern state, symbolizes the *universality* of a democratic political community within a *particular* nation-state. This explains, inter alia, how the same states that flagged universalism of human rights forcefully demonstrated – not merely the dark sides of Enlightenment and Western civilization, but that their emancipating potentials were principally not aimed for colonized societies.

The problem arose once the given concept of nation became no more inclusive and „universal“ but rather exclusive within one and the same nation-state, more particularly when (ethno)-*nation* and *demos* did not coincide anymore, which is the case of multi-cultural societies with deep cleavages. In this sense, not only autocratic regimes, but also constitutional democracies have already been facing for quite some time the test of their viability, such as Canada, India, and Belgium. (Huntington’s paradigm of „cultural and territorial overlapping“ as a cause of dissolution and ethnic wars in Yugoslavia maybe captures the external form of dissolution process through ethnic wars but does not suffice to understand the causes of dissolution of not only Yugoslavia, but all three ex-communist federations. Besides, the territory was here one of essential elements of categorical nature of the conflict, precisely because ethnic and territorial lines did not overlap.

Minority rights as not only individual, but also collective rights have cast a new light on citizenship as the principle to symbolize universality within a particular nation-state. Minorities do not fit in the constitutive principles of modern polity as through-individually-based-majority-defined democratic polity. Minorities as groups – principally – have nothing to say on fundamental constitutional issues. In consequence, minorities cannot participate in the citizenship they have not consented to. They have been sending the message that universality of the modern polity does not work for them, since, for them, it is an „exclusive“ universality.²⁸

III – Different Models of Constitutional Politics of Human Rights: Examples of Principal Varieties

Fundamentally different approach to human rights and understanding of equality in constitutional politics of human rights vary among states from libertarian understanding of equality as equality of opportunity and formal equality of law to a substantiated equality that builds on positive measures instead of on equal rights. This additionally testifies a systemic tension between individual and group rights’ approach under constitutionalist liberal terms.

The diversity reflected in the disagreements on the values to compose a state human rights policy is, first of all, historically and culturally driven. For instance, even two constitutional democracies belonging to the same legal tradition of common law – United States and India – paradigmatically demonstrate a far-reaching influence of divergent conceptual settings on policy choices in human rights protection²⁹. In the

28 Cf. „Fédéralisme, multiculturalisme et droits de l’homme: le principal défi pour la politique post-moderne“, in: Marco BORGHI, Patrice MEYER-BISCH (eds.), **Société civile et indivisibilité des droits de l’homme**, Editions universitaires Fribourg, Suisse, 2000, pp. 179-192

29 G. Johnson, „Human Rights in Divergent Conceptual Settings: How Do Ideas Influence Policy Choices?“ in: D.L. Cingranelli (Ed.), **Human Rights: Theory and Measurement (89)**, 1988, pp. 41-59.

United States, individualism and equality of opportunity back an absolute nature of civil and political rights. In India, the logic of constitutional design draws heavily on negotiating the values of citizenship, which affirms positive group difference and differential rights of minorities in a plural and unequal society. Constitutional and statutory provisions for preferential discrimination in favor of disadvantaged groups are sharply at odds with liberal principles of equality. „An arena of contestation between two constitutional principles of equality and difference” was, thus, opened up, calling for judicial intervention in the interpretation of the constitutional principles³⁰.

It also indicative that an important part of the academic debate between liberalism and communitarianism has been initiated by the challenges that multiculturalism and identity politics brought to one liberal democracy, such as Canada. The problems of constitutional accommodation of Quebec as a distinct society faced the constitutional politics of this country with a need to revisit its foundational values, including the legitimacy of a group status as a basis for rights claim. In its decision on the right of Quebec to secession from 1998, the Supreme Court of Canada made clear that not only individual, but also communal liberties are part and parcel of legitimate diversity accommodation. The respect for minority rights as one of „four foundational constitutional principles” is functioning „in symbiosis” with democracy, which is not simply about the process of government, but embodies instead also substantive goals, such as „respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.” No doubt, the value attributed to cultural diversity goes far beyond anti-discrimination as a part of universal equality before the law and calls also for rights accommodation of group identity as such. Since 2006, Quebec as a territory has the status of a nation. The consequence is far-reaching: only French-speaking Canadians are nation in this federal unit of the Canadian federation! Hence, the politics of multiculturalism applied for Canada as a whole, but interculturalism for Quebec. As Ch. Taylor put it: “Multiculturalism is an excellent policy, but it has to be applied in each society in a way that fits. And that’s what fits us (in English Canada).”³¹

How and why is the inter-culturalism in Quebec different? One of the two presidents of the Consultative Commission evaluating the policies of rational accommodation of cultural differences in Quebec, Charles Taylor, explains: “The reason why people use the prefix ‘inter-’ as against ‘multi-’ is that they want to accentuate the exchanges between different cultural groups ... (using) the French language, within which we all exchange”, Taylor replied. „It’s a set of policy goals, essential in this society that has no relevance in Toronto or Vancouver. And that’s why it’s a different policy.” His co-chairman Gérard Bouchard adds: “A minority culture like Quebec is naturally more concerned with integration and more fearful of fragmentation. So, in interculturalism you have this focus on interaction and integration.”³²

A significantly different, but equally straightforward reasoning on identity politics gives the US Supreme Court in one of its milestone decisions, Regents of Univ. of Cali-

30 K. Suresh, „Citizenship and Differential Rights of Minority Protection in India”, *Indian Journal of Federal Studies* (2), Centre for Federal Studies, New Delhi 2004, pp. 134-161

31 <http://www.canada.com/montrealgazette/news/story.html?id=0e04c8a5-7b7c-4c42-9e...> 27.10.2010

32 Ibidem, supra.

fornia v. Bakke from 1978. The Court imposed limitations on affirmative action in the sense that various forms of in-born identity are to be considered as relevant only in terms of individual liberties. „Racial and ethnic distinction of any sort are *inherently suspect* and thus call for the most exacting judicial examination”. In a later decision Grutter. v. Bollinger from 2003, the Court builds on this ruling and says that, *in order to remain constitutional, affirmative action as a means of providing greater opportunities for minorities cannot imply differential treatment on grounds of ascription*. What it requires instead, is an „individualized consideration”. This is how both US Court’s decisions bluntly demonstrated that *equal* citizenship enjoys an absolute status and cannot be compromised for the sake of identity politics.

In the same vein „European equality duty” provided for in the EU directives as a liberal affirmative action³³ is in the UK interpreted as „the equality of opportunities”, which means the equality of outcome instead of equality of opportunities, only as long as the situation of a vulnerable group does not reach the level of protection enjoyed by the majority members of the society. Differently put, positive discrimination that permanently guarantees additional rights for vulnerable groups is not permitted in the UK, since „equality under law of the UK is to be understood as formal equality before the law, and not as providing additional rights for minorities”³⁴.

It is by no accident that the Council of Europe has become the first international body to argue in favor of multicultural citizenship as a precondition to inclusive and participatory democracy. This oldest European organization promoting democracy and the rule of law rightly understood that to date the European traditional liberal democratic *acquis* has faced a major challenge:

How to constitute a state, which would be inclusive for all major communities of its society? In this sense, the Parliamentary Assembly Resolution 1735 (2006) on the concept of nation made indeed a far-reaching statement on citizenship and nationhood within a multilateral setting: „The general trend of the nation state’s evolution is towards its transformation, depending on the case, from a purely ethnic or ethnocentric state into a civic state and from a purely civic state into a multicultural state.”

In other words, effective protection of the rights of persons belonging to national minorities has become *the* standard for democratic governance and sine qua non for social cohesion within the nation-states. Without this condition fulfilled by the nation-states, Europe would not be able to design a sustainable strategic response to multiple identities of societies and individuals within its border. Mind that European Union has no common minority policy and will probably not have one in the near future.³⁵ Fukuyama put it quite to the point: The problem with European identity is that „it comes from the head and not from the heart”³⁶.

33 Cf. J. E. Goldschmidt, „Reasonable accommodation in EU equality law in a broader perspective”, **ERA Forum (2007) 8:39–48**, DOI [10.1007/s_202700700067](https://doi.org/10.1007/s_202700700067), online: http://igitur-archive.library.uu.nl/law/2007-1222-200822/goldschmidt_07_reasonableaccommodation.pdf

34 More in: **ACFC Opinion on the UK of the Advisory Committee for the Framework Convention for the Protection of National Minorities** – ACFC/OP/III/2011/006, para. 59, p. 14.

35 The number of EU Member States that ratified the 12th Protocol as of 30th September 2012 is more than telling: among eighteen ratifications, only six are from the EU Member States (Cyprus, Finland, Luxembourg, Netherlands, Romania and Spain).

36 *Supra*, note 13.

IV – Ramifications for the Supervisory Jurisprudence on the Implementation of the Framework Convention for the Protection of National Minorities (FCNM)

The FCNM marks a milestone in setting higher the international standards for minority protection. It is the first multilateral treaty, which in a form of hard law obliges the Parties to treat rights of persons belonging to minorities as fundamental rights. Minority rights, thus, become an integral part of the international protection of human rights and do not fall within the reserved domain of states. Furthermore, by declaring full and effective equality a key standard for minority protection (Art. 4.2), the Convention introduces a second level of anti-discrimination standards that will in many cases imply additional rights for the persons belonging to minorities. Last but not least, Art. 15 of the Convention that lays down the obligations of the State Parties in effectuating participation rights of persons belonging to national minorities, goes much further than Art 27 of the UN Covenant on Civil and Political Rights. Moreover, Article 4(2) lays down the participation in social, economic, cultural and political life as a measure for full and effective equality. This is how the FCNM for the first time recognizes a political dimension in minority aspirations while „avoiding dangerous and radical „aspirations of self-determination.³⁷

IV.1. Full and effective equality means positive measures and the obligation of a result

From the very beginning of the monitoring process³⁸, the ACFC understood the principles of full and effective equality and of second level of protection against discrimination (Art. 4) as cornerstones for the foundational nature and inclusive scope of participation under the FCNM. The ACFC particularly built upon para.2 of the Article 4 of the Framework Convention, which explicitly demands from State Parties to engage in „non-exclusion policy” prohibiting discrimination. It also called on State Parties to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social and political and cultural life „full and effective equality between persons belonging to a national minority and those belonging to the majority”. Clearly, compared in sequence to respect and protection, promotion is the third highest level of accommodation.

In a nutshell: The ACFC obviously applied the indirect-discrimination-concept³⁹, taking fully into account that indirect discrimination points to a collective dimension of minority rights as such. More notably, the jurisprudence of the Advisory Committee reflects the ambivalence in the nature of minority rights as only individual rights. The first formal recognition by international hard-law human-rights document of a politi-

37 Cf. also W. Kymlicka, **Cultural Rights and Minority Rights: A European Experiment**, (manuscript)

38 “In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in the framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall be recognised experts in the field of the protection of national minorities” (Art.26, para.1). The composition of the ACFC and its procedure were established in the Rules of Procedure (1998) and further decisions of the Committee of Ministers relevant to the monitoring procedure.

39 Indirect discrimination is generally understood as a rule, policy, practice, or procedure that is the same for everyone and thus may look fair but whose side effect disadvantages members of a specified group relative to others.

cal dimension as legitimate in minority demands made the tension transparent in defining the bearer of minority rights. Paradoxically enough, the FCNM builds on liberal foundations of tolerance, which is eminently that of individual freedom. However, individual freedom has been simultaneously flagged and challenged – it is the participation rights, which should mediate between an individual and a group. Notwithstanding the Explanatory Report, according to which the Convention „does not imply the recognition of collective rights“, the ambivalence between the individual and the collective in monitoring the minority rights protection under the FCNM remains. The „founding fathers“ of the FCNM did try, but did not succeed in putting this ambivalence aside, since no consensus within the international setting seemed feasible in the near future. As a consequence, the Explanatory Report draws a clear line, almost in a manner of antinomy, between individual and collective rights.

Nonetheless, the case of also collective nature of minority rights is indeed notorious. Needless to say, it is the constitutionalist principle of equal citizenship that has been challenged here, too. First, as already said, the FCNM has for the first time recognized a political dimension in minority demands (arts. 2 and 21). Secondly, the FCNM principles for accommodating political demands of minorities convincingly testify a linkage between minority rights on one side, and state-design and its decision-making processes, on the other. Thirdly, another important indicator for a structural tension between a collective exercise of some of minority rights and the definition of their individual bearers can be seen in the fact that the problem of „representativeness“ of consultation mechanisms still waits to be sufficiently underscored in the ACFC opinions. Namely, „representativeness“ is the question about representing authentic interests of a given minority group, not merely of the „persons belonging to“ this minority group.

Put it differently, in order to have at least some of the minority rights effectively guaranteed, is it not also the group who must be the bearer of the rights? Once such a question can be put and argued as pertinent, a critical step beyond the fundamental constitutionalist principle of equal citizenship has been irreversibly taken.

Territorial Concept of Multiculturalism – Legacy and Challenges of Switzerland

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I. Introduction

The aim of this paper is to make evident to which extent the multiculturalism in Switzerland is structured territorially and that for this reason Switzerland cannot practically serve as any kind of model for the solution of the multiculturalism of the Balkan area. I intend to also show how much the territorial diversity has influenced the Swiss multicultural concept, holding together a most fragmented territory. With this explanation, I intend to demonstrate that different solutions have to be found for a region, which is historically a mix of different religions, ethnicities and languages, which in consequence are living dispersed now, but in the same territory and region. One main lesson learned based on the Swiss experience is that any solution, which is imposed by foreign powers will ultimately cause just new conflicts. Only solutions developed from ideas rooted in history, founding on experiences within the region and cultures on the ground will finally be acceptable for peoples.

II. Importance of Autonomy

Autonomy is certainly one of the most important means for a country to hold traditional cultural, religious and ethnic diversities together. Countries with traditional diversities differ from immigration countries. People immigrating into another country and hoping for a better individual future and happiness are usually prepared to accept to integrate into their new homeland if they can live autonomous and foster their own cultural background. By living separated, peoples can live together and integrate into a culture which is building on diversities.

1. Different Concepts of Autonomy

a. Immigration Countries

Peoples immigrating from Europe and Asia to South- and North-America, as well as to Australia and New Zealand have minor problems to live within multicultural countries. They have immigrated into the other country and thus mentally been pre-

pared to give up a part of their culture and tradition. One should nevertheless not forget that people who have first migrated to those countries have often been in atrocious conflicts with the native population. After those conflicts, those migrants dominated and still dominate native indigenous peoples.

It is not astonishing that the indigenous peoples in these countries have achieved a majority decision within the United Nations, obliging countries to grant all indigenous peoples important autonomy. It may however not astonish observers that many countries hosting indigenous peoples rejected this resolution.

b. Personal and Territorial Autonomy

This paper, however, does not address the problem of multiculturalism with regard to immigration countries, but rather with regard to countries confronted with ethnic diversities traditionally.

With regard to diversities of countries fragmented by autochthonous populations, the autonomy of the cultural communities is probably one of the main means to hold diversities together. Already in the old conflict of the Aaland Islands, concerning the Swedish minorities, the League of Nations could solve the conflict by transferring a far-reaching autonomy to the Aaland Islands. Also with regard to Hong Kong, autonomy was the solution. After the World War II, similar autonomy was granted in Italy to the Alto Adige.

Looking into the actual conflicts in Europe, namely of the former Yugoslavia with conflicts still continuing in Bosnia and Kosovo, it seems that in earlier times the European countries did find better solutions for their conflicts, than the international community nowadays.

With regard to autonomy, one has to distinguish between two different and some times even contradictory concepts of autonomy. Autonomy can be personal. In this case, it is not the territory, which gets autonomy but the communities or nationalities. In countries with dispersed communities such autonomy is probably more appropriate than territorial autonomy. Different ethnic communities can, due to such autonomy, live with other communities in the same town and foster their culture of the community. Cultural communities can maintain their own cultural life and educate their children in their own language.

The Lebanon is a typical example of a country with personal autonomy. As this country was in earlier times under the rule of the Ottoman Empire, so it does not astonish that it has developed, although with difficult internal wars, a concept of personal autonomy. To a certain extent, Belgium has also introduced, besides a rigid territorial concept of autonomy, some sort of personal autonomy mainly in the so-called communes „de facilitées”. In Brussels, for example, children of French speaking parents go to French speaking schools and children of Flemish speaking parents into Flemish schools. Thus, they automatically become part of the communities of Wallonia or Flanders. Traditionally, also Switzerland has provided personal autonomy to religious communities which are publicly recognized and which enjoy certain autonomy. As this autonomy is personal, the same Canton can provide this autonomy to several religious communities. Nevertheless, one has to admit that those concepts of personal

autonomy are linked to the borderline cantons and in some cantons they are even decentralized to the lowest territorial level, namely the municipalities.

The other concept of autonomy is territorial. Autonomy is territorial when the central state does not transfer public powers to communities but to territories. This, however, is only possible if the different communities are not dispersed over the territory and mixed with other communities. Territorial autonomy with the aim to accommodate and hold together different communities, preconditions that the different decentralized territories are somehow ethnically uniform.

Historically, the autonomy in Switzerland has been principally territorial. It has developed around cantons and in many cantons around the territory of municipalities. Thus, when one looks into autonomy in Switzerland, one has not only to analyze the autonomy of cantons, but in many cases also of municipalities.

Why are personal and territorial autonomies sometimes contradictory? A country can only transfer issues of culture and education to lower level authorities, security and order are issues, which principally need to be solved by a police controlling the territory. Communities can only indirectly provide some security but only within their own authority. A public authority can only settle conflicting relations between persons of different communities or even of united ethnicities, if based on territory. If the country transfers the autonomy rather to territories than to communities, territories' favorable communities will attract these communities. Ethnical cleansing may often be the negative result of territorial autonomy.

Therefore, it is almost not possible to combine both concepts of decentralization. Belgium is an example of the problems raised by this combination. Decentralization to communities is rather favorable for religious communities. With regard to language, such autonomy is much more difficult to be granted. Multilingual cantons of Switzerland could decentralize their language only by granting autonomy to municipalities.

Nevertheless, I would contradict the famous verdict of the constitutional court of Germany in the Maastricht decision, which seems to depart from the idea that democracy is only possible if on an entire territory all people speak and understand the same language. Swiss direct democracy contradicts this verdict. On the other hand, one has to admit that the financial challenges of multilingual democracies are important.

c. History of Personal Autonomy versus History of Territorial Autonomy

The big and unsolved problem for the Balkan states is that under the rules of the Ottoman Empire communities had some autonomy based on the millet system. This system granted autonomy to communities but not to territories. For this reason during centuries, different communities dispersed and mixed with others over different territories.

Influenced by the territorial autonomy in the peace of Augsburg and of Westphalia, Western European countries developed mainly autonomy through territories, rather than through communities. The autonomy granted to princedoms was mainly religious giving each ruler the power to decide on the religion of its subjects. Influenced by this old tradition, Europe teaches actually the Balkan countries in multiculturalism based on their tradition of territorial autonomy, not grasping that in this area different

history should enable the states to find other solutions to structure their multicultural-ity. The result of such influence is disastrous, because it ends either in new secession movements or in unsolvable minority conflicts.

II. The Swiss Legacy of Multiculturality

1. Territorial decentralization

a. Religion

Territorial decentralization has long tradition in Switzerland. Already in 1531, after religious conflicts, Swiss cantons agreed that in future the majority of the cantons and interestingly, in mixed cantons even the majority of municipalities should decide on the religion of the canton, respectively, of the municipality. Consequently, municipalities with uniform religious tradition attracted people of other municipalities to change their domicile.

As a result, even today, with the secularized state and guarantee of freedom of religion, many municipalities are still almost religiously uniform with regard to the overwhelming majority of their inhabitants. Interesting, however, is the fact that autonomy has already been in these times decentralized from the sovereign cantons to municipalities. This was very different to the solution of the Augsburg Settlement and later the peace of Westphalia, which granted only princedoms the power and the right to decide on the religion of their subjects.

Nevertheless, in Switzerland, most municipalities decided on the religion of the majority, except in cases where majority and minority were almost equal. In these cases, the churches had to be open for both confessions. Moreover, in the 16th century, the religious conflicts resulted in dissolution of the canton of Appenzell which split between the protestant Rhodes exterior and the catholic Rhodes interior. This was in fact ethnical cleansing which had happened in Switzerland already in the 16th century.

Whoever visits Switzerland today would be astonished to find that the municipalities of many cantons determine religious holidays. Thus, in the Canton of Fribourg protestant villages have their carnival at a different date than the catholic municipalities. In mainly protestant villages, one can see a cock on the peak of the church tower, while in villages with mainly catholic inhabitants a cross decorates the peak of the tower.

b. Crosscutting of Language and Religion

For Switzerland, it should be also kept in mind that although diversities split by territory, there is often a crosscutting of diversities. For example, in the Canton of Fribourg the majority of the population is French speaking, and the minority speaks natively German. With regard to religion, the majority of the peoples are catholic and the minority is protestant. Some of those protestant minorities are French-speaking living in traditional French speaking areas, while some Protestants are German-speaking living in traditional protestant villages in the German speaking area. Important is nevertheless, that the diversities are territorially determined by the municipalities. Only

in the agglomeration of the town of Fribourg French and German speaking peoples live in the same municipality and belong either to the Protestant or Catholic community.

The phenomena of religious diversity combined with language diversity are rather different from the two other multicultural European states Spain and Belgium. Spain and Belgium are of mainly Catholic tradition, but split by different languages.

Many people think that one of the main reasons why Switzerland could hold its diversities together are linked to the fact that diversities in Switzerland are crosscutting. This is correct, but one should not oversee that with regard to municipalities traditional communities have rather developed as uniform territories. This has changed in the 19th and 20th century in towns, which have now rather mixed communities. This is particularly due to the fact of freedom of residence, which enabled the Swiss to change residence according to their economic possibilities.

c. Secularization of the Swiss Confederation

The main national tool to solve religious conflicts in Switzerland has been the secularization of the state. Only at the national level, the Constitution guarantees freedom of religion. This fundamental right requires the Confederation and the cantons to protect individual freedom of religion. It guarantees neutrality of public authorities at all levels, from the municipalities, to the cantons and the Confederation. Although the cantons could privilege some religious communities, they have been obliged to remain neutral versus all other religions. In particular, cantons have granted neutrality in education. However, not all cantons have followed this principle and have privileged for a long time the traditional confession of the majority in the canton. Even in public schools, they did not observe strictly the order of neutrality. There are cantons, which strictly imply the federal obligation for neutral education of children, whereas others (mainly of Catholic tradition) have tried with all possible means to avoid this precept.

2. Federalism as Compromise

a. The Constitution of 1848, amendments and revisions

In 1847, the winners of the preceding civil war made principally the Swiss Constitution. However, they were prepared to find essential compromises with the losers of this war and tried to accommodate the believers of the ancient regime by providing a far-reaching autonomy to the cantons.

The founding fathers constructed bottom up federalism from the territories of the municipalities to the territory of the canton and finally to the Confederation. Before 1848, the sovereign cantons concluded different alliances during several centuries. In 1848, they agreed within the committee of ministers to establish a Constitution, which in case of approval by the majority of the cantons and of the people, should become valid for the entire country. Unlike the United States Constitution, which was only valid for states accepting it, by decision of the ministers the new Swiss Constitution should become valid even for cantons in which it did not get the majority of the people.

Finally, the majority of the people and of the cantons adopted this Constitution. It became the first Constitution to hold Switzerland together as a newly created federation. The sovereign, that is the majority of the people and the cantons, has amended the Con-

stitution more than 200 times since. Moreover, in addition to those limited amendments, there were also two total revisions in 1874 and in 1999. The democratic campaigns for and against the adoption of the amendments and the total revision of the Constitution contributed largely to the nation building of the Swiss people (not nation).

b. The Bearer of Switzerland

Originally, the Article 1 of the Constitutions of 1848 and 1874 declared that „Together, the people of the 22 sovereign cantons of Switzerland united by the present alliance, to wit: Zurich, Berne, Lucerne....Valais, Neuchatel, Geneva and Jura, form the Swiss Confederation.” The new Constitution of 1999 does not any more refer to the people of the cantons, but it is rather bluntly mentioned in the preamble that the bearer of Switzerland are now the Swiss people and the cantons. This is certainly an example of nation building through autonomy and democratic constitution making.

c. Balance of Shared Rule and Self-Rule

Besides autonomy, the other institutional component to hold diversities together is federalism, which grants the autonomous federal units participation on the decision making process at the federal level. With regard to Switzerland, only this right to participate mainly in the second chamber of the Federal Assembly and through the majority of the Cantons required for a constitutional amendment could hold the country together. In this context, it should be noted, that since 1891 the Constitution provides the possibility for the people to require by popular initiative specific amendments of the Constitution. This developed tool of direct democracy and the innumerable constitutional amendments helped to build up a nation of the Swiss people and to turn the former civil war enemies into peaceful adversary partners in politics.

Decisive for the success of federalism is the constitutional balance of shared-rule and self-rule. To maintain this balance, the constitution of a federal country needs continuous changes and amendments. While in the US and in the European Union the Supreme Court or the European Court of Justice interprets the Constitution or the treaty, the sovereign to change the Constitution in Switzerland are the people and the cantons.

Territorial federalism and direct democracy were the main instruments to hold the country together. Federalism builds up on the sovereignty of the territorial unity of the cantons. Although the cantons differ in population and size, the Constitution respects each canton as equal. For example, the Canton of Uri counts only some 35 thousand inhabitants while Zurich counts more than one million. With regard to the territory, the Canton of Grison with 7105 km² is almost 40 bigger in size than the smallest full Canton of Zug with only 239 km².¹ (There are also 6 half cantons which are not included). The Canton of Zug is even smaller than Davos, which is the biggest municipality in the Canton of Grison with 284 km².² Nevertheless, for any constitutional amendment the voice of the Canton of Uri, respectively of the Canton of Zug has the same value as the Canton

1 See the list of size of the Swiss Cantons: http://geographie.ch/index.php/Liste_der_Schweizer_Kantone visited November 1 2012

2 See with regard to Davos: <http://www.news.ch/Davos+wird+groesste+Gemeinde+der+Schweiz/318169/detail.htm> visited November 1 2012

of Zurich, respectively the Canton of Grison. Moreover, all four cantons have two seats in the Council of State (Swiss second chamber). The balance between equality of the cantons and equality of one person, one vote, one value has been decisive to hold the country together. Federalism requires Switzerland to recognize the sovereignty of each canton over its territory. Each canton has its own police and is responsible for the security. In case of great internal troubles other cantons are obliged to support the Canton having difficulties to uphold the order with their own police forces.

d. No Change of Cantonal Borderlines

It is an interesting fact that from 1848 to 1999 the Constitution prohibited the cantons to make political alliances. Cantons did not have the right to change their territories. The federal Constitution considered any agreement of cantons providing territorial changes as a prohibited political agreement. The reason for that lies in the beginning of the new federal state, when some cantonal territories were contested and the Confederation decided for the sake of peace to let territories of the cantons untouched. This, again, shows how important the territorial arrangement of Switzerland was.

e. Main Responsibilities of the Cantons

Each canton has not only a territory to rule upon, it has also its own Constitution. Cantons design their own governmental system with legislature, executive and judiciary. Although the governmental system of the cantons seems somehow similar, there are still important varieties in particular with regard to direct democracy and the internal decentralization of the cantons. Multicultural cantons, mountain and rural cantons devolve usually more powers to municipalities than cantons which are uniform with regard to language and religion.

f. Challenge of Language

At the federal level, there are four national languages and three (almost four) official languages. The cantons decide which language is official on their territory. There is no language called Swiss as Serb, Albanian, Hungarian, German or French. In Spain, Castilian is the official language of Spain, but Catalonia has the power to decide on other language as official for Catalonia. However, Spaniards living in Catalonia need to know Catalan as well as Castilian because the official language of Spain is only Castilian. In Switzerland, no language has such a privilege. This may also be the reason why in Switzerland language communities, which are smaller than the language spoken by the German-speaking majority, do not consider to belong to a minority. As all languages have equal position, no community needs to consider belonging to a minority.

The cantons determine the language for communication with the authorities and with the judiciary. The language of education in primary schools is often decided at the municipal level.

However, here again with regard to languages, there are still important language borderlines, which do not match with cantonal borderlines. In general, those borderlines are not contested. Historical excavations have found out that the borderline between the ancient Celt communities and the Alemannic communities are still the same as the ac-

tual language border between the French and German speaking persons in the Canton of Fribourg. There are some towns and villages, which have a mixed language tradition. Fribourg and Bienne are the two French-German language towns. Bivio is a rural municipality in the Canton of Grison with German, Italian and Romansh.

For the French speaking community living in the town of Bienne, the canton of Berne has provided a special possibility for the language communities to defend their interest in the field of education. This is the only known example of a Swiss legislation taking into account rather the language community than the territory.

g. The Bearer of Switzerland

Unlike Constitutions of the 19th century, which were guided by the concept of one nation holding and bearing the state and its constitution, Switzerland based its legitimacy not on one nation but on the idea of a composed nation.

Thus, Switzerland accepted in its first Constitution to be a composed nation of people of the cantons. Here again, it is the territory which unites the people of the cantons and not the communities. Based on this concept, Switzerland could develop its own nation building up to the third Constitution of 1999 in which according to the preamble the holder of Switzerland is the Swiss people and the Cantons. There was no controversy on this new notion of the Swiss people. This shows how substantial nation building has been possible from the people of the cantons to the Swiss people.

h. No Foreign Intervention

Asking the reasons why this has been possible, one has also to refer to foreign and in particular to the neighboring countries. The fact that neither France, nor Germany, nor Italy or Austria have intervened into the nation making process within Switzerland has helped Switzerland to develop its own design of a nation without any foreign intervention. The fact that foreign neighbors respected the nation making process within Switzerland was a decisive factor for the Swiss nation building; a condition, which in the Balkans has not been respected.

i. Cantonal decentralization

When looking into the importance of the territory in Switzerland, it should be borne in mind that also cantons have territorially substantively decentralized. Mainly multicultural cantons have provided for municipalities to decide on the official language of the municipality including the language of education. Thus, in the Canton of Grison which has three languages such as Italian, Romansh and German, municipalities decide on the language of education. They can even decide with only 40% of inhabitants speaking Romansh that this language becomes the language of education for the children.

Compared to the Ohrid Agreement in Macedonia, where boundaries of municipalities had to be reshaped according to a census, such provision would never have been accepted within the cantons for several reasons: The borderlines of municipalities are historical. In case, only municipalities decide in most cantons on their mergers or on their boundaries. From a Swiss point of view, the sentence that there are no territorial solutions to ethnic issues and at the same time they decide that boundaries should be shaped according to the census is interesting. Thus, the agreement is in contradiction to itself.

III. Secession of the Canton of Jura as Interesting Case

1. Vienna Congress

An example of this view of self-determination may be the way the Swiss have managed the secession development of the new Canton of Jura. Originally, the Jura region was part of the diocese of Basel. In 1815, the Jura region belonged to the former part of the diocese of Basel. The big powers in the Vienna Congress transferred this region to the Canton of Bern, in order to compensate this canton for its territorial losses during the reign of Napoleon.

For a long time, this area – called new part of the Canton Bern – was under unrest, because mainly the French speaking people did not feel integrated into the Canton of Bern. After more than hundred and fifty years of troubles with this area, the canton decided in its Constitution to give this region the right of self-determination.

2. Cantonal Responsibility

a. Amendment of the Constitution of Bern

Cantons had to determine within their constitutional sovereignty on any demand for secession of a region, which wanted to create a new canton. Accordingly, the Canton of Bern amended its Constitution after more than hundred years of internal troubles. The amendment³ transferred the right of self-determination to this region. In 1974, the region voted in favor for secession and for the foundation of a new canton. In similar secession cases, the international community considered such majority decision as final. For the Canton of Bern, this vote was not final.

b. Holders of the Right of Self-Determination

Holders of this right of self-determination were not only the entire region, but also the districts and some of the municipalities. Thus, first a small majority of the entire region decided to separate from the Canton of Bern and to found the new Canton of Jura within Switzerland. Later on, the districts got the possibility to abstain from this new canton and finally, even the municipalities at the borders of this new canton could decide to which of their neighboring cantons they wanted to belong. This procedure enabled to determine the geographic area and the borderlines of the great bulk of the people willing to secede from the Canton of Bern.

c. Not Language but Religion Determines Borders

Interestingly, those borders were not identical with the language borders, but rather with the borders of the traditional religion. The French-speaking Protestants wanted to remain within the Canton of Bern, while the French speaking Catholics wanted to create a new canton. Within these new borders, by self-determination of the region, the districts and the municipalities, this people could create their new Canton of Jura.

³ See the text and the proposal of the FC to guarantee this constitutional amendment <http://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?ID=10044810> Visited November 1 2012

d. Model for the International Community

Unfortunately, the international community ignored this way of conflict management by the Canton of Bern. In particular, in the conflict of Yugoslavia some 20 years later, including the actual conflict of Kosovo, the concept of a democratic procedure taking into account not only majorities of a region, but also of districts and municipalities, might have appeased the horrible conflicts, which did break out in the nineties.

e. Never Ending Conflict

It is normally expected of a conflict management to end with a democratic secessionist decision, either for or against secession. However, this is rarely the case, as also observed with regard to this Swiss secession case of the Canton of Jura. Since the peaceful secession, different compromises and conflict management tools have been necessary on both sides. In February 2012, both cantonal governments proposed their intention to enable the people of the Canton of Jura and of the remaining French speaking districts of the Canton of Bern to allow the people from both sides to vote simultaneously whether they would want to create a new canton. If one or both sides rejects, the municipalities of the Canton of Bern can decide to remain in the Canton of Bern or to join the Canton of Jura.

The procedure invented by the Canton of Bern to allow districts and even municipalities to vote on issues of secession or joining another canton has finally inspired the Constitution makers of the new Swiss Constitution to provide for a new Article 53. This Article gives cantonal areas the possibility to decide democratically whether they want create a new canton or to join another canton. Such decision need in the end the constitutional approval at the federal level by the sovereign to adopt the new canton. The FA has the power to approve possible boundary adjustments.

IV. Concluding Questions

1. Territorial Solutions

Is the Western concept with regard to territorial solutions of diversity justified?

Under the Western influence, ethnic cleansing developed in Bosnia and Herzegovina as well as it may also develop in Kosovo. Solutions in this area cannot be found with our Western ideas developed out of territorial solutions of ethnic diversities. The peoples of the region have to find solutions for dispersed and mixed societies with diverse ethnical background. The only lessons we can learn from the Swiss experience is that solutions need to be found by the peoples themselves and for this reason those states should develop basic democratic structures which enable the population to indicate their concerns and which forces the politicians to take those concerns serious. Switzerland is probably one of the very few countries where people could develop according to their proper ideas and where people were always able to adapt policies according to the basic concerns of minorities.

2. Territories fading away

The second question we have to ask with regard to our globalized societies. In fact, we are facing a world organized by networks. What does territory mean in such a world where borderlines are fading away? Namely, it is true that the modern technological inventions have changed our lives and goals. It is also true that due to those developments the importance of territories and borders is fading away. Nevertheless, countries still insist on their territories. Schengen has become an icon for discriminating people inside or outside the Schengen Area. Citizenships are linked to territory. Not only immigration countries, which grant citizenship when one has been born within the borders of the country, consider the territory as important for granting citizenship. Also in countries which grant citizenship on the concept of loyalty, residence and territorial integration is indispensable because only people resident in the country have a chance to acquire the citizenship. Even though the importance of territory is fading away, basic needs of human beings are still linked to territory.

However, the fact that the importance of territory is fading away is an additional reason, why mainly people in the Balkan should find solutions for their multicultural societies. If territory becomes less important, the people concerned with the fate of living in contested territories should then have the possibility to find their own solutions for the future development.

Minority Territorial Autonomy in Eastern Europe – a Closed Chapter?

MIODRAG JOVANOVIĆ¹

1. Introduction

One of the most influential justificatory theories of minority rights, that of Will Kymlicka, argues that, unlike ‘immigrant groups’, ‘national minorities’ should enjoy ‘self-government’ rights, which „typically take the form of devolving political power to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland or territory.”² This may eventually take the form of federal unit or autonomous region/province. When subsequently testing the applicability of his ‘liberal theory of minority rights’ in various non-Western settings, Kymlicka states that „there is reason to believe that in ECE, as in the rest of the world, loyalty is best secured by encouraging, not suppressing, minority identities, and by enabling forms of minority self-government.”³ Thus, despite being aware of specific socio-historical impediments for promoting minority territorial autonomy (hereinafter, MTA) in this part of Europe (the legacy of „pseudo-federalism” and the intricate relation between minorities and their kin-states⁴), Kymlicka nonetheless believes that all the elements of his theory apply in this part of Europe as well. That is, even though he admits that „the prospects for federalism in ECE are very slim, at least in the foreseeable future”, he says that he does not see what would be „the alternative mechanisms (...) for accommodating minority nationalism.”⁵

Kymlicka notices that the only cases in Eastern Europe, outside Russia, where minority territorial autonomy has been accepted are actually cases „where the national minority

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2 Will Kymlicka, *Multicultural Citizenship – A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), p. 30.

3 Will Kymlicka, ‘Western Political Theory and Ethnic Relations in Eastern Europe’, in Will Kymlicka and Magda Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001), p. 64.

4 In a more recent paper, Kymlicka argues that „two key factors enabling the adoption of TA in the West did not exist in post-communist countries: geopolitical security and human rights protections.” Will Kymlicka, ‘Minority Rights in Political Philosophy and International Law’, in Samantha Besson and John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), p. 385.

5 Kymlicka, ‘Western Political Theory and Ethnic Relations in Eastern Europe’, p. 67

simply grabbed political power and established *de facto* autonomy without the consent of the central government. In these situations, the only alternative to recognizing *de facto* autonomy was military intervention and potential civil war.”⁶ At the beginning of 1990s, Estonia rejected a referendum supporting autonomy for Russian-dominated Narva; Kazakhstan rejected autonomy for ethnic Russians in the north; Ukraine rejected a referendum supporting autonomy for ethnic Romanian areas; Lithuania rejected requests for autonomy by ethnic Poles; Macedonia rejected a referendum for autonomy for Albanian-dominated Western Macedonia in 1992 (and only after the outbreak of violence acceded to the Ohrid Framework Agreement in 2001), both Romania and Slovakia rejected and continue to reject any idea of a territorial autonomous regime for the Hungarian minority. Moreover, a number of states used violent means in dealing with territorial claims (some of which were in fact pro-independence claims) – Azerbaijan with respect to Nagorno-Karabakh; Georgia with respect to Abkhazia and Ossetia; Russia with respect to Chechnya; Moldova with respect to Transnistria; and Serbia with respect to Kosovo and Metohija. As is well known, not all of these attempts were successful in preserving the territorial integrity of the given country. All this has led Kymlicka to conclude, in his 2007 monograph, that „there are no cases where post-communist states in control of their territory decided, of their own accord, or debate the merits of adopting some scheme of federal or quasi-federal autonomy for their national minorities, as part of a larger process of democratization.”⁷

From this perspective, it seems not only that the future that Kymlicka talked about has not yet come, but that the whole concept of MTA appears to be a closed chapter of the East European democratic transition. In the remainder of the paper, I will try to provide an explanation for this state of affairs, by casting some new light on Kymlicka’s own arguments and, then, by adding few of my own. I will, first, demonstrate how ideologically thwarted experiments with federal arrangements of the socialist countries have negatively affected the prospects for MTA in the period of post-communist transition. Second, I will try to elucidate the kin-state problem, by reinterpreting it in terms of „a pathological absence of continuity in territorial status” (I. Bibo), which might be considered a permanent feature of the East European politics. Third, I will add as an important distracting factor the opinions of the Badinter Commission in the case of the former Yugoslavia, which has advanced the principle that in all cases of secession from or dissolution of federal states, internal federal borders shall automatically become international frontiers. Finally, the recent advisory opinion on Kosovo of the International Court of Justice (ICJ) might represent an additional nail in the coffin of the idea of federalism and MTA, insofar as it seems to have opened some new venues for territorially organized minorities to unilaterally break away from its host state. In the last part of the paper, I will confront Kymlicka’s claim that there is no viable alternative to MTA, by arguing that the ultimate value for justifying self-governing rights – that of preservation and flourishing of a minority group – can be equally well accomplished by the realization of the minority’s right to full and effective participation in the political life of the country, which is commonly recognized by international scholars as the substance of the internal form of self-determination.

6 *Ibid.*, p. 62.

7 Will Kymlicka, *Multicultural Odysseys – Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007), p. 180.

2. Pseudo-Feudalism of the Socialist Era

As already pointed out, Kymlicka takes „the legacy of the pseudo-federalisms of the Communist regimes in Czechoslovakia, Yugoslavia, and the Soviet Union” as one of the obstacles for the introduction of MTA regimes in post-communist Europe. In his opinion, „[t]he constitution of these federations contained a division of powers between the central and local levels of government, but in reality all power was centralized in the hands of the Communist Party which imposed its will on the subunits.”⁸ While the aforementioned description is by and large accurate, it is here necessary to stress a more profound ideological background for introducing federal formula in these countries in the first place. The key Soviet ideologists of the socialist movement saw both federal formula and national self-determination merely as strategic tools for the accomplishment of higher ideals. Lenin’s position on this subject matter is exemplified in the following passage:

Having transformed capitalism into socialism, the proletariat will create an *opportunity* for the total elimination of national oppression; this opportunity will become a *reality* ‘only’ – ‘only!’ – after a total democratization in all spheres, including the establishment of state borders according to the ‘sympathies’ of the population, and including complete freedom of secession. This, in turn, will lead *in practice* to a total abolition of all national distrust, to an accelerated drawing together and merger of nations which will result in the *withering away* of the state.⁹

While being in favor of offering any national group in Russia the right to secede, „he was dead against any federation.” At the same time, Lenin was prepared to grant autonomy for every province whether it asks for it or not. However, one should be aware of his rather peculiar understanding of that concept. Lenin did not take autonomy to imply the right of a body to certain competences, which is legally secured against infringements from above or outside. To him „autonomy was nothing more than a requisite, or an incident, of good administration. Good administration requires that a chief should not interfere in a petty way with his subordinates in the work which he himself has laid out for him.”¹⁰

Despite the fact that historical routes to the adoption of federalism in three socialist federations were somewhat different, and the subsequent constitutional design displayed specificities of each case¹¹, there was still one common denominator of all the three communist federal experiments. Namely, they were all organized around the idea of managing, if not even solving once for all, the intricate inter-ethnic relations among their populations.¹²

8 Kymlicka, ‘Western Political Theory and Ethnic Relations in Eastern Europe’, p. 64.

9 Quoted from Yuri Slezkine, ‘The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism’ (1994) 53 *Slavic Review* 2, 419.

10 Samuel Dobrin, ‘Soviet Federalism and the Principle of Double Subordination’ (1944) 30 *Transactions of the Grotius Society*, 275.

11 For instance, Czechoslovakia was one of the rare examples of the so-called bi-communal federations. Cf. Ivo D. Duchacek, ‘Dyadic Federations and Confederations’ (1988) 18 *Publius – The Journal of Federalism* 2, 5.

12 „In any particular federation, those factors prevail which correspond to the political motives for the federation’s origin ... In socialist countries ... the ethnic factor represents the principle and decisive motive for the origin of federations.” Viktor Knapp, ‘Socialist Federation – A Legal Means to the Solution of the Nationality Problem: A Comparative Study’ (1984) 82 *Michigan Law Review* 5/6 (Festschrift in Honor of Eric Stein), 1213-1214.

For instance, in the formulation of the Great Soviet Encyclopedia, the socialist federation „differs radically from the bourgeois federation”, insofar as it is „the state form for *solving* (emphasis mine) the national question”, and as such „is based on the national-territorial principle.”¹³ In that respect, each of three socialist federations represented the clear case of an *ethno-federal state*, „a federal state in which at least one constituent territorial governance unit is intentionally associated with a specific ethnic category.”¹⁴

Hence, although socialist pseudo-federalism was not embedded in a genuine democratic federal process, the inherited federal structure decisively contributed to the ethnification of politics and, eventually, to the dissolution of states. When ruling communist parties lost their legitimizing function, because their ideology became obsolete, the best one could hope for was that communist ethno-federal structures will not turn into mere shells with no content whatsoever, but that they will be democratized quickly. However, with the collapse of the centre, it became clear that federal units had been already fueled with the content of ethno-national politics, due to the structural advantages provided by the decade’s long federal state architectonics.¹⁵ Moreover, the centre was no longer able to channel disputes over territory or sovereignty, at least, not through democratic process and in accordance with the principles of liberal constitutionalism. One should not forget that both USSR and SFRY tried, in the ‘terminal phase’ of their existence, to determine a constitutional procedure for secession of their constituent units.¹⁶ However, these legislative attempts were superseded by illegal activities and military solutions on the ground. Simply enough, aforementioned documents were, first, drafted too late, and, second, they were embedded in a decades-long system, that of the total party control and not of the rule of law. Federal formula was, thus, in the post-communist Eastern Europe perceived as something to be avoided, because of both generating the so-called ‘stateness’ problem¹⁷ and obstructing other simultaneous objectives of democratic transition.¹⁸

13 *Bol'shaia Sovietskaia Entsiklopedia*, Moscow, 1977, p. 255, Quoted from Philip G. Roeder, ‘Soviet Federalism and Ethnic Mobilization’ (1991) 43 *World Politics* 2, 203.

14 Henry E. Hale, ‘Divided We Stand – Institutional Sources of Ethnofederal State Survival and Collapse’ (2004) 56 *World Politics* 2, 167.

15 Cf. Robert H. Dorff, ‘Federalism in Eastern Europe: Part of Solution or Part of the Problem?’ (1994) 24 *Publius: The Journal of Federalism* 2, 99-114.

16 In USSR, it was *The Law Concerning the Procedure of Secession of a Soviet Republic from the Union of Soviet Socialist Republics*, of April 3, 1990. In SFRY, that was the draft proposal, *Concept for the Future Organization of the State Proposed by a Working Group Comprising Representatives of All the Republics as a Basis for Further Talks of the Republican Presidents and the State Presidency*. More on both documents in, Miodrag Jovanovic, *Constitutionalizing Secession in Federalized States – A Procedural Approach* (Utrecht: Eleven, 2007), pp. 119-126.

17 Linz and Stepan define this phenomenon in the following way: „In some parts of the world, conflicts about the authority and domain of the *polis* and the identities and loyalties of the *demos* are so intense that no state exists. No state, no democracy.” Juan J. Linz and Alfred Stepan, ‘Toward Consolidated Democracies’ (1996) 7 *Journal of Democracy* 2, 14.

18 Peculiarities of the East European fourth wave of transition concern the imperative of economic transformation, high level of ethnification of politics, as well as the necessity of the simultaneous pursuance of all the objectives. In such a situation, post-communist countries with inherited federal structures – Russia, Bosnia and Herzegovina and, for a while, Serbia and Montenegro – were the ones with the lowest democratic transition record. See more in, Miodrag Jovanović, *Transition and Federalism: East European Record*, in Miodrag Jovanović, Slobodan Samardžić, *Federalism*

3. Territorial Discontinuity and the Kin-State Phenomenon

Kymlicka argues that the „kin-state phenomenon is an important aspect of ethnic conflict in Eastern Europe that is typically absent in Western democracies.” One can certainly find analogous cases in the West, such as, for instance, Austria and the German-speaking minority in South Tyrol; France and the French-speaking Walloons in Belgium, Netherlands and the Flemish community, or Sweden and the Swedish community of the Åland Islands. However, in none of them „do we talk about the problem of kin-states or the threat of irredentism. For some reason, apart from Northern Ireland and Cyprus, the presence of kin-states has not caused the same sort of problem in the West.” The reason for this lies in the fact that, unlike in the West, in Eastern Europe „the problem is not just that the minority has a kin-state, but rather the historical fact that the minority collaborated with this kin-state in oppressing the majority group.” Thus, Hungarian minority in Slovakia and Romania is perceived through the historical lenses of centuries long oppression of Habsburg monarchy; Russians in Baltic states are viewed as a reminder of the former Soviet rule, and Muslim Albanians in Serbia and Macedonia, as well as Muslim Turks in Bulgaria are seen as manifestation of the centuries long occupation under the Ottoman Empire.¹⁹

It is important to further clarify the significance of the kin-state phenomenon in Eastern Europe by putting it in a proper historical framework. Namely, this is a feature of a more general process of nation and state building in this part of Europe and can be perceived primarily as an outcome of the disintegration of three great empires – Austro-Hungarian, Tsarist Russian and Ottoman Empire. From the period of disintegration of these great empires, throughout the World War II, until the latest Balkan conflicts, this part of Europe witnessed the phenomenon which the Hungarian philosopher Istvan Bibo calls „a pathological absence of continuity in territorial status”. He is of the opinion that, as a consequence, the most characteristic feature of the unstable East European political spirituality is „an existential fear for one’s community”.²⁰ While in majority of the aforementioned cases from Western Europe the territories of modern states historically preceded nations, so that these terms – state and nation – coincide and can be used interchangeably, in Eastern Europe „[t]hose countries that have acquired statehood late revel in it even though the state they have has come too late to fit the nation for which it was intended.”²¹ Soon after their formation, new Eastern European states got involved in endless quarrels over the lines of territorial demarcation. Therefore, almost every case of the present interethnic hatred and intolerance in this part of Europe is historically rooted, or can be expressed, in terms of some territorial

and Decentralisation in Eastern Europe: Between Transition and Secession (Zürich, Berlin: LIT, Institute of Federalis, 2007), pp. 1-169.

19 Kymlicka, ‘Western Political Theory and Ethnic Relations in Eastern Europe’, p. 66. For an interesting survey of the status of Hungarian minority in Transylvania (Romania), and Turkish in Bulgaria, see, e.g., Mary M. McIntosh et. al., ‘Minority Rights and Majority Rule: Ethnic Tolerance in Romania and Bulgaria’ (1995) 73 *Social Forces* 3, 939-968.

20 Istvan Bibo, ‘The Distress of East European Small Nations’, in Karoly Nagy (ed.), *Democracy, Revolution, Self-Determination: Selected Writings of Istvan Bibo*, (Boulder: Social Science Monographs, 1991), pp. 38-39.

21 Andre Liebich, ‘Nations, States, Minorities: Why is Eastern Europe Different?’ (1995) *Dissent*, 314.

dispute. As eloquently put by one author, in Eastern Europe, „[n]ational pride is measured in km².”²² No wonder, thus, that national minorities in these countries often consider themselves trapped on the ‘wrong’ side of the borderline. This, in turn, profoundly affects the perception of MTA both from the perspective of the host state and of the minority group. Simply put, an ethno-culturally based territorial autonomy is much more than a mere political delegation of powers and competencies. This fact cannot be easily disregarded when discussing MTA solution in the East European setting.

On the other hand, kin-states very often try to compensate for what their political elites more or less openly perceive as unfair historical territorial demarcations²³, by adopting policies of preferential treatment of members of their ethnic group living in neighboring states. Instead of waging wars for territories, contemporary East European states rather opt to endorse controversial policies with the extra-territorial scope of application, whose beneficiaries are citizens of other states. These measures include offering dual citizenship, voting rights, preferential status in the areas of education, employment, cultural matters, etc. The last illustrative example, in that respect, is the Constitution of Hungary. Article D stipulates as follows: „Hungary, guided by the notion of a single Hungarian nation, shall bear a sense of responsibility for the fate of Hungarians living outside her borders, shall foster the survival and development of their communities, shall support their efforts to preserve their Hungarian identity, and shall promote their cooperation with each other and with Hungary.” Even before the drafting of the Constitution, Hungary adopted the *Act on Hungarians Living in Neighboring Countries*, which stipulates in Article 1 that it „shall apply to persons declaring themselves to be of Hungarian nationality”, provided they are not Hungarian citizens, that they live in one of neighboring countries, except for Austria, and that they have not voluntarily renounced their Hungarian citizenship or are not in possession of permanent resident permit.²⁴

This law provoked a heated debate, because the Hungarian nation is a large one and it encompasses highly territorially concentrated communities living in border areas of Slovakia, Romania and Serbia. However, this is not an isolated example in East European constitutionalism. Article 5, par. 1, of the Constitution of Slovenia, for example, says that this country „shall maintain concern for autochthonous Slovene national minorities in neighboring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland.” Par. 2 states that „Slovenes not holding Slovene citizenship may enjoy special rights and privileges in Slovenia”, which shall be in more detail regulated by law.²⁵ Similarly, Article 10 of the Constitution of Croatia, which is entitled ‘Citizens Abroad’, regulates in its second paragraph that

22 Péter Kovács, ‘Individual and Collective Rights in the Constitutional Evolution – A Positivist Approach’, in Kalman Kulcsar and Denis Szabo (eds.), *Dual Images – Multiculturalism on Two Side of Atlantic*, (Budapest, The Royal Society of Canada and Institute for Political Science of the Hungarian Academy of Sciences, 1996), p. 221.

23 Consequently, it is still not uncommon in this part of Europe for political parties (most of which are, frankly speaking, of marginal importance) to operate with concepts such as ‘Greater Serbia’, ‘Greater Croatia’, ‘Greater Albania’, ‘Greater Hungary’, etc.

24 English version is available at http://www.mfa.gov.hu/NR/rdonlyres/A08A8619-B08C-450F-A70B-0949A5467BAB/0/Statusz_EN.pdf

25 English version is available at http://www.servat.unibe.ch/icl/si00000_.html

„[p]arts of the Croatian nation (understood in ethnic terms, M. J.) in other states shall be guaranteed special concern and protection by the Republic of Croatia.”²⁶ Finally, almost identical provision can be found in the 2006 Serbian Constitution, which states in Art. 13, par 2, that „[t]he Republic of Serbia shall develop and promote relations of Serbs living abroad with the kin state.”²⁷

Potentially most problematic measure of the kin-state, at least from the perspective of its neighbors, concerns the dual-citizenship regime. Pogonyi, in that respect, observes: „If large kin-minorities are present in states affected by the redrawing of boundaries (...) dual-citizenship claims often stir heated diplomatic and political debates within and among the involved states.” This measure is usually proposed by right-wing nationalist parties and is, thus, perceived „as part of chauvinist politics and as a threat to sovereignty.”²⁸ Even though this regime can hardly be challenged on purely normative grounds,²⁹ one of its counter-effects concerns an almost instant repudiation of any idea of granting MTA to the ‘protected’ ethnic communities, because it is feared that such a regime of multi-governance can only contribute to irredentism, as a form of secession.³⁰

4. Internal Borders as Would-be International Frontiers

From all the aforementioned, it seems clear that the „existential fear” (Bibo) could have been only strengthened after the break-up of three ethnically complex socialist federations in the early 1990s. The case of former Yugoslavia is, in that respect, of particular importance. As it is well known, the legal framework for the political solution of this case was provided in the series of legal opinions of the Arbitration Committee, which is widely referred to as Badinter Commission, after its chairman, the then President of the French *Conseil Constitutionnel*.³¹ The starting premise of these highly criti-

²⁶ English version is available at http://www.servat.unibe.ch/icl/hr00000_.html

²⁷ English version is available at http://www.servat.unibe.ch/icl/ri00000_.html

²⁸ Pogonyi takes the example of the Fidesz-led 2010 Hungarian government, which „claimed that the external citizenship serves ‘national reunification’ and remedies the tragic consequences of the 1920 Paris peace treaties.” Szabolcs Pogonyi, ‘Dual Citizenship and Sovereignty’ (2011) 39 *Nationalities Papers* 5, 694.

²⁹ “In the light of conflicts related to trans-border ethnic kin-minorities it would be tempting to say that dual citizenship should not be considered an option in regions where border adjustments created new minorities, and where revisionist feelings and nationalist sentiments are still strong. But such an approach can hardly be given normative justification. If dual citizenship is seen as a legitimate tool for maintaining links with overseas diasporas, it is very hard to argue against offering it to trans-border kin-minorities, who often have much closer links with their home states as overseas migrants.” *Ibid.*, 696.

³⁰ Kymlicka is also aware of this worst-case-scenario interpretation of the geopolitics of Eastern Europe, when noticing that „most post-communist states have one or more enemies on their borders who would like to destabilize the state. One familiar tactic for doing so is to recruit minorities within the state, and to encourage them to engage in destabilizing protest, even armed insurrection. In such a context of regional insecurity, national minorities are perceived as potential fifth-columnists for neighboring enemies, and autonomy for such minorities is perceived as a threat to national security.” Kymlicka, ‘Minority Rights in Political Philosophy and International Law’, p. 385.

³¹ Other members were presidents of the German (Roman Herzog) and Italian (Aldo Corasaniti) Constitutional Courts and the Spanish Constitutional Tribunal (Francisco Tomas y Valiente). In

cized opinions³² was that the former Yugoslavia was „in the process of dissolution”. As put by Hannum, „(t)he cases of Yugoslavia and the Soviet Union were considered to be instances of dissolution rather than secession, despite the obvious fact that secession was precisely what was occurring in Yugoslavia.”³³ Moreover, the Commission found that international legal principles – of self-determination and *uti possidetis* – are both applicable in this case, despite the fact that they are inherently in tension, the former being of dynamic and the latter of static nature.³⁴

The Commission’s mechanical implementation of the *uti possidetis* principle outside of the decolonization context raised a particularly harsh criticism.³⁵ Ratner, for instance, argues that the „application of *uti possidetis* to the breakups of states today both ignores critical distinctions between internal and international boundaries and, more important, is profoundly at odds with current trends in international law and politics.” He notices that many administrative, internal borders do indeed „merit transformation into international boundaries based on historical and other characteristics; but the assumption that all such borders must be so transformed is unwarranted.”³⁶ The Commission, nonetheless, ultimately concluded that four Yugoslav republics shall become independent states within the existing administrative borderlines of federal units. Radan calls this solution the *Badinter Borders Principle*, which implies that in cases of the federal units of a state gaining independence, the existing intra-federal borders are to be transformed into international frontiers of the new states.³⁷

Some international scholars are inclined to draw the far-reaching conclusion with respect to the applicability of the *uti possidetis* principle. He says that „[t]he weight of the presumption of *uti possidetis* is variable.” That is, its applicability is conditional upon the existence of an internal border. „The more unitary the state, the weaker the presumption (...) the more entrenched a particular administrative line may be, the stronger the presumption. In the case of federal states (...) the presumptions would be

that sense, the only exception was the President of the Belgian Court of Arbitration (Irène Petry). It is interesting to note that thus composed body was meant to provide legal opinions „based on the principles of international public law which serve to define the conditions on which an entity constitutes a state.” (Opinion Nr. 1) Allen Pellet, ‘Appendix: Opinions of the Arbitration Committee’ (1992) 3 *European Journal of International Law* 1, 182.

- 32 See, e.g., Peter Radan, *The Break-Up of Yugoslavia and International Law* (London and New York: Routledge, 2002)
- 33 Hurst Hannum, ‘Self-Determination, Yugoslavia, and Europe: Old Wine in New Bottles?’ (1993) 57 *Transnational Law & Contemporary Problems* 3, 62.
- 34 „The disintegration of Spanish imperialism in America produced the norm of *uti possidetis*. The end of the German, Austrian, and Ottoman Empires gave rise to self-determination. In the post-1945 era *uti possidetis* and self-determination were redefined and synthesized into a doctrine of decolonization. Since the end of communism, however, this synthesis has become unstable and new norms are required which are developed not by conflict but by fairness discourse.” Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1995, pp. 146-147).
- 35 Cf. Suzanne Lalonde, *Determining Boundaries in a Conflicted World – The Role of Uti Possidetis* (Montreal and Kingston: McGill-Queen’s University Press, 2002) Tomáš Bartoš, ‘Uti Possidetis. Quo Vadis?’ (1997) 17 *Australian Yearbook of International Law*, 37-96.
- 36 Steven R. Ratner, ‘Drawing a Better Line: Uti Possidetis and the Borders of New States’ (1996) 90 *American Journal of International Law*, 591.
- 37 Peter Radan, ‘Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission’ (2000) 24 *Melbourne University Law Review* 1, 52.

at its least assailable.”³⁸ However, this interpretation met the strong criticism within the camp of federal scholars. Fleiner, Schneider and Watts, for instance, argue that the Badinter Borders Principle „in effect declassifies federal states internationally into ‘second class unitary states’.”³⁹ Even more importantly, this decision is likely to „dissuade governments in the region either from entrusting minorities with a broad measure of local autonomy or from entering into federal arrangements as a method of regulating interethnic relations.” Simply enough, „[i]n the event of a severe crisis, in which it is judged by an outside authority that the state is in the process of dissolution, the sub-state units of government so created may be considered as vested with a right to separate statehood.”⁴⁰ This turned out to be accurate prediction, because ever since the Badinter Commission’s ruling, no MTA regime was formed in Eastern Europe.

5. ICJ on Kosovo: A Newly Created Venue for Gaining Independence?

Although the International Court of Justice (ICJ) in its recent Advisory Opinion tried to refrain from saying anything about legal effects of the Kosovo’s unilateral declaration of independence (UDI), this opinion, nonetheless, „has led to the popular conception that the Court in *Kosovo* has confirmed that Kosovo has validly seceded from Serbia and is now a state.” Consequently, despite the fact that international scholars „will know not to interpret this outcome into the Court’s silence, the political effect is the same as if it had pronounced itself in favor of an independent Kosovo.”⁴¹ Apart from generating this impression, which was not followed by the expected new wave of recognitions of Kosovo, this opinion is built upon some legal conclusions, which seems to be of rather general nature. For instance, the ICJ’s key conclusion is that the Kosovo UDI as such is not in violation of the applicable international law.⁴² However, one may reasonably argue that, by concluding this, the ICJ also conveys a message regarding legality of the subsequently effectuated independence. Namely, „[c]an it be that an entity declares independence without violating international law but then violates international law, when it effects independence by seceding and creating a new state?”

38 Malcolm N. Shaw, ‘Peoples, Territorialism and Boundaries’ (1997) 8 *European Journal of International Law* 3, 505.

39 Thomas Fleiner, Hans-Peter Schneider and Ronald L. Watts, *Report of the Expert Group on Proposals for the Constitutional Reorganization of the Federal Republic of Yugoslavia* (Belgrade, Centre for Liberal-Democratic Studies, 2001), p. 17.

40 Martin Rady, ‘Self-Determination and Dissolution of Yugoslavia’ (1996) 19 *Ethnic and Racial Studies* 2, 387.

41 Jörg Kammerhofer, ‘Begging the Question? The Kosovo Opinion and the Reformulation of Advisory Requests’, p. 10, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1684539

42 The ICJ did not accept the argumentation, which was fostered by some participants in the proceedings, that being a fact, the UDI could not be legally assessed. The ICJ realized that the Kosovo UDI would be deemed illegal either if it were issued in connection with some violation of general international legal norms of *jus cogens*, or if it were as such prohibited by the special legal regime of the SC Resolution 1244. However, it found that the Kosovo UDI was not illegal on either of these two grounds. See in more details in, Miodrag Jovanović, ‘After the ICJ’s Advisory Opinion on Kosovo: The Future of Self-Determination Conflicts’, paper presented at the ASN annual convention, New York, 14-16 April 2011.

Since this reasoning would not be consequential, it appears as if „the principle of effectiveness would determine if a declaration of independence has resulted in the creation of a new state.”⁴³ Moreover, by leaving to the political discretion of individual states to determine the ultimate status of Kosovo in international law, the ICJ essentially strengthened the ‘constitutive’ theory of recognition. According to it, the birth of a new state is not dependent upon objective criteria of statehood, such as those provided in Montevideo Convention⁴⁴, but upon sufficient number of recognitions by other states. International legal doctrine is, however, still generally in favor of the conflicting, ‘declaratory’ theory of recognition.⁴⁵

With such a shift in international legal theory and practice, territorially concentrated minorities with a secessionist’s agenda might get an impetus for the following pattern of the strategic political behavior. First, get as much power on the ground as possible; second, unilaterally declare independence, because this act as such does not violate general international law; third, try to find as powerful international patron as possible, in order to safeguard as much acts of recognition as possible; finally, wait for a factual situation to turn into an international legal status. In that respect, the fact that neither Kosovo with an overwhelming support of the USA and major European powers has managed so far to become a UN member, nor have Abkhazia and South Ossetia with the Russian support managed to get more than few recognitions does not seem to change much. With a plausible new legal venue for strategic behavior, it is to be expected that secessionist minorities around the globe will give their shot.⁴⁶ In such a situation, it is to be expected that an almost natural reaction of East European states, trapped in a number of historically succeeded conflicting territorial aspirations, would be to prevent such a scenario by rejecting any idea of the MTA regime.

6. MTA and Its Alternatives

Kymlicka argues that the reason for granting self-government rights to national minorities is to prevent majorities from outvoting or outbidding these communities „on

43 Robert Muharremi, ‘A Note on the ICJ Advisory Opinion on Kosovo’ (2010) 11 *German Law Journal* 8, 880.

44 See, Art. 1, 1933 *Montevideo Convention on the Rights and Duties of States*, entered into force on 26 December 1934.

45 In a much-celebrated book on the creation of states, Crawford says that „[t]he conclusion must be that the status of an entity as a State is, in principle, independent of recognition”, even though recognition „can resolve uncertainties as to status and allow for new situations to be regularized.” James Crawford, *The Creation of States in International Law* (2nd ed.) (Oxford: Oxford University Press, 2006), p. 28, 27. As a representative of the UK before the ICJ, Crawford himself, however, provided arguments that seem to reward the ‘constitutive’ theory. See, CR 2009/32, pp. 47-48.

46 For instance, the foreign ministry in Transnistria welcomed the „landmark” decision, perceiving it as a plausible „model” for political behavior. (Quoted from, James Ker-Lindsay, ‘Not Such a „Sui Generis” Case After All: Assessing the ICJ Opinion on Kosovo’ (2011) 39 *Nationalities Papers* 1, 6) Similarly, in an almost instant reaction of a pro-independence Catalan web site, it is stated, „since a popular referendum on self-government along the lines of those envisaged for Scotland or Quebec is unthinkable given the political realities of Spain, Catalonia might well find in a unilateral declaration of independence the only means to start a peaceful process of separation.” available at http://www.catalonianewstate.com/2010_07_01_archive.html

decisions that are of particular importance to their culture, such as issues of education, immigration, resource development, language and family law.”⁴⁷ When explicating this form of „group-differentiated rights”, Kymlicka discusses them in connection with the broader concept of self-determination. Although international law recognizes this right only to ‘peoples’, he notices that minorities often insist that they qualify for the status of right-holders, too.⁴⁸ Accordingly, Kymlicka suggests that ‘self-governing rights’ of national minorities could eventually be justified as a form of the right to self-determination. In one of the latest accounts on this issue, he emphasizes this point more openly, by stressing that numerous versions of a broader concept of ‘liberal multiculturalism’ endorse the view that „the autonomy of national minorities should be seen, not as a delegation of power from the central state, but as a manifestation of an inherent right of self-determination of nations or peoples.” According to this standpoint, „the interest that people have in their cultural identities and collective life is sufficiently strong to ground an inherent right to govern themselves. Moreover, extending a right of self-determination to national minorities is seen as a matter of moral consistency.”⁴⁹ More precisely, MTA „is seen as part of a more consistent approach to the self-determination of peoples generally.”⁵⁰ In contrast, international law of self-determination seems to exclude national minorities from the circle of beneficiaries, insofar as it explicitly vests this right only in ‘peoples’.

Let me first discuss whether political philosophy and international law are indeed on the opposite sides with respect to this issue, as suggested by Kymlicka. When speaking in terms of the circle of plausible bearers of the right to self-determination, they seem to be getting much closer. Despite the fact that in international law ‘people’ was commonly interpreted to mean the totality of all citizens of a state, there are clear signs of repudiation of this view in both theory and practice. Hence, Crawford makes an appeal to international lawyers to resist „the conclusion that a widely-used term (people, M. J.) is to be stipulatively and narrowly defined”, and instead argues that „our function should be to make sense of existing normative language, corresponding to widely-regarded claims of rights, and not to retreat into a self-denying legalism.” This would, then, imply that minority groups, particularly those territorially concentrated, which form a provincial majority, can „properly claim to be ‘peoples’”.⁵¹ Capotorti, who is the author of the most often cited definition of minority in international law⁵², argues in a similar fashion that „[i]n so far as a specific minority is historically entitled to be qualified as a people, undoubtedly that right (to self-determination, M. J.) must be recognized.”⁵³ Accordingly, minorities are increasingly seen as plausible holders of the right to self-determination in international law.

47 Kymlicka, *Multicultural Citizenship*, p. 38.

48 *Ibid.*, p. 27.

49 Kymlicka, ‘Minority Rights in Political Philosophy and International Law’, p. 383.

50 *Ibid.*, p. 384.

51 James Crawford, ‘The Right to Self-Determination in International Law: Its Development and Future’, in Philip Alston (ed.), *Peoples’ Rights* (Oxford: Oxford University Press, 2001), p. 64.

52 Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384, para. 96.

53 Francesco Capotorti, ‘Are Minorities Entitled to Collective International Rights?’, in Yoram Dinstein (ed.), *The Protection of Minorities and Human Rights* (Dordrecht: Martinus Nijhoff Publishers, 1992), p. 509.

In the next step, it is necessary to examine what this claim to self-determination amounts to. For Kymlicka, this is the point at which political philosophy of 'liberal multiculturalism' and international law more openly diverge. In his opinion, the main problem stems from the fact that self-determination in international law is primarily associated with acquiring independent statehood, which, in turn, instantly provokes negative connotations of MTA. That is, [f]or international lawyers, tying TA to self-determination is needlessly provocative, and risks undermining a core premise of international law itself – namely, the existence of sovereign states that are the main agents responsible for fulfilling international law. For normative political theorists, by contrast, the provocation contains an important moral lesson: states need reminding that they did not always possess sovereignty over all the peoples and territories they currently claim, and that addressing the original sovereignty of sub-state national groups is unfinished moral business. Tying TA to self-determination is a way of reminding states that they cannot take their (often ill-gotten) sovereignty over sub-state nations or peoples for granted.⁵⁴

There are two distinct claims here, and I will investigate them separately. First claim is that there is no right to MTA within the existing international law of self-determination. Second claim is that the right to MTA necessarily follows from the premises of political philosophy of 'liberal multiculturalism'.

As for the first claim, it would be fair to say that under the present framework of public international law, „minorities or peoples do not yet have a legal right to autonomy". Yet, „this claim might be evolving, particularly in the light of a right to democracy as part of the 'internal' right to self-determination."⁵⁵ Whereas the *external* aspect of self-determination „defines the status of a people in relation to another people, State or Empire", the *internal* or *democratic* aspect concerns „the relationship between a people and 'its own' State or government."⁵⁶ Accordingly, while there is no straightforward right of national minorities to territorial autonomy (not even within the European system of minority protection, which is the most robust one), the MTA regime is certainly one of the recognized and recommended forms of respecting internal, that is democratic, aspect of the right to self-determination. When summarized, this development in international law of self-determination implies that „satisfactory treatment of minorities is based on the imperative condition that *internal self-determination for the whole population* should first be realized."⁵⁷ In the next step, however, we need „a less majoritarian, more differentiated, participatory and communitarian meaning of people"⁵⁸, if we are to recognize that minorities play a distinct role and have their own status in the life of one 'people' in its capacity of *demos*.

54 Kymlicka, 'Minority Rights in Political Philosophy and International Law', p. 384

55 Hans-Joachim Heintze, 'On the Legal Understanding of Autonomy', in Markku Suksi (ed.) *Autonomy: Applications and Implications* (The Hague: Kluwer Law International, 1998), p. 32.

56 Patrick Thornberry, 'The Democratic or Internal Aspect of Self-Determination with some Remarks on Federalism', in Christian Tomushat (ed.), *Modern Law of Self-Determination* (Dordrecht: Martinus Nijhoff, 1993), p. 101.

57 Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), p. 351.

58 Patrick Thornberry, 'The Principle of Self-Determination', in Vaughan Lowe and Colin Warbrick (eds.), *The United Nations and the Principles of International Law (Essays in Memory of Michael Akehurst)*, (Routledge: London and New York, 1994), p. 188.

This interpretation of the „emerging trends” (Cassese) in international law of self-determination seems to bring political philosophy of ‘liberal multiculturalism’ and international legal theory much closer than envisaged by Kymlicka. Nevertheless, the key dilemma remains for the moment unanswered: is the right to MTA a necessary corollary of the aforementioned understanding of the ‘internal’ right to self-determination, and is it also a necessary ingredient of the political philosophy of ‘liberal multiculturalism’? I hesitate to answer positively to either part of this question. To be sure, there are international legal scholars who would be ready to respond to this question in the affirmative. Cassese, for instance, argues that the internal aspect of self-determination „today ought primarily to be considered a principle mandating the recognition of group rights and regional autonomy.”⁵⁹ Gilbert is even more explicit: „The right to autonomy for groups in society is a necessary consequence of the combined effect of the right to self-determination and the rights of persons belonging to minorities to enjoy their own culture.”⁶⁰ I would subscribe, however, to Thornberry’s opinion that the core substance of the mentioned right is *effective and democratic participation* of minorities, rather than territorial autonomy. Firstly, the right to MTA was explicitly rejected within the UN Commission on Human Rights’ Working Group on Minorities, and secondly, it was not envisaged in the UN Declaration. At the same time, the inclusion of participatory rights „was welcomed as a significant step in international law.” To state this, however, „is not to imply an antithesis between autonomy and participation; on the contrary, ‘active’ participation in the life of states may lead to autonomous structures, as individuals and groups find levels of organization appropriate to effective participation.”⁶¹ The important thing, however, is that the ‘internal’ right to self-determination need not ultimately take the form of the MTA regime.

I would argue that the same reading holds for political philosophy of ‘liberal multiculturalism’. Namely, it seems that the suggested rationale for introducing the right to self-government – empowering minorities to have a say in decision-making processes that are of particular importance to their culture – can be equally well achieved by safeguarding various mechanisms of effective participation of minorities in the political life of the country as a whole. These mechanisms need by no means take the form of territorial autonomy. In short, ‘liberal multiculturalism’, as I see it, does not necessarily imply a complex form of state organization, that is, federalism/devolution. By being raised on the back of the traditional liberal-democracy, this political philosophy challenges primarily some institutions, principles and mechanisms of this political regime.⁶² For in-

59 Cassese, *Self-Determination of Peoples*, pp. 350-351.

60 Geoff Gilbert, ‘Autonomy and Minority Groups: A Right in International Law?’ (2000) 35 *Cornell International Law Journal* 2, 353.

61 Thornberry, ‘The Democratic or Internal Aspect of Self-Determination with some Remarks on Federalism’, p. 134.

62 In that respect, I fully subscribe to Modood’s argument that „multiculturalism presupposes the matrix of principles, institutions and political norms that are central to contemporary liberal democracies”, but it is also a challenge to some of them. In his view, „multiculturalism could not get off the ground if one totally repudiates liberalism; but neither could it do so if liberalism marked the limits of one’s politics. Multiculturalism is a child of liberal egalitarianism but, like any child, it is not simply a faithful reproduction of its parents.” Tariq Modood, *Multiculturalism – A Civic Idea* (Cambridge: Polity Press, 2007), pp. 7-8.

stance, it challenges the Westminster-style democracy, by arguing in favor of some instruments of „consociational democracy”⁶³; it challenges the legacy of liberal constitutionalism, by seeking to redraw the private/public sphere line of demarcation and by reformulating the constitutional identity of the state⁶⁴; it challenges the traditional human rights doctrine by arguing in favor of a special set of collective rights.⁶⁵

The OSCE-sponsored *Lund Recommendations on the Effective Participation of National Minorities in Public Life* stipulates that non-territorial forms of self-governance of national minorities „are useful for the maintenance and development of the identity and culture of national minorities. The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of national minorities.”⁶⁶ It is highly appealing to assume that the aforementioned issues regarding minority culture and identity could be more easily protected within the MTA framework. However, there is room for other institutional mechanisms as well. One such non-conventional institution, called „national council of national minority” and created for the purpose of exercising the non-territorial self-governing right of minority can be found in the 2006 Constitution of Serbia. Article 75, par. 3, states as follows: „Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law.” The subsequently introduced *Act on the National Councils of National Minorities* stipulated in detail the procedure for the election of these bodies and on 6 June 2010, sixteen national councils of national minorities were elected.⁶⁷

7. Conclusion

In judging the mixed record of the European model of minority protection, which emerged as a reaction to the rise of inter-ethnic violence in Eastern Europe, Kymlicka notices that „the goal of formulating principles to deal with the claims of ethno-national groups was too ambitious in light of regional insecurity and democratic transition.” He takes this to be „an important and sobering lesson in the difficulties of using international law to articulate the logic of liberal multiculturalism.” It has turned out that the adopted regional legal model, whose key instrument is the Council of Europe’s *Framework Convention for the Protection of National Minorities* „was unable to reconcile the short-term goal of conflict prevention in unstable conditions with the long-

63 See, Arend Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977)

64 See, Michel Rosenfeld, *The Identity of the Constitutional Subject – Selfhood, Citizenship, Culture, and Community* (Oxon: Routledge, 2010)

65 On the concept of collective rights, see, Miodrag A. Jovanović, *Collective Rights – A Legal Theory* (Cambridge: Cambridge University Press, 2012)

66 *The Lund Recommendations on the Effective Participation of National Minorities in Public Life*, (The Hague, OSCE High Commissioner on National Minorities, 1999), par. 17, 18.

67 *Zakon o nacionalnim savetima nacionalnih manjina (Act on the National Councils of National Minorities)*, Suzbeni glasnik RS br. 72/2009 (Official Gazette RS, No. 72/2009).

term goal of promoting robust forms of liberal multiculturalism.” This leads Kymlicka to conclude that the implementation of normative principles of ‘liberal multiculturalism’ is dependent „on a number of preconditions that are far from universal.”⁶⁸

This paper tried to demonstrate two distinct things: first, that certain preconditions, determined by specific socio-historic developments in Eastern Europe, made the MTA model – at least for the moment – less attractive option for countries of this region; and second, that MTA is not the only model through which minorities could nurture their distinct identity and culture. A viable alternative to MTA is a system of effective participation of minorities in the democratic life of a country, particularly in matters related to education, culture, religion and language. Not only that the full implementation of one such system would serve the same values that are promoted by political philosophy of ‘liberal multiculturalism’, but by being essentially complementary to the overall mechanisms of constitutionalism, democracy and human rights protection, it would critically contribute to the imperative political goal of East European societies, that of democratic consolidation.⁶⁹ History of Western societies teaches us that the MTA regime can be developed far more easily in the presence of the firmly entrenched institutions of traditional liberal-democracy. If East European societies ever manage to reach that level of political and economic stability, they would be certainly more susceptible to the idea of adopting the MTA regime.

⁶⁸ Kymlicka, ‘Minority Rights in Political Philosophy and International Law’, p. 387.

⁶⁹ Kymlicka eventually realizes this problem, when noticing that in the post-communist world „claims for self-government by homeland minorities were occurring prior to democratic consolidation. As a result, there are fewer guarantees that minorities who receive autonomy will exercise their powers in a way that respects human rights, rather than creating islands of local tyranny that are intolerant of ‘outsiders’ residing on the territory.” *ibid.*, p. 386.

Late Capitalism, Europeanization: Dusk of Multiculturalism, or Something Else?

ALPAR LOŠONC¹

Let us begin with the following quotation: In essence, modern racism is never simply 'a relationship to the Other' based upon perversion of cultural or sociological difference; it is a relationship to the Other *mediated by the intervention of the state*. It is a *conflictual relationship to the state which is 'lived' distortedly and 'projected' as a relationship to the Other*.² This rather ambiguous sentence could lead to numerous conclusions. The *first* part states something already known: perversion of cultural and sociological differences causes racism. The *second* part warns us to broaden our horizons. We should paraphrase Balibar's statement: *relationship with the Other* is not just a direct, but rather a *multi-mediated* relation which refers not only to racism but to all group experiences, including nationalism. *Still, it is not only the state which acts as mediating mechanism between the Same and the Other; there are also instruments of capitalism 'embedded' in the world between the Same and the Other*. This world in-between is not leveled, but rolled over because of different struggles, projections, and historical determinations; it is the world where economic powers determine symbolic consequences and *vice versa*. Culture, religion, etc. are not masks which misrepresent the essence. Isn't it obvious, then, in the case of America that 'the causes of economic consequences are never only economic causes, just as the symbolic consequences are never preceded by only symbolic or ideological causes?'³ Can we really not see that ethnically-segregative boundary lines are just the reaction to *two obligations* imposed by capitalistic economy and the ideology of an imaginary collectiveness (belonging to certain cultural units)? The cries for 'cultural dialogue', in spite of their best intentions, neglect this fact. In their criticism of 'fundamentalism' they ignore the imaginary determination of the Other in the globalized capitalism. We will not be any closer to the real elements of power, if we analyze 'vacant' Same and the Other from the aspect of

¹ The article is supported by the Ministry of Education, Science and Technological Development, Government of the Republic of Serbia, under the auspices of the project 179052.

² E. Balibar, *Es Gibt Keinen Staat in Europa: Racism and Politics in Europe Today*, *New Left Review*, 1991, 186, March/April, 15.

³ E. Balibar, *We, the citizens of Europe?*, Belgrade, 2003, 51. K. Nash, 'The „Cultural Turn” in Social Theory: Towards a Theory of Cultural Politics', *Sociology*, 2001, 35(1): 77-92.

'heavenly ethics'. Focusing on culture without the economic horizon will lead us to culturalism and culturalization which are often hidden behind the narrative on 'multiculturalism'.

Angela Merkel, Nicholas Sarkozy and David Cameron have recently raised dust with their declarations about the depletion of multiculturalism in Europe. Some translations emphasized the 'depletion of European model of multiculturalism'. Those statements, on the one hand, have been welcomed by the critics of 'excessive multiculturalism' and by those who resent the toxicity of 'multiculturalism', but on the other hand, they have confused those who have advocated 'multiculturalism' for years. However, a feeling of discomfort remains even if we put an effort in correcting these statements and false interpretations. Corrections are necessary in the case of publicized statements inspired by the moment. Even such an eminent institution as the BBC has jumped to conclusions claiming that Merkel's statement would be followed by exclusion and reluctant acceptance of those who do not speak German and do not find it necessary to immerse themselves in language studying. This was not implied at all, as Merkel explicitly said⁴ that the immigrants were welcomed and that they represented important resources for the development of German economy. After all, it is a well known fact that, after the World War II, Germany has become an immigration country out of economic reasons. No forms of exclusion have been mentioned, nor a closed type of nation-state or European *apartheid* advocated. Nobody has promoted assimilation, but rather a change of community boundaries, a modification of the language integration and altered forms of accepting Others. Based on everything said, we cannot come to the conclusions that an unobstructed national hegemony, founded on a strong state, has been resurrected and even much less that the ideal of a nation-state has been evoked, which would bring us back to the 19th century, as some advocates of *homo nationalis* would like to see it happen – to be more precise, that would be practically impossible as the national form is exposed to dynamic changes; the situation is not the same as it used to be two centuries ago. The Chancellor spoke about Islamic culture as an integral part of Germany; she clearly indicated that this culture would make a constituent part of the entire German society and that Germany would rely in the future on qualified immigrants who are prepared to adhere to German laws, which as statement did not contravene the principles of multiculturalism. However, the Netherlands has been heading in that direction for several years, changing the tolerance regime frames.⁵ It is the Netherlands which was proclaimed as 'the most multicultural' country of Europe based on its Minorities Memorandum (1983).

Yet, these statements are not of occasional character, they formulate orientations that have already existed for some time; there are respectable scientists who, at the beginning of this millennium, diagnosed transformations of the 'multicultural reality'

4 M. Schrader: Merkel erklärt „Multikulti“ für gescheitert. Deutsche Welle. 2010. 10. 16. <http://www.dw-world.de/dw/article/0,,6118143,00.html>. Criticism of A. Merkel's attitude toward Greece and her 'racist use' of the syntagm 'lazy Greeks' which is contrary to the actual data, <http://www.stuetzle.in-berlin.de/2011/06/wie-deutschland-von-griechenlands-krise-profitiert/>.

5 J. M. Doomernik, The state of multiculturalism in the Netherlands, *Diversité Canadienne/Canadian Diversity*, 2005, 4 (1), 32-35. H. Entzinger, The Rise and Fall of Multiculturalism: The Case of the Netherlands," in *Towards Assimilation and Citizenship: Immigrants in Liberal Nation-States*, Basingstoke, UK, Palgrave, 2003, 59-86.

and predicted even more changes to follow!⁶ A distinguished sociologist argues that multiculturalism mediated by the *state* has been disappearing because it has used itself up, so the return to the assimilation model could be expected in form of old nation-state.⁷ A change in the approach has been observed in many countries; in the United States, for instance, affirmation activities have been reduced or stopped, and a part of the resources provided by the government for the integration of 'multicultural aspects' have been decreased. A parallel example of this phenomenon in Europe could be seen in Sweden.⁸ The weariness in regard to multiculturalism, which 'has gone too far', frequently provoked different reactions.⁹ The concept of 'civil integration' was offered instead of 'excessive multiculturalism'; some political parties suggested a program of *Leitkultur* (the leading culture) in comparison to all other 'cultures'.¹⁰ In the meantime, certain analyses of national educational systems revealed some tendencies towards the reduction of multicultural contents, even claiming that the golden age of 'multicultural educational regimes' has passed.¹¹ Triumphant neo-conservatism blamed 'multiculturalism' for putting the immigrants and minorities into ghettos and abetting thus separatism and destroying social cohesion. There is no *zero-sum* game between multiculturalism and integration, but it can be illustrated that the rhetoric of government administration, instead of promoting diversity, emphasizes the welfare of integration according to the Western European principles of community.

All in all, after reconsidering the statements given by European politicians, those who were quick to seize their pens and write about the end of certain European orientation that has been present over the last few decades, should not be too excited. The return of a 'pleasing' form of assimilation is no longer possible; 19th century is definitely over. Still, my intention was not merely to avoid the problem by simple deconstruction of various false interpretations that occurred not such a long time ago (in 2010 and 2011). Namely, I also believe that there is a problem in Europe and *my starting*

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- 6 K. Mitchell, Geographies of identity: multiculturalism unplugged, *Progress in Human Geography*, 2004, 28, 5, 641–651.
- 7 R. Brubaker, The return of assimilation? Changing perspectives on immigration and its sequels in France, Germany, and the United States. In Joppke, C. and Morawska, E., ed., *Toward assimilation and citizenship: immigrants in liberal nation-states*, Basingstoke, Palgrave Macmillan, 2003, 39–58.
- 8 W. Larner, Globalization, governmentality and expertise: creating a call centre labour force. *Review of International Political Economy*, 2002, 9(4), 650–74. K. Mitchell, Transnationalism in the margins: hegemony and the shadow state. In Jackson, P., Crang, P. and Dwyer, C., ed., *Transnational spaces*, London, Routledge, 2004, 122–46. C. Joppke, and Morawska, E. Integrating immigrants in liberal nation-states: policies and practices. In Joppke, C. and Morawska, E., ed., *Toward assimilation and citizenship: immigrants in liberal nation-states*, Basingstoke: Palgrave Macmillan, 2003, 1–36.
- 9 P. Toynbee, Why Trevor is right: multiculturalism no longer provides a satisfactory answer to the complex nature of today's race relation issues, *The Guardian*, 2004, 7 April, 12.
- 10 On changes in Germany (*Leitkultur* je program CDU) i u Engleskoj, Ch. Joppke, The Retreat of Multiculturalism in the Liberal State: The Retreat of Multiculturalism in the Liberal State: Theory and Policy, *British Journal of Sociology*, 2004, 55, no. 2. Joppke believes that it is not a change toward the monoculturalism. I believe that he simplifies the situation. Anne Philips proves the point by stating that it is implicitly assumed that generic value is liberal, European determination, *Multiculturalism without Culture*, Princeton, 2007, 23.
- 11 W. Apple, Between neo-liberalism and neo-conservatism: education and conservatism in global context, in: N.C. Burbules and C. A. Torres (Eds) *Globalization and Education: Critical Perspectives London and New York*, Routledge, 2000, 57–78.

point is that there has been a problem for quite some time, long before these statements were made. These signs are just a late expression of numerous earlier tendencies. However, my approach to this problem is within some broader context and quite different from those of the abovementioned politicians. It is the problem of defining the identity of Europeans and the European community, that is, imagining the European Community with created diversities, and creating European common wealth in the world between the Same and the Other, Me and Him. *The meaning of that world 'in-between' is something I would like my discussion on multicultural forms to be based upon.* This form emerged from numerous conflicts, forms of solidarity, transformations of labor distribution, changes in society and demography. If 'national forms' exist, then '*multicultural forms*' exist as well. Similarly to the national form, we can here discuss about a 'social formation' *which non-reductively combines economic and ideological structures, economic obligations and collective experiences into one whole.* Regardless of future transformations of foreigners' integration frames and ways to accept newcomers that are 'not in the community' of Europe, there will still be some forms of multiculturalism presented in the dynamics of different tendencies which I have just tried to outline. Finally, all forms of multiculturalism are subject to change, equally as the national form, which evolved historically.

To review the previously mentioned statements, is it really possible that a politician can performatively declare the end of a social phenomenon ('multiculturalism to be over, finished!', 'to be terminated, used up')? How can anybody announce the completion of a pattern which has been in so many different ways offered to countries that were preparing themselves for European integration? Have not elements of 'multiculturalism' been incorporated in the constitutional systems of European countries?¹² Have not aspects of antiracist policies been deeply respected in all European political systems? Has not the European Union been the one to encourage multicolored environment that replaced the earlier assimilation model – giving the right of citizenship to the foreigners, too? Wasn't it in Europe that the policies of active approach to diversities were formulated, that is, the acknowledgement of differences was encouraged and active strong support to diversity was given?

The uneasiness also appears due to the time in which the statements were made, the time of non-typical crisis constellation that affected Europe. Namely, the 'position' of these statements *apparently* indicates that the creators of the 'multicultural model' have contributed to the crisis gravity. 'We are too tolerant and you are aggressive and ungrateful', but it has always been like that. These statements, too, *seem to* suggest that 'we have offered you, the immigrants, our endless multicultural love by accepting you', 'we have welcomed you' and 'you caused serious trouble'. 'We have let you come close, maybe – too close, we have allowed you to participate in some multicultural games, maybe we have gone too far, or maybe you have gone too far in the game, and now we will stop, or at least impose some restrictions'. 'It is time to change the rules of the

12 *An Identity for Europe The Relevance of Multiculturalism in EU Construction*, (Ed. R. Kastoryano), Palgrave, 2009. P. Geschiere, *The Perils of Belonging. Autochtony, Citizenship, and Exclusion in Africa and Europe*, Chicago, Chicago University Press, 2009. M. Wiewiorka, *La différence. Identités culturelles: enjeux, débats et politiques*, La Tour d'Aigues, Editions de l'aube, 2005.

game, we have been too tolerant'. As I said: *it seems*. I am not talking about the intention, but the statements, expressions are always a part of some discursive regimes¹³ over which even the politicians do not have the power: all their statements are imprinted into the dynamics of such discursive procedures. *In that sense, I find the mentioned statements to be discursively problematic and potentially even dangerous, and that they represent an uncertainty in Europe; they appear to be a search for finding solution in an unstable environment than a completely newly designed strategy.* Suddenly, the neoliberal celebration of differences made room for *neoliberal monoculturalism* and *neoliberal nationalism*. One of current typical myths is that neoliberalism rejects any communitarian nationalism and that neoliberalism, by promoting undisturbed movement of goods, must be *anti-nationalistically* based. *Neoliberalism, on the contrary, needs nationalism instead of benevolent cosmopolitanism as a form of mobilization to establish itself.* An old issue related to economic nationalism has been forgotten¹⁴ because it is assumed that economics is *per se* rational and as such eliminates nationalistic obstacles. Margaret Thatcher's war episode with Argentina has been also a paradigm for these conditions.¹⁵ Neoliberalism acts *ambivalently*: on the one hand, it creates individualization and on the other, it creates *deindividualization*. It designates the individual as the holder of responsibility and, at the same time, it affirms national frames (e.g., 'Dutch standards and values'). It simultaneously *denationalizes* and *renationalizes*, connects and disconnects. The more appropriate name for neoliberalism would be 'acculturation regime'¹⁶; how it would otherwise be possible for the United States to support simultaneously neoliberal and neoconservative orientation? Therefore, the statements made by European politicians are not 'just' some rhetorical ornaments, as they definitely exert some discursive effects and, after all, they were made by people in high positions. They *retroactively* just define a condition which reflects the dynamics of neoliberalism.

¹³ See the intervention of Sarah Ahmed, „I would argue that *the hegemonic position is that liberal multiculturalism is the hegemony*. This is why the current monoculture political agenda functions as a kind of retrospective defense against multiculturalism. The explicit argument of New Labour is that multiculturalism went 'too far': we gave the other 'too much' respect, we celebrated difference 'too much', such that multiculturalism is read as the cause of segregation, riots and even terrorism. So now migrants must be British; we must defense integration, as *a defense against multiculturalism*, which in turn is what threatens the well-being of the nation.", 'Liberal Multiculturalism is the Hegemony – It's an Empirical Fact' – A response to Slavoj Žižek, <http://www.darkmatter101.org/site/2008/02/19/>.

¹⁴ E. Helleiner, Economic Nationalism as a Challenge to Economic Liberalism? Lessons from the 19th Century, *International Studies Quarterly*, 2002, 46, 307-329. E. Helleiner, Economic liberalism and its critics: the past as prologue? *Review of International Political Economy*, 2003, 10, 4, November, 685-696.

¹⁵ D. Harvey, *A Brief History of Neoliberalism*, Oxford, Oxford University Press, 2005, 84. A. Harnes, The rise of neoliberal nationalism, *Review of International Political Economy*, 2011. Y. Kawai, Neoliberalism, Nationalism, and Intercultural Communication: A Critical Analysis of a Japan's Neoliberal Nationalism Discourse under Globalization, *Journal of International and Intercultural Communication*, 2009, 1.

¹⁶ W. Schinkel and F. van Houdt, The double helix of cultural assimilationism and neoliberalism: citizenship in contemporary governmentality, *The British Journal of Sociology*, 2010, Volume 61, Issue 4. M. Mann, Has globalisation ended the rise and rise of the nation-state?, *Review of International Political Economy*, 1997, 4.

Needless to mention, the self-understanding of Europe is in crisis. Thus, we should briefly discuss this crisis in relation to the topic of this paper. My intention is to show that the creators of 'multicultural model' have not caused today's crisis (at least not directly), but I would also like to prove that European struggle with themselves, due to reluctant reconsideration of the integration frames, which is a clear *symptom* of this crisis. So, this crisis is not solely European in its form, and it is not a type of a crisis situation that could be thematized from the cultural perspective 'only'. However, it is obvious that this crisis cannot be explained with words such as 'turbulence' or 'side problems', although it is deeply connected to the 'late capitalism'. Recurrence of crisis discourse after a standstill, that is, after the cessation of crisis in the 70s, speaks for itself: crisis has been, indeed, *dedramatized* with respect to the situation eight years ago, that is, with respect to the 1930s; still, the cost of it was that the crisis with numerous implosive effects and sedimentated forms of unemployment has slowly metastasized as a secular trend.

So, although discussing the crisis of financialized-neoliberalized capitalism in the whole world, our focus here should be on its manifestation forms in Europe. We cannot ignore the fact that institutional organization of Europe, that is, EU, has been established *in the prime of neoliberalization of the entire world*. Consequently, whether we like it or not, EU bears the mark of rampant neoliberalization¹⁷ and this must not be ignored if we wish to discuss its 'multicultural forms'. The contemplation of common aspects in the European community shows that Europe has been rooted in the social structure of the whole world over the last decades. It is the social dynamics, which is determined by neoliberalism and supported by financial regimes, that falls into crisis and constantly nurtures the uncertainty in the world, leaving no actual possibilities to resolve the crisis in near future.

The combination of federalism and republicanism, Kant's perpetual piece and the bureaucratic spirit outlined by Napoleon's *code civil*, i.e. belief in civilizatory mission of the European administration, form the basis of EU. It was created as a pacification form of the relation between France and Germany, with the aim to resolve not only earlier conflicts in the heart of Europe, but also the continuous problems of German self-interpretation, that is, self-reflection identity, with the unambiguous *constitutive* goal to enable the European countries to endure in an intensified economic race and face global mega competition. This raised the question of reinterpretation of the relationship between nation-state and political authority, and decentralization of nation-states in a context of constantly tense relationship between European universality and national particularism. However, *neoliberalism* as a new type of comprehensive-dominant form of rationality with irreversible consequences has been always present.¹⁸ Old Keynesian welfare state, established after the World War II, represented certain combination of capital-state dynamics and nation with regulated economic flows. The nationalization of social entities was conducted by providing the welfare and annulling

17 J. Milios; D. P. Sotiropoulos, Crisis of Greece or crisis of the euro? A view from the European 'periphery', *Journal of Balkan and Near Eastern Studies*, 2010, 12: 3, 223 — 240. I. Manners, *Another Europe is Possible: Critical Perspectives on European Union Politics*, Handbook of European Union Politics.

18 I wrote about neoliberalism as a form of rationality, K. Josifidis, A. Lošonc, *Neoliberalism: destiny or choice*, Novi Sad, Graphic, 2007.

the market risks with considerable redistribution efforts made by the state. In Europe, it represented a *tendency of consubstantiality* between capitalism and nation-state. This period was characterized by a strong relationship between national and economic union which has been typical of the nation-state since the beginning of modernity.

Now, let us take a glance outside Europe: it is well known that 'multiculturalism' became a state doctrine first outside Europe, in Canada and Australia, at the beginning of the 70s in 20th century. These countries supported something called reversed diversity in their immigration and minority integration policies: it could be said that the integration was enabled through institutionalized diversity frames. However, the diagnosis of multiculturalism 'weariness' was given with an implication that the *state mediation of multiculturalism was becoming weaker, that is, the state supported political arrangements were being withdrawn*. So, the transformation of diversity integration was initiated and the emphasis was put on active presence of the state in the conduction of multicultural programs. The state showed readiness to support the multicultural society with appropriate educational programs. This reminds us that the entire problem should be analyzed from the dynamics aspect of the multicultural forms.

Keynesian-Fordist state (like Atlantic Fordism, East-Asian exportism, industrialization patterns in Latin America) was hit by the crisis processes after the ebullient 1960s, and at the beginning of the 1970s neoliberal counter-offensive of capital has been created with highly successful techniques and desired results. This brings us to a wider neoliberal constellation where EU also belongs. *Prior to this, however, a remark should be made on the fact that multiculturalism maintained by the state was established at the end of the Keynesian-Fordist state which could, in a way, connect the moments of acknowledgment of diversities and redistribution of resources*. A state, which is not neutral regarding the multiculturalism or culture diversity and which is actively involved in the regulation of individual and collective rights, still bears a mark of Keynesian enthusiasm that could be observed after the World War II. This does not mean that there is absolute homology between the dynamics of socio-economic aspects and regimes supporting the idea of multiculturalism, but I would still suggest that this relationship should be reconsidered. Multiculturalism never floats in air, thus it collects some marks within itself which, at first, may seem external.¹⁹ Multiculturalism in state has remained as a heritage to the state ensemble which became neoliberalized in the following decades, or better to say, the state would sooner or later have to change its governing mechanisms in accordance with the changed aspects of socio-economic constellation. Europe became more systematically interested in multiculturalism when neoliberalization has been introduced in the European countries and without this consideration numerous contradictions cannot be fully understood.

Over the last few decades it has been frequently indicated that the national state has become virtually insignificant in the context of planetary interdependence and that territorial forms of political authority weakened in favor of non-territorial entities; this was emphasized by numerous authors, who were at different political positions. Still,

¹⁹ On American understanding of multiculturalism, N. Singh, Culture/wars: recoding empire in an age of democracy, *American Studies Quarterly*, 1998, 50, 471–522. C. Hayward, and R. Watson, Identity and Political Theory, *Washington University Journal of Law and Policy*, 2010.

the knot between capitalism and nation²⁰ has not been cut, it only gained new configurations. In spite of some libertarian indications, neoliberalism does not occur in a weak state; by no means has the state been weakened over the last decades. Who would, anyway, interfere with the laws of the world market? Who would create legal frames for life in which all forms show a tendency of becoming a result of commodity exchange? Who, if not the state, would save the damaged financial institutions from a fall into the abyss of destruction at the peak of the crisis?

This is not a question of a 'recovery of nation-state'²¹ to some of its previous conditions, because the nation-state has never withdrawn from the scene. The most important fact is that neoliberalism cannot function easily without a *strong* (national) state. Still, it does not mean that nothing has changed: the relationship between redistribution and acknowledgement of the previous condition has not changed, that is, that national form has remained untouched: the diagnosis of state withdrawal from the sphere of multicultural arrangements is actually in accordance with the transformation of its functions which exist in the neoliberalization of the society. Since the statement that relationship between the Same and the Other is mediated by state interventions has been already quoted, it should be applied here as well: relationship between the Europeans and foreigners living on their territory is influenced by the characteristics of the state and its apparatus, and by historical reproduction and transformations. It was then the state that has been focused on providing unhindered circulation of capital and mobilization of workforce on the globalized market, or on applying sanctions that would preserve that order; it has become a '*workfare-state*', in many aspects different from the earlier situation. Undoubtedly, existence modes of such a state also affect the national imagination since they always imply the 'ideality' of a national unity and neutralization of social differences within a nation.²² However, neoliberal rationality intensifies the immanent characteristics of capitalism, that is, social inequality which has a direct effect on the national self-understanding. It should be pointed out that the change in the meaning of 'multiculturalism' is not unexpectedly congruent to the change in the meaning of 'welfare'. Therefore, we should bear in mind that the transformation of the notion of welfare and reformation of welfare state has created new options for successful right-wing parties to mobilize the voters based on their fears of extensive immigration and possibility of losing their jobs: '...fear of foreigners, workers, suburban youth, Muslims (...) all previously mentioned suggests a need for someone to protect people'.²³ A newcomer who asks for a job and wants an asylum as a destroyer of 'our order' from inside, that is, a newcomer as an 'internal thief of our possibilities', is adequate to be mobilized by strong right-wing parties. Threat is not

20 Kojin Karatani described this as Borromean knot, K. Karatani, *Beyond Capital-Nation-State, Rethinking Marxism*, 2008, 20: 4, 569 — 595.

21 B. Jessop, The return of the national state in the current crisis of the world market, *Capital & Class*, 2010, 34(1)38-43.

22 "Nation-state, whether a welfare state or nationalistic welfare state, does not undermine the class dominance, but nationalistic ideology always implies a negation of diversities or social inequalities...There is always something more than nationalism alone: one nationalism which is...more national, which is more national than the nationalism itself", É. Balibar, *La crainte des masses*, Paris, 1997, 350.

23 A. Badiou, *The Meaning of Sarkozy*, London, 2008, 9.

only used in the rhetoric of the right-wing parties, but of other parties, as well that implicitly or explicitly use the rhetoric of 'the toxic Other'.²⁴ The rhetorical figure 'intrusion of the Other' or 'excessiveness of the Other' appears even among those European politicians who present themselves as tolerant, that is, as representatives of a 'good and tolerant spirit' of a 'multicultural nation'.²⁵ The Other has become a subject in the field of protection. Therefore, the recently made claims that 'Europe is not too multicultural, but not multicultural enough' assert nothing else but a negative criticism of the current state.²⁶ Local receptions of neoliberal world order show resentment towards such a newcomer. A desire to preserve cultural distance ('let it be present if it must, but far away from me'), which has been motivated by the 'politics of fear', is a constant configuration of such occurrences. Stiff competition in the labor market and pauperization affecting domestic and foreign workers has resulted in the far-right winning 10% or even over 15% of votes at the elections.

We should also consider the post-colonialism in EU: numerous European countries widely accept immigration, that is, 'labor force beyond communitarianism', with the aim of preserving competition in neoliberal order.²⁷ However, we are faced with refugees on the European borders who provoke anxiety, dissatisfaction and different forms of fantasies, that is, economic xenophobia; however, it is not a coincidence that security has become an important issue in Europe and that discussions on intense relationship between security and democracy in the heart of Europe have ensued again.²⁸ Post-colonial traces can be found everywhere in *economization of security* and in the constant game between 'national' and 'social security'.²⁹ The statement made by Hannah Arendt long time ago that colonialism would return to Europe as a boomerang is not insubstantial at all. Europe has europeanized the world by its mechanism for creating reality; signs of europeanization are omnipresent, they can be noticed even where they are not expected. The constellation is neither simple, nor easily understood. Those Muslim people who are quickly and irresponsibly declared as risk carriers for Europe use *European discourses*: attend European universities, adopt European categorical structures in order to use them as a form of dissatisfaction. They represent an offspring of the paradoxical link of europeanization and diversity creation regime in Europe.

Post-colonialism, premodern archaism, national self-awareness, demography, certain attempts of creating post-national frames, neoliberalization of the economic order and labor force and precarization of labor force have been strongly intercon-

24 The picture is, normally, too complex, E. Ivarsflaten, What Unites Right-Wing Populists in Western Europe?: Re-Examining Grievance Mobilization Models in Seven Successful Cases, *Comparative Political Studies*, 2008, 41, 3. On the use of „toxic rhetorics”, A. Azmanova, Against the politics of fear: On deliberation, inclusion and the political economy of trust, *Philosophy Social Criticism*, 2011, vol. 37, no. 4, 401-412.

25 S. Ahmed, *The Cultural Politics of Emotion*, Edinburgh, 2004, 135.

26 G. Bosetti, Introduction: Addressing the politics of fear. The challenge posed by pluralism to Europe, *Philosophy Social Criticism*, 2011, 37, 371.

27 On migration dynamics in Europe, J. Martinez, Politiques d'immigration: bilan d'un échec, *Cités*, 2011/2 - n° 46.

28 A. Tsoukala, Democracy Against Security: The Debates About Counterterrorism in the European Parliament, September 2001-June, 2003, *Alternatives*, 2004, 29, 417-39.

29 M. Neocleous, From Social to National Security: On the Fabrication of Economic Order, *Security Dialogue*, 2006, 37, 363.

nected in the European politics which inevitably affirms the imagination of the 'economic security'. The forms of multiculturalism in Europe have not been determined by these moments.

The above previously mentioned leads to the conclusion that: *the articulation of multiculturalism is strongly connected with the creation and experience of diversity*. Therefore, we cannot be satisfied by simply referring to diversities as *given* facts: such an approach would neglect the fact that these diversities *are* always *created* within relatively defined conditions. These diversities are only present in the processes and there is no logical explanation on how these processes could end or deplete. Thus, colonialism *did* respect diversity (India and R. Kipling are good examples for it), it even increased the cultural distance in behalf of diversity. Therefore, the celebration of diversity as means of emancipation should be avoided. Diversity does not always guarantee emancipation. Considering the discussions on multiculturalism as an expressed and insatiable desire for diversity is a terrible mistake which will soon become an ideological alibi. I am not suggesting the infinite immersion into celebration of diversity, nor the glorification of mass-collective awareness of microgroups-neoethnicity as an absolute, that is, as an unconditional measure of emancipation.

Hence, multinational-neoliberal capitalism has affirmed the altered diversity management in comparison to its earlier condition. I have already mentioned the *intermediary* aspect of the relationship between the Same and the Other. Actually, the culture represents a mechanism of intermediation between the Same and the Other. The culture does not exist within itself as a form of monological manifestation, *it is acquired in the form of already reflected encounter with the Others*: it is not a coincidence that anthropology³⁰ developed the concept of culture as a collection of characteristics that a certain group has and not how others see them, and vice versa; actually, it is a means of becoming visible for the Others. This does not mean giving the priority to the Others or other cultures but *it means emphasizing a complex exchange of views, attitudes and norms*. Rancière (1998) had argued similarly, discussing the relationship between the French and the Algerians and the original political relationship between the Same and the Other: Rancière's concern is 'with a reflexive gaze we turn back on ourselves when we consider an other whose presence or absence modifies the adjective *French* and distances the *French* political subject from him- or herself'.³¹ Insofar, culture is a form of reflexive combination of the above mentioned exchanging views and signs in public space, although we always talk about our own culture and its content which is a *condensation of what others think of us*. There is a moment when the Other addresses/interpolates us as 'you'. Culture is always a way of *addressing transactions* between different contents; every transaction is already a reaction. This means that national culture, and every other culture is incomplete: despite of the fact that different forms of nationalism rely on unconditional collectiveness, homogenization is always temporary and non-finalized, and necessarily exposed to constantly new transactions with

30 F. Jameson, On „Cultural Studies”, *Social Text*, 1993, No. 34, 17-52. H. Eidheim, When Ethnic Identity Is a Social Stigma, in *Ethnic Groups and Boundaries*, ed. F. Barth, Boston, Little, Brown, 1969, 39-57.

31 J. Rancière, The Cause of the Other, *Parallax*, 1998, vol. 4, no. 2, 25.

the Others. This causes fear of identity loss which further develops into identity loss panic that seizes the masses.

However, we have something else to clarify since we are frequently faced with the misunderstanding that arises from the interpretation of multiculturalism. In such a way, normative interpretation of the phenomenon of multiculturalism points to the *culture as contextual frame* for freedom of choice/decision which is greatly appreciated in liberalism. This shows sensitivity to historical-contingent particularism and enables reconsideration of a relationship between universality and particularity. This is also the manner in which sophisticated argumentation of Will Kymlicka promotes culture as transcendental condition for consideration of multiculturalism. However, the reason I decided not to perform normative analysis in this paper lies in my intentions to carry out a research on *social conditions under which the mentioned normative analysis can occur*. Normative projections are not created in a vacuum and my analysis of *the form* was intended to tackle that as well. Kymlicka, who contributed so much to the consideration of multiculturalism, argues from the aspect of liberal political philosophy and everyone who is familiar with historical dynamics of liberal comprehension of the world is also familiar with the *novum* of such an approach. Nevertheless, the tragic destiny of liberalism in neoliberalism should be emphasized as well as its understanding of culture as a contextual frame for freedom of choice. *This represents only a part of the general tension between liberalism and neoliberalism which is increasing nowadays*, i.e. this is a context which we should accept. Normative treatment of diversity in liberalism is inevitably associated with the logic of neoliberal order which implies utopian understanding of the market: liberal values often remain too *low* in comparison to the *strong* neoliberalism.³² Valérie Charolles wrote an excellent argumentative book about conflicts between liberalism and capitalism, showing that this conflict was imposed, sometimes in a problematic and asymmetrical manner, and that liberalism would always be subject to this conflict.³³ Anyway, the transition between liberalism and capitalism cannot be described in continuity lines. This is a moment that refers to the relationship between liberalism and neoliberalism. However, if this is the case, then we can discuss the *crisis of liberalism* which has arisen in the last decade and the attempts of liberalism to question neoliberal conquest of the world by applying normative analyses. The transformed meaning of 'welfare' also affects liberal understanding of multiculturalism since it directs the attention to the active state care when dealing with diversities. However, my aim is not to highlight the problem of culture: it is a reservoir of different meanings, a contribution of heterogeneous struggles and discussions, as well as a terrain for battlefield of different legitimations. Liberal theory of contextual choice emphasizes the inevitable moment of creating culture, but it does not thematize either social paths of culture in neoliberal capitalism or its tension *toward the Same*. *We have to keep in mind that we are faced with possible misunderstandings since the projections*

³² I tried to analyze this in K. Josifidis, A. Lošonc, *Neoliberalism: destiny or choice*, Novi Sad, Graphic, 2007.

³³ V. Charolles, *Le libéralisme contre le capitalisme*, Ed. Fayard, 2006, particularly the second chapter on „antiliberal capital”. About the changes in the meaning of individual sovereignty in neoliberalism, C. Audard, *Altern. Économiques, L'Économie politique*, Le Nouveau Libéralisme, 2009, 4, 26. On regression of individualism and creation of corporate individualism, M. Perelman, *Manufacturing Discontent The Trap of Individualism in Corporate Society*, London, Ann Arbor, 2005, 16.

that are summarized in the interpretation of multiculturalism are not just logical deductions; they represent an interweaving of such deductions and socio-economic dynamics. I am convinced that the theory of multiculturalism can be developed only if we are ready for both normative analysis and critical description of different paths of culture.³⁴ This makes the task more difficult, but it cannot be avoided.

How is neoliberal capitalism seen from a cultural point of view? We should not forget the requirements that have been set many times during modernity, relating to the gaining of *autonomy* of culture in relation to the economic imperatives. Nevertheless, neoliberalism distorts this requirement and we are faced with a tendency which casts doubt on this requirement: *today, everything is culturalized*, the difference between culture and economics is becoming smaller, in some situations porosity disappears and culture becomes merchandize and makes commodifications. Furthermore, citizenship is formed before culturalization. The introduction of cultural contents into economic flows directed towards profitability has adverse effects on culture. It is not true that culturalization of economics means that both, culture and economics have the same status, that is, that they are equal. There is a general *tendency* showing that culturalization inverts the desire for cultural autonomy into a commodity. Undoubtedly, this type of diagnosis is not new, however, such a range of commodification has not been seen before. Naturally, this does not imply that every production related to culture is determined by neoliberal rates of production and consumption, but rather that there is a *cultural dominant* in today's life. Therefore, it does not mean that culture has been determined by the neoliberal order. Such a statement would be strongly against my belief. However, transformation of culture and its taking of different forms are *functional* according to the ideology of neoliberal order. Respectively, there are congruencies between certain cultural practices which were modeled based on the consumption pattern and neoliberal economics.

This simplified description gives us a perspective on the problem of culture in the context of free choice. Additionally, there is another important issue related to the market which is worth mentioning. Namely, the market (socially mediated) *does not* exist as a freedom of choice in neoliberalism, as a context of choice or as a medium of embodied freedom; it rather exists as a *disciplinary mechanism*, and as 'inspection institution'. Spontaneity, which has been celebrated on many occasions, is connected with 'panopticon', that is, all-seeing regime of discipline.³⁵ In a system where media and market are the main creators of culture, this is of particular importance. Let us consider the following statements:

One commentator (prone to numerous issues related to multiculturalism) writes that multiculturalism operates as „conceptual tool” for the state in order to „control the differences”.³⁶ The following (American) statement, which introduces utilitarian meaning of culture, is also important: multiculturalism „promotes” the capitalism on an

34 Kymlicka, too, analyzed this problem, W. Kymlicka, *Multicultural Odysseys: Navigating the new International Politics of Diversity*, Oxford, Oxford University Press 2007, 130.

35 On market (as a mechanism of coordination of individual reactions) in relation to Bentham, M. de Angelis, *The Beginning of History*, London, 2007, 194.

36 K. Mitchell, *Geographies*, *ibid.* 642. T. Asad, Multiculturalism and British identity in the wake of the Rushdie affair, *Politics and Society*, 1990, 18, 455–80.

international level.³⁷ Prior to drawing a conclusion out of it, I would like to mention other cases which are also relevant. One researcher complains that ‘multicultural meanings’ conceal burning racism and he laments over the fact that ‘multiculturalism’ is connected with the aspects of racism. He believes that race creates numerous situations in capitalism and that many constellations in the globalization are full with racist elements, but ‘multiculturalism’ makes it obscure since it enables the celebration of diversity as a *per se* progress. Despite the fact that racism is legally forbidden, and that campaigns are led against it, racism on daily basis are masked. Numerous manifestations of racism remain unidentified. Aggressors/police officers pretend always to be benevolent as ‘multicultural’ guardians of order in the name of neoliberalism; their army is even joined by the sons and daughters of all nations who enjoy this wonderful game of diversity by reciting the Ode to Joy contrary to the attacked side which is constantly *mononational* and accepts mononational logic of the world. It is not a coincidence that this author³⁸ writes about ‘neoliberal multiculturalism’, indicating that neoliberalism has *transformed* ‘multiculturalism’, that is, ‘multiculturalism has become an alibi for the development of neoliberal patterns’. The world market represents a model for totalization, that is, for the comprehensive view of the world, and with respect to that ‘multiculturalism’ is *cofunctional*. Another author³⁹, after mentioning the amounts invested in the *instrumentalization of multi-colored* world, comes to an obvious and provocative conclusion that the capital absorbs and creates market diversity and that countries tolerate the created constellation and have to invest substantial means in order to improve the conditions caused by the creation of diversities. Therefore, multiculturalism is *favorable* for the capital on the world market, but *unfavorable* for a territorialized and fixed state which is located in a ‘fixed place’. On the other hand, we could say that capital *can* accept diversities for the purpose of profit, while the state, which bears those diversities, *cannot*.

None of the interpretations of multiculturalism can be separated from history; the truth about it can be discovered only within the given social moments. Understanding ‘multiculturalism’, as the focal point of diversities and a promoter of capitalism, gives it the role of an instrument. If it is established in the state-secured competition in order to make the relationship between capital and culture more flexible, then it inevitably bears certain consequences. Pointillist-consumerism ideology of neoliberalism regards upon the question of identity as an expression of preferential structure which constantly changes, depending on the flux and reflux of marketing and advertising; therefore, identity could also be chosen as a side moment on a scale of endless choices.

Undoubtedly, there are certain forms of multiculturalism that have become ideological. *However, it is not fatality*. By stating that ‘multiculturalism’ disciplines diversities it only means that market classifies and maintains those diversities within a given order. A hypertrophic market denies its social origin.. The previously made statement about the market in neoliberalism, playing a role of a *controller and mediator of disci-*

37 Mitchell, *ibid*.

38 J. Melamed, The Spirit of Neoliberalism. From racial liberalism to Neoliberal multiculturalism, *Social Text*, 2006, 89, Vol. 24, No. 4, Winter.

39 J. Resnik, Multicultural Education – Good for Business but not for the State? The ib Curriculum and Global Capitalism, *British Journal of Educational Studies*, 2009, Vol. 57, No., 3.

pline, could be understood as a constellation where diversities must be mediated and produced by market. This, however, poses a problem of understanding the *culture in the context of choice*. If culture is formed based on a market pattern, then following usually happens: programs and options are offered in *given*, already created frames which are afterwards referred to as a free choice. The fact that this is a 'multi'-variant does not change anything at all. *Even this course of events can be transcended if we focus on defining the actual context where choices are made, that is, if we do not consider the given contexts as sacrosanct*. The market is celebrated as an embodiment of divine origin not because 'someone', 'something' arbitrates people through *so called* spontaneous order and resolves the crucial human problem: the problem of measure. Still, this is destructive for both, culture and 'multiculture'. Together they represent never-ending people's endeavor to find measure in relation to the development of *relation between the measurable and immeasurable*.

Undoubtedly, discussions on multiculturalism bear misunderstandings. Those are not 'just' misunderstandings, but rather expressions of numerous contradictions rooted in this unique notion. Just as culture is a debatable notion, so is equally 'multiculture'. All the attempts have been unsuccessful, which tried pacifying the discussions on multiculturalism and turning it into a neutral-technological notion that would address the needs in a given moment. Therefore, I advocate a *political* understanding of multiculturalism. Cultural politization is a precondition for comprehension of events in which the forms of multiculturalism are involved.

The Concept of the Nation

ANDRÁS JAKAB¹

*'Nation' is a category of 'practice', not (in the first instance) a category of analysis. To understand nationalism, we have to understand the practical uses of the category 'nation', the ways it can structure the perception, to inform thought and experience, to organise discourse and political action.*²

The abstract, evaluative, psychologically and sociologically influenced (where the participants of the debate are necessarily also personally affected to some degree), endlessly debated, through time slowly changing, variously describable and internally complex nature of the concept of 'nation' which resists widely accepted definitions can probably be best characterized by what we call an 'essentially contested concept'.³ We have to understand and *explicate the communicative situations* in which we use such complicated and abstract concepts, rather than to give one-sentence definitions which would anyway just use other very general expressions which should be again defined and so on.⁴ On this methodological premise, in the first part of the present study we are going to analyze the factors which led to the breakthrough of nationalism in the 18th century. In the second part, some antinomies about the nature of modern nations will be dealt with, using the term in a Kantian sense as equally rational but contradictory statements.

1. Factors Helping the Formation of Modern Nations

The factors which led to the formation and which we are discussing in this section should be considered as being only conducive towards the formation of modern nations.⁵ This means that no individual factor is a sufficient ground for nation formation on its own; and conversely: the lack of any of them did not make modern nation forma-

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² Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe*, Cambridge, CUP 1996, 10.

³ WB Gallie, Essentially Contested Concepts, *Proceedings of the Aristotelian Society*, nr. 56 (1956) 167–198.

⁴ Cf. HLA Hart, Definition and Theory in Jurisprudence, *Law Quarterly Review* 1954, 37–60.

⁵ Miroslav Hroch, From National Movement to the Fully-Formed Nation: The Nation-Building Process in Europe, *New Left Review* (198) 1993, 8–9 on the fact that any account has to be multi-causal.

tion impossible, but only less likely. As we will see, these factors have also partly influenced (mostly reinforced) each other, thus the following explanation of social-political mechanisms is rather similar to a network than to a series of individual, neat and parallel grounds. The order of the different factors does not mean any ranking in importance; it simply seemed the most logical way to explain in a concise manner the complexity of the issue.

1.1 Nationalism Itself as a Political Ideology Helping the Formation of Nations

‘Nationalism is primarily a political principle, which holds that the political and national unit should be congruent,’⁶ thus 1. a nation should have a state (national self-determination) and 2. states should be nation-states (nation-building).⁷ As nations are not biological or physical entities, their political existence can be explained to a great extent by the emergence of the political idea behind them, i.e. by nationalism.⁸ Or to put it more bluntly: nations did not create nationalism; it was rather the other way around.⁹ Ethnic/cultural communities became nations by the idea of nationalism, i.e. by the claim to render the boundaries of the nation congruent with those of its governance unit.¹⁰ The usual main normative argument of nationalism (‘nations should have a state’) is thus necessarily circular, as nations become nations exactly through believing in the idea of nationalism.¹¹ The other usual nationalist argument (‘states should be nation-states’) contradicts the former, consequently, nationalist politics is not simply about reinforcing or establishing the belonging to a national community, but a bitter struggle between nationalizing states and state-seeking national minorities for the loyalty of the members and for the political rights to self-government.¹²

For the success of this political idea, however, some of the structural social factors which are detailed below were helpful, and the presence of at least some of them indispensable. In the words of Miroslav Hroch:¹³

The diffusion of national ideas could only occur in specific social settings. Nation-building was never a mere project of ambitious or narcissistic intellectuals [...] Intel-

6 Ernest Gellner, *Nations and Nationalism*, Blackwell 2006 2nd ed., 1. The term ‘nationalism’ first appeared in a text by Herder in 1774, see Isaiah Berlin, *Vico and Herder*, London, Hogarth 1976, 181.

7 As a matter of fact though, they are and were mostly not congruent, see William H McNeill, *Polyethnicity and National Unity in World History*, Toronto, Toronto Univ. Press 1986.

8 We are not going to analyse what did *not* have a direct influence on the emergence of nationalism. Because of its well-known and widespread nature, only one of such factors should be mentioned here: As opposed to some Marxist accounts, it is *not* possible to establish a causal link between capitalism and nationalism, except at the most general level; bourgeoisie was *not* the inventor of nationalism: if we look for a specific social group behind nationalism, then in modern times its first mover was rather the intelligentsia. See Josep R Llobera, *The God of Modernity. The Development of Nationalism in Western Europe*, Oxford, Berg 1994, 220.

9 Eric Hobsbawm, *Nations and Nationalism since 1780*, Cambridge Univ. Press 1992, 2nd ed., 10; Eugen Lemberg, *Nationalismus*, Reinbek bei Hamburg 1964, vol. II 250.

10 Michael Hechter, *Containing Nationalism*, OUP, 2000, 7.

11 Jacob Levy, National Minorities without Nationalism, in: Alain Dieckhoff (ed), *The Politics of Belonging*, Lanham, Lexington Press 2004, 160.

12 Levy (n. 10) 161.

13 Miroslav Hroch, From National Movement to Fully Formed Nation, *New Left Review* (198) 1993/ March 4.

lectuals can invent national communities only if certain objective preconditions for the formation of a nation exist.

These social preconditions are succinctly summarized by Paul Brass (we are going to deal with them one by one in later parts of the present paper):¹⁴

Nationalism is most likely to develop when new elites arise to challenge a system of ethnic stratification in the cities or an existing pattern of distribution of economic resources and political power between ethnically distinct urban and rural groups or ethnically diverse regions. One moment at which such challenges tend to arise most forcefully is when industrial development and political centralization have led to concentrations of job opportunities in key urban centers and to the need for trained personnel to fill the new positions. It is at this point also in pluralistic societies that the issue of language becomes critical because the choice of the official language and the medium of education determine which groups have favored access to the best jobs.

It is difficult to consider nationalism as a usual political philosophy: as opposed to conservatism or liberalism, it just does not claim to be a philosophically sophisticated system.¹⁵ It is rather an emotional alliance and a *mass* movement.¹⁶ It does have some clearly identifiable tenets though which, according to Smith, are the following:¹⁷

1. The world is divided into nations, each with its own peculiar character, history and destiny.
2. The nation is the source of all political and social power, and loyalty to the nation has priority over all other allegiances.
3. Human beings must identify with a nation if they want to be free and realize themselves.
4. Nations must be free and secure if peace is to prevail in the world.

Therefore, nationalism is not simply a claim of ethnic/cultural similarity, but a claim that ethnic/cultural similarity should count as *the* definition of the political community.¹⁸ Nationalism also refers to a specific way of thinking and talking about the people, i.e. a nationalist discourse. One of the reasons why it is difficult to understand the features of this discourse is partly due to the fact that it is a discourse systematically forming the object of which it speaks.¹⁹ This discourse can be characterized by the following typical elements:²⁰

1. Boundaries of territory or population, or both;
2. indivisibility,
3. sovereignty or the aspiration of sovereignty, usually through an autonomous or a putatively self-sufficient state,

¹⁴ Paul R. Brass, *Ethnicity and Nationalism: Theory and Comparison*, New Delhi, Sage 1991, 43-44.

¹⁵ Cf. Bernard Yack as cited in Ronald Beiner, Introduction: Nationalism's Challenge to Political Philosophy, in: Ronald Beiner (ed), *Theorizing Nationalism*, New York, State Univ. of New York Press, 1999, 2: 'there are no great theoretical texts outlining and defending nationalism. No Marx, no Mill, no Machiavelli. Only minor texts by first rate thinkers, like Fichte, or major texts by second rate thinkers, like Mazzini.'

¹⁶ According to Erica Benner, Is there a core national doctrine?, *Nations and Nationalism* 2001, 155-174 its nature is rather similar to doctrines on the placement of the political community, like imperialism, regionalism or globalism.

¹⁷ Anthony D. Smith, *National Identity*, London, Penguin, 1991, 74.

¹⁸ Craig Calhoun, *Nationalism*, Buckingham, Open University Press, 1997, 9; and Craig Calhoun, Nationalism and Ethnicity, *Annual Review of Sociology*, 1993, 211-239, esp. 229.

¹⁹ For such a concept of discourse see Michel Foucault, *The Archaeology of Knowledge*, London and New York, Routledge, 2002, 54.

²⁰ Calhoun 1997 (n. 17) 4-5. The features are to be understood only as family resemblances in the sense of Wittgenstein.

4. an 'ascending' notion of legitimacy, or the idea that government is just only when it is supported by popular will; 5. popular participation in collective affairs, 6. direct membership, where each individual is a part of the nation and is categorically equal to all others, 7. culture which includes some combination of language, values and shared beliefs, 8. temporal depth, the idea of a nation extending from the past to the future, 9. common descent or racial characteristics, 10. special historical, sometimes sacred connections to a territory.

Though some philosophical precursors can be found in Rousseau or in Herder, neither of them can actually be identified as being a nationalist thinker using the full-fledge of the arguments as shown above which have been used by nationalist politicians.²¹ Nationalism as a political ideology is a modern phenomenon (even if some elements of nations and even of national identity can be traced back to pre-modern times, but nationalism as a mass movement claiming that the nation should have a right of self-determination, and consequently also its own state, stems from the end of the 18th century, see below 2.1 *Old vs. Modern*).

1.2 The Socio-Psychological Needs of the Individuals

During the 18th century in Europe, the nation became a substitute for social cohesion both through royal families (or other cohesive traditions and allegiances) and through religion and national churches.²² First, we will take a look at secularization as a force behind nationalism, and then we will analyze the influence of the breakdown of traditional social structures.

1.2.1 The Need to Give a Meaning to Life after Secularization

Modern national identity appeared in Western Europe at a time when religion itself was losing its grip on the masses.²³ How identity building based primarily on (universal catholic) religion failed in Europe is shown by the slow but unstoppable demise of the Habsburg Empire beginning with the Dutch wars in the 16th century and ending in 1918 with the dissolution of Austria-Hungary.²⁴ The emergence of nationalism went hand-in-hand with secularization.

Secularization (not to be confused with atheism which remained rare even during this period) means here the declining explanatory and justificatory force of religion in politics. Secularization also meant a growing acceptance of social changes: the static nature of law and society of the Middle Ages was based on the pre-given order of the infallible divine will, and as the order was losing its religious side, it was also losing its unchangeable and sacred nature.²⁵ In the language of politics, theological divine will

21 On the consciousness of belonging together and on patriotism: Frederick M Barnard, National Culture and Political Legitimacy: Herder and Rousseau, *Journal of the History of Political Ideas* 1983, 231-253; Frederick M Barnard, Patriotism and Citizenship in Rousseau, *The Review of Politics*, 1984, 244-265. On Montesquieu's idea of the *caractère d'une nation* or *esprit général d'une nation* see Montesquieu, *De l'esprit des lois*, 19, 5. 27 (1748), *Œuvres complètes* vol. 3. (1976) 559.

22 Eric Hobsbawm, Mass-Producing Traditions: Europe, 1870-1914, in: Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition*, Cambridge Univ. Press 1983, 303.

23 Hobsbawm (n. 21) 269.

24 Llobera (n. 7) 140.

25 António Manuel Hespanha, *Cultura jurídica europeia. Síntesis de un milenio*, Madrid, Tecnos, 2002, 59-66.

has been substituted by the legal will of the sovereign or by the will of the legislator.²⁶ It was caused by a unique constellation of European developments, such as the Investiture Controversy, the emergence of Italian city republics and the Reformation.

(1) Early feudal monarchs used the church as a legitimacy-supporting organization for the kingdom or the empire, which was in theory ('spiritually') subordinated to an independent pope, but in practice served the stability of the respective monarchy.²⁷ The Investiture Controversy (11th – 12th centuries) as an independence struggle of the church against secular authority or even as a fight for taking over the leading role in the Christian world led, however, to a certain distance being created between religious and political authority (Concordat of Worms, 1122).²⁸ The ongoing legal quest between the pope and the emperor and the attempt of these powers to strengthen their internal hierarchical administration by legal rules made more lawyers necessary on both sides: canonists (or decretists, experts in church laws) and legists (experts in secular Roman law).²⁹ This growing amount of legal knowledge and the finding of a remaining copy of Justinian's *Digesta* (i.e., a vast secular but extremely prestigious body of law) at the end of the 11th century also contributed to the autonomy of legal science from theology (so resulting in separate faculties of law at the early universities).³⁰

(2) Based on the actual political practice of Italian city-republics in the 15th and 16th centuries (which did not claim any divine legitimacy), Machiavelli described the internal logic of politics in his *Il principe* and the *Discorsi*. Even though it outraged most of Europe, it also contributed considerably to thinking about public authority in a secular way.³¹

(3) Even more importantly, the Reformation and the following religious wars in the 16th and 17th centuries shook the force of the church (or from then on: the churches) even in the spiritual arena. The struggle between Catholicism and Protestantism ended undecided (Peace of Augsburg, 1555; Peace of Westphalia, 1648): both continued to exist in a Europe which was from now on recognized of consisting of equally sovereign states. The co-existence of Protestants and Catholics in Europe and sometimes even within individual states required a new language for the political discourse which was secular. The horrific results of the religious (civil) wars of the 17th century further

²⁶ Hespanha (n. 24) 71, 105-106.

²⁷ For the justification of this situation, the 'two swords doctrine' of Pope Gelasius I (492-96) was used, according to which the secular ('temporal') sword also stems from the church (the pope), but it is used by secular monarchs (the emperor) for secular government, but the spiritual sword remains with the pope. Gerhard Köbler, *Deutsche Rechtsgeschichte*, München, Franz Vahlen, 5th ed. 1996, 109. It is based on Luke 22:38, where the disciples tell the arrested Jesus: 'Lord, behold, here are two swords.' The re-interpretation of this passage and of this doctrine was itself part of the Investiture Controversy.

²⁸ Randall Lesaffer, *European Legal History*, Cambridge, Cambridge Univ. Press, 2009, 212-216.

²⁹ Roman law was especially used by the secular side as a pool of argument, especially the phrases by Ulpian 'quod principi placuit, legis habet vigorem' ('what pleases the emperor, has the force of law') and 'princeps legibus solutus est' ('the emperor is not bound by the law'). D. 1.4.1 and D. 1.3.31. It was later used by other secular powers (kings, princes) against the emperor himself. For more detail see Piper Gilmore, *Arguments from Roman Law in Political Thought, 1220-1600*, Cambridge, Mass., 1941; Jacques Krynen – Albert Rigaudière (eds), *Droits savants et pratiques françaises du pouvoir, 11e-15e siècles*, Bordeaux, Presses Universitaires de Bordeaux 1992.

³⁰ Lesaffer (n. 27) 236, 243, 253-254.

³¹ Lesaffer (n. 27) 313.

strengthened the feeling of the elites in many countries that a new non-religious conceptual frame might be a more fruitful way of securing stable peace. At the same time, the Peace of Westphalia also meant that claims for universal (papal or imperial) authority were rejected.³²

Religion was a ready-made model for nationalism in rituals and schemes of thought, and in many cases it was either a substitute for religion, in others it became a powerful ally, reinforcing emerging (but in its nature actually secular) nationalism.³³ The former happened during the French Revolution in the form of a new anti-Christian religion in which abstract concepts such as Fatherland (*Patrie*), Reason (*Raison*), Liberty (*Liberté*), etc. became deified and were worshipped as gods (or rather goddesses),³⁴ the latter in the form of national Christian churches supporting nationalist movements (like in Poland or Ireland).³⁵

Symbols and semi-ritual practices, such as flags, singing national anthems, election days, images (icons) and ceremonies (feasts, processions, pilgrimages, holy days), all resembled older religious practices.³⁶ Instead of saints, patriotic heroes and national geniuses were (and are) worshipped.³⁷ In the words of Llobera:³⁸

[N]ationalism has become a religion – a secular religion where god is the nation. What is meant by that is not only that modern nationalism has all the trappings and rituals of a religion, but also that, like religion, it has trapped into the emotional reservoir of human beings. Religion [...] operates at the same level as nationalism: the level of deep elementary emotions.

A new answer has been given to the question of fear from death, the probably most important psychological factor behind religions, stating that the meaning of individual life is to be part of a bigger community which lives forever,³⁹ for which entity consequently it is worth sacrificing our own individual lives.⁴⁰ Accordingly, being a member of a nation often acquired a missionary zeal, its average war martyrs became worshipped in ceremonies of national holidays which used as their scene the Tomb of the Unknown Soldier.⁴¹ Instead of religious martyrs, our public events began to worship the historical founding fathers of our nation, or even more its anonymous member, the Unknown Soldier, i.e. potentially ourselves.

32 Divine legitimacy has been substituted by the secular doctrine of sovereignty, see András Jakab, *Neutralizing the Sovereignty Question. Compromise Strategies in Constitutional Argumentations about the Concept of Sovereignty before European Integration and since*, *European Constitutional Law Review* 2006/3. 375-397, esp. 375-378 and 383-384.

33 Llobera (n. 7) x, 144; Heinrich August Winkler, *Einleitung: Der Nationalismus und seine Funktionen*, in: Heinrich August Winkler (ed), *Nationalismus*, Königstein 1978, 6; Peter Alter, *Nationalismus*, Frankfurt, Suhrkamp 1985, 15-16.

34 Llobera (n. 7) 139, 145. Also the home-land often became sacralised, like the 'holy Russian land' or 'Holy Ireland', see Hobsbawm (n. 8) 49. Sometimes old sacralised expressions achieved new emphasis, like in Hungary the expression 'countries of the [Hungarian] Holy Crown' gaining a more ethnic connotation than before.

35 James G Kellas, *The Politics of Nationalism and Ethnicity*, London, Macmillan 1991, 48.

36 Hobsbawm (n. 47) 12, Hobsbawm (n. 8) 72; Carlton JH Hayes, *Nationalism: A Religion*, New York, Macmillan 1960, 164-168.

37 Rogers Brubaker, *Religion and nationalism*, *Nations and Nationalism* 2012, 3.

38 Llobera (n. 7) 143.

39 Bruce Kapferer, *Nationalist Ideology and Comparative Anthropology*, *Ethnos* 1989, 161-199.

40 Benedict Anderson, *Imagined Communities*, London, New York, Verso, 2nd ed. 2006, 11.

41 Anderson (n. 39) 9-10.

1.2.2 The Need for Social Cohesion in a Dynamically Changing World

Even though members of nations are actually not relatives in a biological sense, we still often use metaphors based on family ('mother country', 'fatherland', 'founding fathers of the nation', 'our brothers on the front').⁴² From the nation we not only expect (mutual) actual help in case of need, but it also gives the feeling of togetherness which, in modern individualized times, is so much needed.

Modern nations, even though by definition collective entities, emerge under the precondition of individualism in society (meaning not the philosophical idea, but the sociological fact). Nationalism is actually balancing out social individualism by giving an identity anchor to individuals. Individualism as a social phenomenon can be explained on different grounds, such as absolutism, printing machines, Reformation, and urbanization and industrialization.

(1) The corporatist (in which rights and duties depended on belonging to a social-juridical group, like an estate) and hierarchic picture of society faded away. European states forced each other via constant wars into becoming more centralized, militarily and financially more efficient states (those which were unable to take up this path, like Poland, disappeared). The new absolutistic states subdued traditional aristocracies, which led the people living in the territory of the aristocrats to consider themselves as direct subjects of the king, rather than as belonging to the aristocrat. Instead of group or collectivistic logic, they became in the new constellation simply *individual* subjects of the central monarchical power.⁴³

(2) Johannes Guttenberg inventing the printing machine around 1440 not only contributed to the success of the above mentioned Reformation, but also made possible the existence of printed newspapers. In the 18th century, in England, France, certain parts of the Holy Roman Empire, the Netherlands and British colonies of North America (today's US East Coast), the number of literate people and the connecting journalism reached a critical mass. Public opinion was formed considerably by newspapers, and for a printed text it was less important who said it in which pompous palace. The argument itself became more important, about which each reader formed his opinion *individually*.⁴⁴

(3) The weakening of general religious spiritual authority (i.e., secularization, as described above) led to a certain extent to being intellectually 'lonely', without the former unquestionable truths.

(4) Urbanization and industrialization also contributed to the breakdown of traditional (grand)family and clan ties, and the social and cultural vacuum left by this was filled by the nation. In large-scale industrial societies people moved between many positions, migrating and changing jobs, thus people did not have to be prepared for unique jobs that would last a lifetime and furnish identity (priest, guildsman, aristocrat, peasant, king).⁴⁵ They also worked in specialized jobs, resulting in the loss of the

⁴² Thomas Hylland Eriksen, *Ethnicity and Nationalism*, London, Pluto, 3rd ed. 2010, 130.

⁴³ John Markoff, *Waves of Democracy. Social Movements and Political Change*, London e.a., Pine Forge 1996, 43-45.

⁴⁴ Markoff (n. 42) 46.

⁴⁵ John Breuilly, Introduction, in: Gellner (n. 5) xxiv.

feeling of unity of their life environment.⁴⁶ Modern society is not mobile because it is egalitarian; it is egalitarian because it is mobile.⁴⁷

All these led in turn to social alienation (*Entfremdung*). Because of this alienation and because of the gradually diminishing role of old traditions, new traditions had to be invented which gave common political identities to societies.⁴⁸ These social and political identities could not be any more overwhelmingly religious ones because of the *secularization* (as described above). Accordingly, the 19th century became the century for inventing new national traditions or for transforming local or dynastic traditions into national ones. New public holidays emerged, monuments and buildings were built that tried to look ancient, national anthems were written, the national flag was put to into every ceremony (wedding, election day) and on public buildings,⁴⁹ huge national festivities were celebrated (where the nation worshipped itself and its own culture).⁵⁰ Folk tales and folk songs were collected (sometimes partly even invented, see the Finnish Kalevala in 1835). All this happened in the name of a *conscious* effort to build nations.⁵¹

Competing identities like that of class (with its own festive day, 1 May, with its own symbols and mythology), proved to be doomed to fail in the long run.⁵² To use the words of Hobsbawm:⁵³

What is clear is that nationalism became a substitute for social cohesion through a national church, a royal family or other cohesive traditions, or collective self-representations, a new secular religion, and that the class which required such a mode of cohesion most was the growing middle class, or rather that large intermediate mass which so signally lacked other forms of cohesion.

1.3 Political and Cultural Compartmentalization

Political compartmentalization beginning in the 16th century had different elements. On the one hand, universalist structures (*Imperium* and *Ecclesia*) had been fragmented, on the other hand, the centralized modern administrative state was born. Both have been helped by a third factor, namely by the linguistic unification in vernaculars (and vice versa, the first two factors themselves also helped this unification). The fuzzy picture of the Middle Ages where universalist structures claimed authority

46 Heinrich August Winkler, *Nationalismus*, Athenäum 1978, 26.

47 Gellner (n. 5) 24.

48 Eric Hobsbawm, Introduction, in: Hobsbawm and Ranger (n. 21) 2 on the need for stable identification points in a changing and dynamic world. Cf. see Llobera (n. 7) x on the need for roots, and *ibid.* 153: 'The nation was a family (tribe) writ large.' Similarly John Breuilly, *Nationalism and the State*, Manchester 1993 2nd ed., 418-419.

49 An extreme form of respect for national flags is to be to the present day in the US, where the flag is worshipped every day (beginning in the 1880s), see Raymond Firth, *Symbols, Public and Private*, London, Allen & Unwin, 1973, 358-359.

50 Gellner (n. 5) 135; Hobsbawm (n. 21) 263, 264, 273, 278.

51 Cf. Hobsbawm (n. 21) 267 quoting Massimo d'Azeglio 'We have made Italy: now we must make Italians.' (1861). According to David Laven, Italy, in: Baycroft and Hewitson (n. 87) 256 (with further references) the phrase actually stems from Ferdinando Martini (1896).

52 Hobsbawm (n. 8) 173.

53 Hobsbawm (n. 21) 303.

over heterogeneous political units slowly faded away: it broke up into strictly separated units and these became more homogenous inside than before.

In the Middle Ages, cultural differentiation was a means of hierarchization, thus a protected stabilizing factor of existing power structures.⁵⁴ Privileged groups such as dynasties, the clergy and the nobility shared identities which transcended political boundaries.⁵⁵ By contrast, immobile peasant communities could identify neither with higher social groups (social division) nor other peasant groups (absence of communication).⁵⁶ In the modern era, however, cultural (especially linguistic) homogenization was necessary for a functioning capitalist society able to provide the financial support and the human resources needed for international conflicts with other states. Modern nations are thus anonymous,⁵⁷ fluid and mobile: they are unmediated, i.e. individuals belong to them directly, in virtue of their cultural style (this even applies to the so called civic nations, see below 2.2 *Natural (Ethnic, i.e. Based on Ancestry or Culture) vs. Artificial (Based on Elite Manipulation; or Civic, i.e. Based on Law and Deliberate Choice)*), and not in virtue of membership of nested groups.⁵⁸ The key conceptual elements of modern nations are thus a certain minimal size (being able to run a full educational system), homogeneity and literacy. All this was missing in the Middle Ages.

In this section, first, we are going to analyze this last issue of country-wide linguistic unification, and then the emergence of modern bureaucratic states, followed by the fragmentation of universalist structures.

1.3.1 Country-Wide Communication in the Vernacular through Linguistic Unification

At the time of the French Revolution (1789) half of the population of France did not speak French (but Italian, German, Breton, English, Occitan, Catalan, Basque, Dutch), and only 12-13% spoke it correctly. At the time of the Italian unification (1861) only 2.5%, according to more generous estimates 9.5%, of the population spoke the Italian we today call Italian.⁵⁹ Ignorance of another group's language constitutes the most obvious barrier to communication,⁶⁰ and thus the most obvious defining line which separates groups.⁶¹ Therefore, for the emergence of nations, a linguistic unification of different dialects was an extremely important component.

This unification happened through different mechanisms. On the one hand, in order to be able to recruit the expanding number of bureaucrats, modern bureaucracies switched from Latin to the vernacular.⁶² The origins of the modern school system are

54 Gellner (n. 5) 9-10.

55 John Breuilly, *Approaches to Nationalism*, in: Balakrishnan (n. 117) 150-151.

56 Gellner (n. 5) 10.

57 Linguistic unification meant internal interchangeability of men and documents, thus anonymity. Anderson (n. 39) 55.

58 Gellner (n. 5) 132.

59 Tullio de Mauro, *Storia linguistica dell'Italia unita*, Bari, Laterza 1970, 43; Arrigo Castellani, *Quanti erano gli italofoni nel 1861?*, *Studi linguistici italiani* 1982, 3-26.

60 On the role of communication in the formation of nations see Karl W Deutsch, *Nationalism and Social Communication. An Inquiry into the Foundations of Nationalism*, Cambridge MA, 1953.

61 Hobsbawm (n. 8) 51.

62 Anderson (n. 39) 39-40.

partly to be found in the educational institutions set up in order to supply the state with the necessary number of bureaucrats. On the other hand, the new and mobile industrial societal structure also required both a mobile division of labor, and sustained, frequent and precise communication between strangers who can share an explicit meaning, transmitted in a standard idiom and in writing when required.⁶³ As labor became more complex, communication became more important for production. Also because of continuous technical inventions, knowledge could not be passed on within the family or within corporations, and instead larger, organized professional educational units were needed. To reproduce its own personnel, such societies needed a pyramidal educational system, which could only be afforded by bigger entities, called nowadays nation-states.⁶⁴

The educational system allowed not only for linguistic unification (*cuius regio, eius lingua*), but also for the dispersion of national historical narratives and identities. The monopoly of legitimate education became from this point of view even more important, more central than the monopoly of legitimate violence.⁶⁵ Education was one of the major means of turning the population of a country into a nation.⁶⁶ Both cultural homogenization within the political unit and differentiation from external political units were sometimes helped by national protestant churches using a vernacular translation of the scripturalist God.⁶⁷ Printed languages laid the ground for geographically large-scale national consciousness (in unwritten languages, speakers of different dialects often do not understand each other),⁶⁸ it unified communication and it also made linguistic changes more difficult.⁶⁹

In addition, industrial inventions indirectly led to circumstances favoring linguistic unification. One is the train, which opened up formerly closed rural areas, broke up these small social communities and integrated them into the whole of country and facilitated country-wide communication.⁷⁰ But even more importantly, the invention of printing machines should be mentioned here. Printing machines resulted in cheap books which could be afforded by a large proportion of society (and a large proportion of society achieved literacy due to the educational system just mentioned), thus a whole industry could be built up on publishing books. The market of Latin and ancient Greek books was quickly filled up, thus new markets were needed. Vernacular books entered into the market, but it would not have been economically efficient to print books in every dialect. Thus, while certain

63 Gellner (n. 5) 33.

64 Gellner (n. 5) 31. 'A viable higher culture-sustaining modern state cannot fall below a certain minimal size (unless in effect parasitic on its neighbours); and there is only room for a limited number of such states on this earth.' Gellner (n. 5) 47.

65 Gellner (n. 5) 33.

66 Michael Mann, *The Emergence of Modern European Nationalism*, in: John Hall and Ian Jarvie (eds), *The Social Philosophy of Ernest Gellner*, Amsterdam and Atlanta, Rodopi, 1996, 147-170; Charles Tilly, *States and Nationalism in Europe 1492-1992*, in: John L Comanoff and Paul C Stern (eds), *Perspectives on Nationalism and War*, Amsterdam, Gordon and Breach 1995, 187-204.

67 Gellner (n. 5) 40, 136; Adrian Hastings, *The Construction of Nationhood*, Cambridge Univ. Press 1997, 12-13.

68 Hobsbawm (n. 8) 52.

69 Anderson (n. 39) 44.

70 József Eötvös, *A XIX. század uralkodó eszméinek befolyása az államra I.*, Magyar Helikon 1981, 248.

dialects have become the standard (printed) ones, others were downgraded to merely oral ones (even before any centralized academic institution could have decided about it). Linguistic unification in vernaculars (sometimes even beyond state-boundaries), so useful for nation-building, was thus much of a result of print-capitalism.⁷¹

Print-capitalism could, however, only influence the literate members of society. Protestantism and Counter-Reformation did extend literacy,⁷² but the decisive step was the introduction of mass schooling (required for jobs both in private economy and as a state bureaucrat)⁷³ combined with the emergence of newspapers (through which the news in the vernacular bounded the reading audience together).⁷⁴ Its main audience were socially modest, but educated middle strata (provincial journalists, school-teachers, aspiring subaltern officials, low noblesse, low rank priests), and nationalism was socially based exactly on such activists.⁷⁵ Not only the language itself, its script could also be identity-building, but only for the literate strata: the demand of Albanian nationalists that their language should be written neither in Arabic nor in Greek script, but in the Latin alphabet, which implied inferiority to neither Greeks or Turks, was obviously irrelevant to people who read no script.⁷⁶

For the less educated (mostly rural, often analphabetic) strata of society, the rise of modern mass media (radio, cinema, television) made it possible for them to be involved in the linguistic unification.⁷⁷ The evolution of the British royal family into a domestic as well as a public icon of national identification would have been impossible but for the modern mass media, and its most deliberate ritual expression was actually devised specifically for the radio (later adapted to the television): the royal Christmas broadcast, instituted in 1932.⁷⁸ Democratic changes, esp. the extension of suffrage also boosted linguistic unification, as nation-wide electoral campaigns were conducted in a unified vernacular (and not in dialects).⁷⁹ The importance of language in office and in school was obvious for the nationalists themselves, and they even often insisted with an exclusionary logic on the linguistic purity of the national vocabulary.⁸⁰

Though the state machinery (national/royal academy setting linguistic standards, schooling system, public administration) was very useful for linguistic unification (cf. the 'King's English'), such unification was also possible in the absence of state standards (like in Germany, with Luther and the theatres), if there is no deliberate state policy fighting against it.⁸¹

71 Anderson (n. 39) 43.

72 Michael Mann, *A Political Theory of Nationalism and Its Excesses*, in: Sukumar Periwal (ed), *Notions of Nationalism*, Budapest, Central University Press, 1995, 45-46.

73 National languages emerged through mass schooling, see Hobsbawm (n. 8) 52, 81, 96. On the literate civil service middle class as the basis of nationalism see Anderson (n. 39) 76.

74 Anderson (n. 39) 62. Only in countries, like Switzerland, where the schooling system always remained highly decentralised, could multilingualism be sustained.

75 Hobsbawm (n. 8) 117, 104.

76 Hobsbawm (n. 8) 115.

77 Anderson (n. 39) 54.

78 Hobsbawm (n. 8) 142.

79 Hobsbawm (n. 8) 94.

80 Hobsbawm (n. 8) 96. The fight against foreign words as 'philological nationalism', see *ibid.* 56.

81 Hobsbawm (n. 8) 61.

Linguistic compartmentalization is not absolutely necessary for the formation of nations though, it is rather just a factor which makes it more likely to happen. Nations having distinct identities, but not having their own language (South America, to a certain extent Ireland, or see the Zionists unable to speak Hebrew), or the opposite, having several languages (Switzerland), are possible.

It is not too bold, though, to predict that the probability of the end of national identity will be higher if automated portable translating machines with earphones translating immediately foreign languages into the user's vernacular become available for the masses. Such a technological invention could have a similarly huge effect on indirectly influencing the political landscape as the invention of the printing machines by Gutenberg did.⁸² In the meantime, universal linguistic unification is restricted to the widening use of English, used in most countries only by the intellectual elite in its international communication, which does not seem to affect the identity of masses.

1.3.2 The Modern Bureaucratic State

Modern bureaucratic state means an institutionalized organization with continuous territory connected through infrastructure (highways, railways, canals, telegraphs), administering the inhabitants directly, having the same laws in all its territory, directing a growing number of public servants (such as postmen, tax officers, policemen, gendarmes and schoolteachers), conducting military conscription, and introducing personal documentation and registration (births, marriages, deaths) for each of its citizens. All these new phenomena in the 18th and 19th century led to a new situation in which not just the growing number of public servants and the government, but the government and *all* citizens were inevitably linked by daily bonds, as never before.⁸³ This modern 'direct rule' not only gave rise to state-building nationalism, but also provoked counter-nationalisms of local ethnic groups.⁸⁴

There is a certain mutual gravitation between modern bureaucratic states and nations:⁸⁵ it is probable that they converge, but no necessary connection can be proven (as a matter of fact, there are quite a few counter-examples).⁸⁶ Nations claimed a right to a state, and states often required a quasi-religious loyalty (civic religion in the form of 'patriotism') which was especially necessary in international conflicts.⁸⁷

The modern bureaucratic state is an expensive machine though which not all states could afford in its full efficiency. E.g., as opposed to France, Spain in the 19th century was a state void of particularly good natural resources and fertile land, and continually

⁸² On the effect of printing machines on individualism, Protestantism and the democratic idea in general, see András Jakab, *Parliamentarisation of the EU without Changing the Treaties. Why We Should Aim for It and How It Can be Achieved*, MTA PTI Working Papers 2010/1., available at http://www.mtapti.hu/pdf/wp_jakab_andras.pdf 8-9 with further references.

⁸³ Hobsbawm (n. 8) 80-82.

⁸⁴ Hechter (n. 9) 24-33, 113-133.

⁸⁵ On the 'tendency' of nations 'to become states' see Leopold von Ranke, *Sämtliche Werke*, vol. 49-50, Leipzig 1887, 326.

⁸⁶ Llobera (n. 7) 121.

⁸⁷ Arthur Schlesinger, *Nationalism in the Modern World*, in: Michael Palumbo and William Oswald Shanahan (eds), *Nationalism: Essays in Honour of Louis L Snyder*, Westport, Conn., Greenwood 1981, ix.

on the verge of bankruptcy. Statesmen lacked the money, and consequently also the will and the vision to ‘nationalize’ the country around a centralized system of education, a tight network of internal communications, a defined set of public holidays, a patriotic history, and even a single language or uniform code of civil laws.⁸⁸ Thus ethnic diversity (which was actually similar in France and Spain in the 18th century) has survived until the present day in Spain, but exists only in a very weak form in France.

Nationalism also fitted to the war tactics of the modern mass armies of bureaucratic states.⁸⁹ Three factors should be considered from this point of view, which characterized wars between the 18th and the 20th century. Firstly, due to increases in population and wealth, armies of previously unseen sizes marched across Europe, especially during the French Revolution and the Napoleonic wars. Secondly, due to improved artillery techniques, it was no longer advisable to use large amounts of foot soldiers in disciplined formations, as they were too vulnerable to far away canons. And thirdly, due to improved firearms, infantrymen became potent killers on their own. These three factors resulted in a new war tactic: huge numbers of soldiers fought as dispersed, lonely individual skirmishers cooperating to take the lives of others (as opposed to former disciplined war formations, for the success of such cooperation a common language as shared vernacular proved to be extremely useful for solving unexpected situations creatively and quickly).⁹⁰ This made command and control very difficult, thus if officers wanted to avoid their troops deserting they needed to motivate them (and not by simple force or threat, as due to the dispersed tactics it was not possible any more). Nationalism fitted to this need, and also the other way around: because nationalism was useful in wars, wars contributed to the success of nationalism. In historical sources it is now well documented that after a while, even military strategists consciously advised the enhancement of patriotic feelings in education in order to create better motivated soldiers for their armies: the spread of mass education itself was partly motivated by the needs of the army, manpower was needed with basic literacy (so they could read the official government propaganda, training manuals, technical guides, and they could understand written orders) and with nationalist predisposition.⁹¹ The former strategy of training less soldiers but to a higher standard was no longer applicable, as the efficiency of new firearms resulted in high losses which could only be replaced if only a short period of training was needed. Such a short period of training was only possible if citizens were pre-educated in the primary general education.⁹²

⁸⁸ Stephen Jacobson, Spain, in: Timothy Baycroft and Mark Hewitson, *What is a Nation? Europe 1789-1914*, Oxford, Oxford Univ. Press 2006, 211. Juan J Linz, Early State Building and Late Peripheral nationalism against the State: The Case of Spain, in: Stein Rokkan (ed), *Building States and Nations*, Beverly Hills, Calif., 1973, vol. 2, 32-116; Jos  Alvarez Junco, El nacionalismo espa ol: las insuficiencias en la acci n estatal, *Historia social* 40 (2001) 29-51.

⁸⁹ The paragraph is based on Barry R Posen, Nationalism, Mass Army, and Military Power, *International Security* 1993. 80-124.

⁹⁰ For similar arguments by Max Weber see David Beetham, *Max Weber and the Theory of Modern Politics*, Cambridge, Polity Press 1985, 129 with further references.

⁹¹ Posen (n. 88) 85, 98, 111-115.

⁹² According to Posen (n. 88) 124, if mass armies become outdated for technical reasons, one of the driving forces of nationalism will also cease.

1.3.3 Fragmentation of Universalist Structures

The man of the Middle Ages was mesmerized by the memory of Ancient Rome, and everything that reminded him of this: the idea of *Imperium*, Roman law, the Latin language, or the universal church (*Ecclesia*).⁹³ As to the *Imperium*, Europe proved to be a failed Empire:⁹⁴ instead nation states emerged. National laws also fragmented any idea of legal unity. As already shown, instead of the Latin language, vernaculars took over. And the universalist catholic Church also broke down into smaller units (this not only meant national Protestant churches, but also movements of national Catholic churches, see e.g. the French Gallicanism).⁹⁵ National churches have played a significant role in the development of many nationalisms, as in modernity, the national sentiment was often a reaction against the cosmopolitan pretension of the Enlightenment.⁹⁶ These factors also strengthened each other: the major protector of the universalist Catholic church, the Habsburg Imperium, slowly lost terrain. The growing importance of vernaculars contributed to the impression that the imagined community of Christendom seemed less real.⁹⁷ With the demise of Latin, the universalist community building role of universities also declined.⁹⁸ In the centre of the fading universalist structures, the birth of nation states was delayed (Germany, Italy), but medieval structures were also eventually defeated there.⁹⁹

The explorations of other continents widened the horizon, and strengthened the perception that other forms of human life were also possible.¹⁰⁰ They discovered that the Sanskrit and the Indic cultures developed independently from Europe and that they are actually much older than the Greek or the Jewish.¹⁰¹ All this meant that the traditional universalist claims became less plausible than before.

1.4 Political Struggles and Wars

National feeling means a strong emotional bond, which can be important in political struggles. Art 3 of the 1789 Declaration (adopted by the *National Constituent Assembly*) stated: 'The principle of all sovereignty resides in the *nation*'. The French revolution made everything *royal* into *national*: the national navy, the national police, the national estates.¹⁰² By heating up nationalistic feeling during the revolutionary wars, the French were able to use their mobilization capacity (*levée en masse*),¹⁰³ but at the

⁹³ Llobera (n. 7) 5.

⁹⁴ Llobera (n. 7) 113.

⁹⁵ Anderson (n. 39) 17 on the territorialisation of faiths as the forerunner of 'nation'.

⁹⁶ Llobera (n. 7) 221.

⁹⁷ Anderson (n. 39) 42.

⁹⁸ Anderson (n. 39) 54.

⁹⁹ Hastings (n. 66) 8.

¹⁰⁰ Erich Auerbach, *Mimesis. The Representation of Reality in Western Literature*, Princeton Univ. Press 1957, 282; Anderson (n. 39) 16, 69.

¹⁰¹ Anderson (n. 39) 70.

¹⁰² Jacques Godechot, The New Concept of the Nation, in: Otto Dann and John Dinwiddy (eds), *Nationalism in the Age of the French Revolution*, London, Hambledon, 1988, 15.

¹⁰³ Stephen Tierney, *Constitutional Law and National Pluralism*, Oxford, OUP 2004, 25. National wars also strengthened the state's legitimacy as the dominating institution which could provide for the financial and military means of warfare, see Jörn Leonhard, Nation-States and Warfare, in: Baycroft and Hewitson (n. 87) 236.

same time, they both irritated the population in occupied territories and gave them a behavioral example. Spanish and German nationalisms were, to some extent, triggered by the French Revolution and the following Napoleonic wars.¹⁰⁴

But it had an effect not only on those who had direct contact with the French Revolution: The French and the American Revolutions also served as successful examples worldwide, namely in South America for Creole nationalists. Those locals who led anti-colonial wars were mostly educated in Europe or in the US and learned the logic of nationalism and the rhetoric of liberation there and took it back home and turned against their educators.¹⁰⁵ The 'nation' proved to be an invention on which it was impossible to secure a patent: it became available for pirating by widely different, and sometimes unexpected, hands.¹⁰⁶

Nationalism was also easy to combine with democracy (both the idea of a national community and democracy opposed serfdom; the doctrine of popular sovereignty can easily be interpreted to imply the idea of a pre-state community),¹⁰⁷ or nationalism could sometimes even substitute democracy (cf. nationalist autocratic regimes).¹⁰⁸ Nationalism gave the *feeling* of equality and it aimed at unity, making it a useful tool for both secessionist and unification movements (depending on the definition of nation).¹⁰⁹ Its (military) mobilization capacity was even stronger than that of democracy, and in cases it was used against international democratic movements (or against democratizing occupational forces) by old-style anti-democratic monarchies.¹¹⁰ Democracy *on its own* proved to be too abstract as a political community in order to gain a strong emotional attachment and to command the loyalty of its citizens.¹¹¹ The best answer to the nation was just another nation. In the course of the 19th and 20th centuries, most states became thus nation-states (at least in their ambitions),¹¹² expressed in the names 'League of Nations' and 'United Nations' consisting actually of states.

104 Mikulás Teich and Roy Porter, Introduction, in: Mikulás Teich and Roy Porter (eds), *The National Question in Europe in Historical Context*, Cambridge University Press 1993, xix.

105 Anderson (n. 39) 51, 118.

106 Anderson (n. 39) 67. On how Hungarian, English and Japanese nationalism triggered as a reaction Slovak, Indian and Korean nationalism see Anderson (n. 39) 109-110.

107 Jürgen Habermas, Citizenship and National Identity: Some Reflections on the Future of Europe, in: Ronald Beiner (ed), *Theorizing Citizenship*, New York State University of New York Press 1995, 255-282, 257: 'The nation-state and democracy are the twins born of the French Revolution. From a cultural point of view, both have been growing in the shadow of nationalism.' Similarly Montserrat Guibernau, *Nationalisms. The Nation-State and Nationalism in the Twentieth Century*, London, Polity, 1996, 3. For many liberals of the 19th century, 'nation-state' meant 'democratic state', see Lothar Gall, Liberalismus und Nationalstaat. Der deutsche Liberalismus und die Reichsgründung, in: Helmut Berding ea (eds), *Festschrift Schieder*, München 1978, 487-491.

108 Anderson (n. 39) 47-50 on Creole nationalism without democratisation.

109 Michael Jeismann, Nation, Identity, and Ethnicity, in: Baycroft and Hewitson (n. 87) 25.

110 Hobsbawm (n. 8) 84.

111 Hobsbawm (n. 21) 264-265.

112 Anderson (n. 39) 86 on the official nationalism of Russification as 'stretching the short, tight skin of the nation over the gigantic body of the empire'.

1.5 Side-Effects of Scientific and Cultural Advancements: Census (Statistics), Map (Geography), Bilingual Dictionaries (Linguistics), Museum (Scientific History), Sport (Olympic Games)

Statistics and census seem to be neutral towards nationalism. As a matter of fact, however, the question itself to a citizen concerning his/her ethnicity/cultural background strengthens his or her national feeling. Before this question was put to him or her, he or she did not have to choose. Once the choice was made, national identities were frozen.¹¹³

Geographical maps are not new inventions. But geographical maps showing every country in a different color and using them in schools of mass education are new. Children learned in classes to identify the 'us' with the area of their state. This strengthened the identity building capacity of the home-country, and maps often have been (and are) used as logos expressing national feelings.¹¹⁴

The linguistic and philological research of the 18th and 19th centuries and the discovery of proto-languages showed that there is no ontological difference between the Jewish/Greek/Latin and the vernaculars.¹¹⁵ The appearance of bilingual dictionaries also implied the equality of languages.¹¹⁶ All this meant that a side-effect of linguistic achievements was that universalist claims became less plausible (meaning compartmentalization as described above), and the own vernacular became more valuable.

Scientific history itself was often used for the purposes of nationalism. Or to put it even more boldly, the early figures of scientific history (Leopold von Ranke, Heinrich von Treitschke, Jules Michelet, Mihály Horváth) wrote their works partly in order to support nationalistic claims.¹¹⁷ Without historians, there is no national mythology, or as Hobsbawm put it: 'historians are to nationalism what poppy-growers in Pakistan are to heroin addicts: we supply the essential raw material for the market'.¹¹⁸ And a new genre of public buildings helped to spread the consciously narrated past amongst the population: the museum.¹¹⁹

Finally, one of the most efficient ways to bolster up nationalist feelings (national pride) is through good sport results.¹²⁰ The most institutionalized form of sport is the

113 Anderson (n. 39) 164, Hobsbawm (n. 8) 100 on this effect of the census in the Habsburg Empire beginning the 1880s. On the durability of national identities once they have been formed see Anthony D Smith, *The Ethnic Origins of Nations*, Blackwell 1986, 16-18 and Llobera (n. 7) 5.

114 Anderson (n. 39) 175.

115 Anderson (n. 39) 70.

116 Anderson (n. 39) 71.

117 Patrick J Geary, *The Myth of Nations. The Medieval Origins of Europe*, Princeton Univ. Press, 2002, 16; Monika Baár, *Historians and Nationalism*, Oxford Univ. Press, 2010, 167-194.

118 Eric Hobsbawm, *Ethnicity and Nationalism in Europe Today*, in: Gopal Balakrishnan (ed), *Mapping the Nation*, London, Verso, 1996, 255.

119 Anderson (n. 39) 178. On this point in the Scottish context: J. Magnus Fladmark (ed), *Heritage and Museums: Shaping National Identity*, Shaftesbury, Donhead 2000. On the relationship between archaeology and nationalism see Margarita Díaz-Andreu and Timothy C Champion, *Nationalism and Archaeology in Europe*, London, UCL Press 1996; Philip L Kohl and Clare P Fawcett (eds), *Nationalism, Politics and the Practice of Archaeology?*, Cambridge Univ. Press 1995.

120 Maurice Roche, *Nations, Mega-events and International Culture*, in: Gerard Delanty and Krishan Kumar (eds), *The SAGE Handbook of Nations and Nationalism*, London ea, SAGE, 2006, 260-272.

Olympic Games (since 1904) in which ‘nations’ have been being ranked in medal tables, even though nations as such obviously cannot box, weight lift or play football. Every single day, national feelings are being reconfirmed by sport news, in which the gladiators of our nation (symbolizing the whole nation) fight also for our honor and prestige.¹²¹

2. Antinomies of the Nature of Modern Nations

The problem with the definition of ‘nation’ is that no list of objective criteria has ever been written which would fit all nations. Even if we write a list containing elements as family resemblances in the sense of Wittgenstein, it would be a very loose list: not a list of elements from which *most* should be fulfilled but rather a list from which *some* elements should be fulfilled.¹²² This would not be particularly helpful. The key element is, namely, a subjective one: national identity (for the emergence of which certain objective factors are of course useful).

It is an imagined community, a deep, horizontal comradeship.¹²³ It is a spiritual community, a ‘community of fate’ having the sentiment of the community’s own shared destiny.¹²⁴ It is a community of solidarity based on trust towards each other.¹²⁵ It is a community which expresses its will to continue a common life everyday (to use Renan’s *bonmot*, a ‘daily plebiscite’).¹²⁶ It is the denial of membership to another nation.¹²⁷ It is the claimed or ambitioned community, the community of all those who *ought to be* citizens of our political community.

Members’ consciousness of belonging to it provides, however, only an *a posteriori* guide to what a nation is:¹²⁸ we can at best guess about whether a new nation emerges in the presence of certain objective factors. But once it has emerged, national identity seems to be quite resistant to historical storms.

The difficulty of any description of its nature is that it is not meant to be a concept of analysis, but a category of ‘practice’ (see our motto). When we talk about ‘the nation’, the features we emphasize in our description depend (often subconsciously) on whether we sympathize with the general idea (for philosophical reasons) or how it effects us in our concrete political-geographical situation. Consequently, different, equally convincing descriptions of *what* and *how* ‘the nation’ is can consist of contradicting elements. In the following, we are going to detail these antinomies.

121 Hobsbawm (n. 8) 132. On the relationship between nationalism and football see Vic Duke – Liz Crolley, *Football, Nationality and the State*, Longman, Harlow 1996.

122 Neither language, nor religion is differentiating, also border referenda often showed results of national identity differing from these criteria, see Hobsbawm (n. 8) 70, 134. Some even claim that there is no definitional way of distinguishing ethnicity from other types of collective identity, see John A Armstrong, *Nations before Nationalism*, Chapel Hill, University of North Carolina Press 1982, 6-7.

123 Anderson (n. 39) 6.

124 Otto Bauer, *The Nation* [1924], in: Balakrishnan (n. 117) 43-50.

125 Umut Özkirimli, *Theories of Nationalism*, Palgrave Macmillan 2nd ed. 2010, 215.

126 Ernest Renan, *What is a nation?* [1882], in Homi K Bhabha (ed), *Nation and Narration*, London, Routledge, 1990, 19.

127 Armstrong (n. 121) 5 on the fact that groups tend to define themselves not by reference to their own characteristics but by exclusion, that is, by comparison to ‘strangers’.

128 Hobsbawm (n. 8) 8.

2.1 Old vs. Modern

It is undeniable that certain feelings of togetherness in a political community existed also in pre-modern eras.¹²⁹ It is less clear, however, how far these feelings concerned the whole of the population or rather just a slim elite. It seems that nationalism as a *mass movement* is a rather modern phenomenon; its breakthrough is mostly attributed to the end of the 18th century.¹³⁰

Hard-core nationalists are mostly convinced that nations (or at least their nation) have existed for ever, whereas hard-core anti-nationalists all state that it is a modern invention. And there is a big grey zone of opinions in between (to which also the present paper belongs), with different shades, especially if we begin talk about the nature of former identities and about the relative number of people believing in them.

A more or less balanced opinion would be to say that nations as shared (1) *political* identities of (2) the *masses* are rather new in modern Europe.¹³¹ Amongst the less educated strata, national consciousness was missing even during the 19th century. When Garibaldi spoke to Southern Italian peasants about 'Italia', they thought he was talking about his mistress.¹³² When the cry 'Viva Italia!' was raised during Victor Emmanuel's entry into Naples, some natives thought it must refer to his wife.¹³³ In 1864, a French school inspector in Lozère was terrified to find out that at one school he visited not a single child was able to answer questions like 'Are you English or Russian?' or 'What country is the department of Lozère in?'.¹³⁴

When the expression *natio* was used in the Middle Ages, it meant the population of another (foreign) country,¹³⁵ a state or a society.¹³⁶ At universities, students were divided into *nationes*, but it did not mean either any specific country nor did it have any political significance: small universities divided the world into a few nations, big universities into many (*natio* meant then rather 'people/students stemming from a certain

¹²⁹ See e.g. Jenő Szűcs, *Nation und Geschichte*, Budapest, Corvina 1981, 161-243. As the present paper is an analysis of constitutional theory, we will be less interested in pre-modern issues, as the constitution (i.e., a man-made law that is higher in rank than simple statutes) itself is a modern invention. See András Jakab, On the Legitimacy of a New Constitution – Remarks on the Occasion of the New Hungarian Basic Law of 2011, available at SSRN: <http://ssrn.com/abstract=2033624> (April 3, 2012) 1-2 with further references.

¹³⁰ Anthony D. Smith, *Nationalism and modernism: a critical survey of recent theories of nations and nationalism*, London and New York, Routledge, 1998, 1.

¹³¹ Walter Bagehot, *Physics and Politics*, London, King 1887, ch III and IV: 'nation-making' was the essential content of nineteenth-century evolution.

¹³² Ralph Gibson, The Intensification of Nationalist Consciousness in Modern Europe, in: Claus Bjørn e.a. (eds), *Nations, Nationalism and Patriotism in the European Past*, Academic Press Copenhagen 1994, 179.

¹³³ Breuille (n. 47) 113.

¹³⁴ Eugen Weber, *Peasants into Frenchmen*, Stanford, Stanford University Press, 1976, 110.

¹³⁵ Ulrich Scheuner, Nationalstaatsprinzip und Staatenordnung, in: Theodor Schieder (ed), *Staatsgründungen und Nationalitätsprinzip*, Wien-München, Oldenburg, 1974, 17. See also Hobsbawm (n. 8) 14-17 on 'nation' as a geographical category.

¹³⁶ Aira Kemiläinen, *Nationalism*, Kustantajat, Jyväskylä, 1964, 48-49: when Adam Smith talked about the wealth of nations, he just meant 'societies' or 'states'. On the uses of *natio* in Roman antiquity mostly in the sense of *gens* ('barbarian people') as opposed to *populus* ('Roman citizens') see Reinhart Kosselleck e.a., Volk, Nation, Nationalismus, Masse, in: Otto Brunner e.a. (eds), *Geschichtliche Grundbegriffe*, Stuttgart, Klett-Cotta 2004, vol. 7, 168-170.

region').¹³⁷ The tendency of some historical sources to differentiate between 'native of the land' and 'foreigner' is not enough to talk about pre-modern nations.¹³⁸ In those few cases where *natio* in the pre-modern era meant the politically relevant population (like in Poland or in Hungary of the Middle Ages), then ethnicity was irrelevant, it was used as synonymous with the 'estates'; and vice versa, ethnic Hungarian and Polish populations in serfdom did not belong to the pre-modern Hungarian or Polish nation.¹³⁹ Local aristocracies actually preferred foreign (thus ethnically different) rulers because they did not take sides in their internal rivalries.¹⁴⁰ We also have to note that this political *natio* of the Middle Ages was different also from the modern civic nations, as it did not contain the idea of legal homogeneity and equality even amongst those who belonged to the *natio* (some belonged by birth to the Upper Chamber of Parliament or had by birth other *legal* privileges etc). Modern national(-istic) feelings are also similar to the ancient Greco-Roman forms of patriotism,¹⁴¹ but that tradition broke down and re-emerged first in the early modern times, thus it cannot prove the old age of nations either.

But on the other hand, in some cases, ethnic identity did exist also in pre-modern times.¹⁴² Nations did not emerge *ex nihilo*.¹⁴³ But before the modern era, it was not the primary element of defining *political* identity. Instead, political identity was defined in terms of personal allegiance (to a monarch) and religion. As these two faded (due to secularization and democratic ideas) ethnicity gained strength; and combined with the factors as described in the first part of the paper, nationalism and modern nations emerged.¹⁴⁴ Nations became to be perceived as 'active political agents, the bearers of the ultimate powers of sovereignty'.¹⁴⁵

The other key issue is that before modernity, political identities were identities of small privileged groups, not of *masses*, as politics itself was just the privilege of such groups.¹⁴⁶ These small groups have been widened into nations by mass schooling, conscription, democratization and mass media.

¹³⁷ Kosselleck (n. 135) 231-233.

¹³⁸ Özkirimli (n. 124) 70.

¹³⁹ Szűcs (n. 128) 84-85. Similarly the 'deutsche Nation' as used by Luther in the 16th century only meant the noblemen, see Kosselleck (n. 135) 235. On modern nations as 'ethnically narrow[er]', but 'socially deep[er]' phenomenon than the (Polish) *natio* of the Middle Ages see Brubaker (n. 1) 84-86.

¹⁴⁰ Ernest Gellner, *Thought and Change*, London, Weidenfeld & Nicolson, 1964, 136.

¹⁴¹ Llobera (n. 7) 151.

¹⁴² Smith (n. 112) 16, 17; Hastings (n. 66) 1-34. According to Johan Huizinga, *Men and Ideas*, Cambridge, CUP, 1984 (orig. 1940) 107 national feelings existed at the beginning of the 12th century in Europe. Cf. Özkirimli (n. 124) 68 on Sri Lanka, Israel, Japan (Armenia and Korea could have been added) showing signs of national identities even before that time.

¹⁴³ On the importance of *longue durée* when explaining nations see Llobera (n. 7) xii, 3.

¹⁴⁴ Reinhard Wittram, *Nationalismus und Säkularisation*, Lüneburg 1949, 6.

¹⁴⁵ David Miller, *On Nationality*, Oxford, Clarendon 1995, 31.

¹⁴⁶ See Llobera (n. 7) 81, 120, Özkirimli (n. 124) 199-200. As a matter of fact, we just do not know much about the identity of the masses, as the written sources normally concentrate on the elites, see Walker Connor, The Timelessness of Nations, in: Montserrat Guibernau and John Hutchinson (eds), *History and National Destiny: Ethnosymbolism and Its Critics*, Oxford, Blackwell, 2004, 40-41. But because of the structural features of pre-modern politics, our guess would be that they did not have a strong political identity based on ethnicity.

The mere fact that certain population names have continuously been used does not mean continuity in identity.¹⁴⁷ As Geary appositely described:¹⁴⁸

Whatever a Goth was in the third century kingdom of Cniva, the reality of a Goth in a sixteenth-century Spain was far different, in language, religion, political and social organization, even ancestry ... With the constant shifting of allegiances, intermarriages, transformations, and appropriations, it appears that all that remained constant were names, and these were vessels that could hold different contents at different times.'

Names were renewable resources, old names could be reclaimed,¹⁴⁹ and to explain the past from the political (national) structure of today is no more than a presentist illusion.¹⁵⁰ Or to put our finding in a rather tautological way: modern nations emerged in modernity.¹⁵¹

2.2 Natural (Ethnic, i.e. Based on Ancestry or Culture) vs. Artificial (Based on Elite Manipulation; or Civic, i.e. Based on Law and Deliberate Choice)

Hugh Seton-Watson famously stated that 'a nation exists when a significant number of people in a community consider themselves to form a nation, or behave as if they formed one.'¹⁵² But it actually begs the question of when and why these people consider themselves a nation. Is it because they recognize their 'natural' status, or because they voluntarily choose to do so? (And if it is a choice, is this choice a rational and well-considered one or is it just the result of elite manipulation?) The dichotomy 'fate vs. choice' was conceptualized by Friedrich Meinecke when he spoke of *Kultur*nation and *Staats*-nation, meaning what we call nowadays ethnic nation and civic nation.¹⁵³

Most (but not all)¹⁵⁴ nationalists want to see nations (or at least their own nation) as something natural;¹⁵⁵ whereas anti-nationalists try to show that nations are artificial. As soon as we begin to analyze what 'natural' and 'artificial' mean, the question becomes really complicated. If 'natural' means some kind of sociobiological approach (common descent maintained by endogamy, nations as super-families of distant relatives),¹⁵⁶ then

147 John Breuilly, Dating the Nation: How Old is an Old Nation? in: Atsuko Ichijo and Gordana Uzelac (eds), *When is the Nation?*, London, Routledge, 2005, 19.

148 Geary (n. 116) 118.

149 Özkirimli (n. 124) 64.

150 Llobera (n. 7) 21.

151 Anthony D Smith, *The Cultural Foundations of Nations*, Oxford, Blackwell, 2008, 13-14. Cf. Llobera (n. 7) 96: 'Whether we can or cannot talk about nationalism in the medieval period is [...] a definitional matter.'

152 Hugh Seton-Watson, *Nations and States*, London Methuen 1977, 5.

153 Friedrich Meinecke, *Weltbürgertum und Nationalstaat*, München 2nd ed. 1969 [1907]. On the dichotomy civic vs. ethnic see Rogers Brubaker, *Citizenship and Nationhood in France and Germany*, Harvard Univ. Press 1992.

154 Besides the classic account of Renan see also Yael Tamir, *Liberal Nationalism*, Princeton Univ. Press 1993, 87.

155 Cf. the description of the liberal Swiss constitutional lawyer Johann-Caspar Bluntschli, *Die schweizerische Nationalität*, Zürich, Rascher und Cie. 1915 [1875], 11: 'The Swiss homeland constitutes such a coherent a richly structured natural whole, one that enables the evolution on its soil of a peculiar feeling of a common homeland which unites its inhabitants as sons of the same fatherland, even though they live in different valleys and speak different languages.'

156 Pierre van den Berghe, Sociobiological Theory of Nationalism, in: Athena S Leoussi (ed), *Encyclopaedia of Nationalism*, New Brunswick and London, Transaction, 2001, 274.

almost in every case nations can in fact be proved to be artificial and common descent can be proved to be historically falsified (except for a very small fraction of nations, e.g. living on islands).¹⁵⁷

But if 'natural' just means a cultural community, i.e. if ethnic means cultural, then the statement defining nation as a natural unit is more difficult to criticize.¹⁵⁸ Deliberate manipulations of national identity (even if supported by the state) often fail if they do not fit the feelings of the population. With the words of Miroslav Hroch:¹⁵⁹

The basic condition for the success of any agitation ... is that its argument at least roughly corresponds to reality as perceived by those to whom it is directed. National agitation thereby had to (and normally did) begin with the fact that, quite independently of the will of the 'patriots', certain relations and ties had developed over centuries which united those people towards whom the agitation is directed.

Once national identities have been formed, elite manipulations work only within their frames (except for extreme oppression, but even then sometimes they do not work).¹⁶⁰ But how these original identities form and which cultural features they pick as the decisive ones, are partly due to elite (meaning not only the political elite, but often also the intelligentsia) manipulation.¹⁶¹ Cultural (ethnic) features are not absolute facts and also not simply intellectual categories: people often refer to them in order to acquire identities which legitimate their claim for certain rights.¹⁶² Ethnicity is thus not about facts of common descent, it is about *belief* in the common descent,¹⁶³ or *belief* in the existence of other binding facts. Identity in general is less about trails from the past, than more about maps for the future, it is about what we want to become and about how we want to see ourselves, and much less about what we were.¹⁶⁴ With the words of Stuart Hall:¹⁶⁵

157 Özkirimli (n. 124) 62.

158 Fredrik Barth, *Ethnic Groups and Boundaries*, Boston, Little, Brown and Co. 1969 on ethnic groups as cultural groups, as opposed to biological ones.

159 Miroslav Hroch, Real and Constructed: The Nature of the Nation, in: John A Hall (ed), *The State of the Nation. Ernest Gellner and the Theory of Nationalism*, Cambridge, CUP, 1998, 99. For a concrete example see David Svoboda, Nations under Siege. Interview with Historian Miroslav Hroch, *New Presence* 2004/4, 26: 'Czechoslovakia is a perfect example of how a national identity cannot be invented. The failure of Czechoslovakia shows how people – which in this instance pertains to the Slovaks – won't accept the concept of a nation that doesn't conform to reality.'

160 Anthony D Smith, The Nation: Invented, Imagined, Reconstructed? *Millennium: Journal of International Studies* 1991, 357.

161 Barth (n. 157) 14-15. According to Breuilly (n. 47) 46, 131, 157, 294 nationalism is often a form of politics used by subordinate elites attempting to seize power. On the role of intelligentsia see Hugh Seton-Watson, Intelligentsia und Nationalismus in Osteuropa 1948-1918, *Historische Zeitschrift* 1962, 331-345; Otto Dann, Nationalismus und Sozialer Wandel in Deutschland 1806-1850, in: Otto Dann (ed), *Nationalismus und sozialer Wandel*, Hamburg 1978, 113; Lewis Navier, *1848: The Revolution of Intellectuals*, Oxford 1992. The moment when the intelligentsia mobilises the masses is called 'national awakening' see Miroslav Hroch, *Die Vorkämpfer der nationalen Bewegung bei den kleinen Völkern Europas*, Prague 1968, 24-25.

162 Or they express fears, see Michael Ignatieff, Nationalism and Narcissism of Minor Differences, in: Beiner (n. 14) 96: 'The differences between Serb and Croat are tiny – when seen from the outside – but from the inside they are worth dying for because someone will kill you for them.'

163 Emerich Francis, *Interethnic Relations. An Essay in Sociological Theory*, New York 1976, 382.

164 David McCrone, *The Sociology of Nationalism*, London – New York, Routledge, 1998, 34.

165 Stuart Hall, Introduction: Who Needs 'Identity?', in: Stuart Hall – Paul du Gay (eds), *Questions of Cultural Identity*, London, Sage, 1996, 4.

Though they seem to invoke an origin in a historical past with which they continue to correspond, actually identities are about using the resources of history, language and culture in the process of becoming rather than being; not 'who we are' or 'where have we come from' so much as what we might become, how we have been represented and how that bears on how we might represent ourselves.

The instrumentalization of ethnic categorization does not exclude, though, that the persons affected deeply, genuinely and honestly believe in it, and through a spillover effect they are even ready to make extreme sacrifices:¹⁶⁶

When members of a categorically bounded network acquire access to a resource that is valuable, renewable, subject to monopoly, supportive of network activities, and enhanced by the network's modus operandi, network members regularly hoard their access to the resource, creating beliefs and practices that sustain their control.

Ethnic categorizations (the emphases on certain cultural features as a means of differentiation in order to conceptualize cultural differences as ethnic differences) are thus strategies or weapons in the struggle for scarce social resources (or sometimes weapons of revenge for oppressed groups against centuries of discrimination),¹⁶⁷ even if they can live their own lives for shorter periods.¹⁶⁸ Nationalism itself is 'a language game that takes the facts of difference and turns them into a narrative justifying political self-determination.'¹⁶⁹

The American and the French nations were formed based on the revolutionary idea of choice: concept of the nation as constituted by the deliberate political option of its potential citizens because they accepted the tenets of the revolution (enshrined in the 1789 Declaration or in the US Constitution), whereby ethnic bonds or linguistic features were secondary.¹⁷⁰ The French Republic saw no difficulty in electing the Anglo-American Thomas Paine to its National Convention.¹⁷¹ Political freedom and nationality fused together giving an optimistic taste of universal development to these nations (as opposed to many 'ethnic' nations).¹⁷² Formal ethnic exclusion would have anyway excluded a big part of the French and American populations (the state was just much bigger than the central ethnic community), thus it would have contradicted the democratic idea promoted by these revolutions.¹⁷³ Informally and in practice, of course, also the French and American 'civic' nations are also based on a particular inherited culture and language, but at least the idea would be ethnic-neutral (and consequently, the as-

166 Charles Tilly, *Durable Inequality*, Berkeley, Univ. of California Press, 1998, 91.

167 Alberto Melucci, *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society*, London, Hutchinson, 1989, 90.

168 Peter Worsley, *The Three Worlds: Culture and World Development*, London, Weidenfeld and Nicolson 1984, 249.

169 Ignatieff (n. 161) 96.

170 Cf. Emmanuel Joseph Sieyès, *Political Writings*, Indianapolis, Hackett, 2003, 94-97, 99 stating in 1789 that belonging to the 'Nation' does not depend on ethnic or linguistic features.

171 Hobsbawm (n. 8) 20.

172 Hans Rothfels, Grundsätzliches zum Problem der Nationalität, in: Hans Rothfels, *Zeitgeschichtliche Betrachtungen*, Göttingen 2nd ed. 1963, 97.

173 Weber (n. 133) on the fact that the building of an ethnic French nation as a mass phenomenon (through compulsory schooling, military conscription and the development of communications) had not been finished by as late as the First World War.

simulation for those who want to join the community, is easier).¹⁷⁴ This ideal of deliberate choice has survived in French and US republican traditions until the present day, a remarkable moment of which is Renan's famous definition of the existence of a nation as 'plébiscite de tous les jours' from 1882.¹⁷⁵

In German territories, however, the ethnic community was much bigger than Prussia or Austria. Thus by defining nation through ethnicity, especially by language ('So weit die deutsche Zunge klingt'),¹⁷⁶ the political influence could rather enlarge. The choice between civic and ethnic nationalism thus depended on the political goals: a to-be Germany awaiting unification of ethnically tied states needed a different concept than the multi-ethnic already-state of France.¹⁷⁷ A nation defined by state-boundaries would have contradicted the interests of both the German intelligentsia and politicians, thus more emphasis was placed on the ethnic element.¹⁷⁸ Definers of nations made use of some ties, ignored others, and transformed them beyond recognition to suit their current (political) needs.¹⁷⁹

As a matter of fact, even within one nation, the definitions changed according to the current interest: German politicians mostly emphasized the cultural/linguistic moments, but in the case of Eastern Prussia the Mazurian people having a dialect of Polish as mother tongue but feeling German, 'obviously' qualified them as German.¹⁸⁰ Similarly, Hungarian noblemen did not become nationalists in the first half of the 19th century because they suddenly felt that they had much in common with their serfs (some of whom were Hungarian ethnics, others non-Hungarians), but because it seemed a rhetorically and emotionally convincing new tool in their centuries long quest against Habsburg centralization. As Breuille put it more generally: 'Nationalism has little to do with the existence of a nation... Rather there were circumstances...when nationalism was the most appropriate form political opposition could take.'¹⁸¹ Once, however, the idea spread (also amongst Hungarian non-noblemen), it also brought consequences that noblemen did not necessarily favor (esp. the end of serfdom). Or to mention yet another Hungarian example: the country before the First World War presented itself as a civic nation integrating its many national minorities under the symbol of the Holy

174 For a criticism of the concept of civic nation as 'a mixture of self-congratulation and wishful thinking' see Bernard Yack, *The Myth of the Civic Nation*, in: Beiner (n. 14) 105.

175 Renan (n. 125) 19.

176 'As far as the German tongue sounds', a formula used by liberal German nationalists in 1848, see Günter Wollstein, *Das Großdeutschland der Paulskirche*, Düsseldorf 1977, 316.

177 André Lecours, *Ethnic and Civic Nationalism: Towards a New Dimension*, *Space & Polity* 4 (2000) 153-165.

178 Brendan O'Leary, *Instrumentalist Theories of Nationalism*, in: Leoussi (n. 155) 148 on nationalism as an instrument in the hands of competing elites in order to achieve power, wealth and prestige. Eventually though, even 19th century German nationalism contained civic elements and its depiction as a *purely* ethnic one is just a projection of the 20th century, see Stefan Berger, *Germany*, in: Baycroft and Hewitson (n. 87) 58-60.

179 Özkirimli (n. 124) 137. Cf. Katherine Verdery, *Whither 'Nation' and 'Nationalism'?*, *Daedalus* 122 (1993) 39 stating that the nation is a symbol with multiple meanings, competed over by different groups manoeuvring to capture its definition and its legitimating effects. On the 'nation' as a source of legitimacy see John Breuille, *Approaches to Nationalism*, in: Balakrishnan (n. 117) 166.

180 Hans Rothfels, *Die Nationalidee in westlicher und östlicher Sicht*, in: Hans Rothfels ea (ed), *Osteuropa und der deutsche Osten*, Köln 1956, 7-18.

181 Breuille (n. 47) 397.

Crown (a pre-modern, religious and inherently non-ethnic institutional symbol), whereas after having lost two thirds of its territory in the Trianon Peace Treaty and having ethnic Hungarians at the other side all around its borders it redefined the role of the Holy Crown and used it as an ethno-nationalist symbol reinforcing claims of national self-determination for neighboring territories inhabited by ethnic Hungarians.

From the potentially many nations only a few make it: those where conscious nation building takes place.¹⁸² 'Why is Holland a nation, when Hannover, or the Grand Duchy of Parma, are not?' famously asked Ernest Renan almost 150 years ago.¹⁸³ But similar questions could be asked about why Austrians are a nation and Bavarians not, and so on. Modern nations can thus be defined as a combination of ethnic and civic elements, in some nations there is a major emphasis on the first, in others on the second, but never as a full realization of any of these Weberian ideal types.¹⁸⁴

To re-define such identities later for whatever reason is extremely difficult, as shown by the failure of Habermas' theory to re-define German identity through the *Grundgesetz* ('constitutional patriotism'), which rather fits to the American identity situation and which never actually had real influence in Germany except for some leftist intellectuals.¹⁸⁵ Such re-definitions could work if ethnic situations seriously change but other identity factors (such as the constitution) do not. If Germany kept the *Grundgesetz* for another hundred years and if the proportion of ethnic Germans decreased considerably, then constitutional patriotism would be a logical identity anchor, but it would still be a question how far the population could actually internalize it in practice. Similarly, an American concept of nation in lack of permanent immigration could in theory differ from the present non-ethnic one, but it would be questionable how far such a sharp switch (i.e. an ethnicisation) could be internalized by US citizens who have been socialized for generations in a differing one.

2.3 Based on Historical Facts vs. Based on Fabricated Myths

Of course, nationalism itself is partly based on counter-factual presuppositions (e.g. 'the world is and has always been divided into nations'), as political ideologies often are. This is though less of a problem, as political ideologies become successful not because of their truth, but rather because they match the social and political landscape where they turn up, and thus they can effectively influence this landscape (by changing it or by stabilizing it).¹⁸⁶ Nationalism as a civil religion is naturally supported by myths which try to idealize reality and in doing so bring 'moral and spiritual meaning to individuals or societies'.¹⁸⁷ The historical truth is secondary (though not entirely unimportant) in this function.¹⁸⁸

¹⁸² Sinisa Malesevic, *Identity as Ideology*, Basingstoke and New York, Palgrave Macmillan, 2006.

¹⁸³ Renan (n. 125) 12.

¹⁸⁴ Brian Vick, Language and Nation, in: Baycroft and Hewitson (n. 87) 169-170.

¹⁸⁵ See e.g. Habermas (n. 106). On Habermas and his critics see Jan-Werner Müller, *Verfassungspatriotismus*, Suhrkamp 2010. The concept stems originally from Dolf Sternberger, *Aspekte des bürgerlichen Charakters* [1946] in: Sternberger, *Ich wünschte ein Bürger zu sein*, Frankfurt aM, Suhrkamp 1995, 10-27.

¹⁸⁶ Breuilly (n. 44) xv, xx.

¹⁸⁷ Robert N Bellah, *The Broken Covenant*, New York, Seabury, 1975, 2.

¹⁸⁸ Renan (n. 125) 11: certain events have to be forgotten, others have to be invented.

The invention of traditions in the 19th century was obviously easier if there was some historical truth in it (thus statehood and a viable high culture from the Middle Ages was an advantage),¹⁸⁹ but truth was never a necessary component of national mythology (cf. the still official Romanian theory of Daco-Romanian continuity).¹⁹⁰ Even on the base of historical facts, the building of actual national narratives seems mostly quite arbitrary. Whether something in the Middle Ages was a civil war, a struggle for independence or just an unjustified revolt, will be clear first through the narrative given *ex post facto* by historians. Even without actual lies or mistakes you can distort historical truth by leaving some details out, implying others, and emphasizing yet others, as Benedict Anderson put it in an amusing example:¹⁹¹

English history textbooks offer the diverting spectacle of a great Founding Father whom every schoolchild is taught to call William the Conqueror. The same child is not informed that William spoke no English, indeed could not have done so, since the English language did not exist in his epoch; nor is he or she told ‘Conqueror of what?’ For the only intelligible modern answer would have to be ‘Conqueror of the English’, which would turn the old Norman predator into a more successful precursor of Napoleon and Hitler.

Identity does not draw its sustenance from facts but from subjective perceptions; not from chronological or factual history but from sentiment or felt history.¹⁹² Whatever new results come up in the research of historians, in popular perceptions nations are eternal. Nobody ever denied the actual multinationality or multilinguality or multiethnicity of the oldest and most unquestioned nation-states, e.g. Britain, France and Spain.¹⁹³ Italian linguistic unity was first achieved in the 1970s.¹⁹⁴ But all this is irrelevant for the public perception. A national mythology has to be coherent,¹⁹⁵ but (as mythology) does not have to be true. Its emotive and convincing power is stronger, however, if at least *some* historical facts support it.¹⁹⁶ As Schöpflin put it:¹⁹⁷

There has to be some factor, some event, some incident in the collective identity to which (national) myth makes an appeal; it is only at that point that the reinterpretation

189 Gellner (n. 5) 83. Michael Keating, *Nations against the State. The New Politics of Nationalism in Quebec, Catalonia and Scotland*, 2nd ed. UK Palgrave 2001, 9 calls it ‘usable past’. Even recent past and recent institutions could serve as identity building, see John McGarry, Brendan O’Leary and Richard Simeon, *Integration or accommodation?*, in: Sujit Choudry (ed), *Constitutional Design for Divided Societies: Integration or Accommodation?*, Oxford, OUP 2010, 72: ‘In the Soviet Union, Yugoslavia, and Czechoslovakia, pluralist or ethnofederal institutions are alleged to have created identities and divisions where none had existed previously, and to have done so needlessly.’

190 Karl Strobel, Die Frage der rumänischen Ethnogenese. Kontinuität – Diskontinuität im unteren Donauraum in Antike und Frühmittelalter, *Balkan-Archiv* 30/32 (2005-2007) 59–166; Catherine Durandin, *Histoire des Roumains*, Fayard, 1995, chapter II; Gottfried Schramm, *Ein Damm bricht. Die römische Donaugrenze und die Invasion des 5.-7. Jahrhunderts im Lichte von Namen und Wörtern*, München 1997, 275-368.

191 Anderson (n. 39) 201.

192 Connor (n. 145) 45.

193 Hobsbawm (n. 8) 33.

194 Llobera (n. 7) 200.

195 Smith (n. 16) 41.

196 Anthony D Smith, Opening Statement: Nations and Their Past, *Nations and Nationalism* 1996, 362.

197 George Schöpflin, The Functions of Myth and a Taxonomy of Myths, in: Geoffrey Hosking – George Schöpflin (eds), *Myth and Nationhood*, London, Christopher Hurst 1997, 26.

can vary very radically from a closer historical assessment. It is hard to see how the Czechs and Slovaks, say, could define their mythopoeias by inventing a strong seafaring tradition.

2.4 Growing vs. Fading

Anti-nationalist liberals or Marxists often predicted or even saw the end of nations and nationalism.¹⁹⁸ Similar predictions have already failed once, when Marxists had to realize with disappointment that during the First World War workers were fighting in the ditches and trenches as national solidarity was just much stronger than any competing international labor-solidarity. And after the War, nationalist veterans of the losing nations did not give up nationalism, but rather the opposite happened: many of them joined nationalistic organizations propagating an even stronger nationalistic and militaristic worldview justifying exceptional (totalitarian) measures with the exceptional new circumstances. Losing the War did not mean the failure of the national idea for them, but it meant that the hinterland was not nationalistic, disciplined and militaristic enough to support them. This, combined with a general feeling of the downfall of liberal Western societies (Spengler, etc.), made a fascist reorganization of society seem a necessity for many. Thus nationalism retained its position not only in the winning countries (which is logical after winning a war in which nationalistic rhetoric was used), but paradoxically it even got stronger and more powerful in the losing countries.¹⁹⁹

The end of nationalism seemed and seems to be no more than wishful thinking by cosmopolitan thinkers.²⁰⁰ It recently gained power not only in Eastern and Central Europe after the end of socialism (which could be explained by the failure of old social and legitimacy structures),²⁰¹ but also in Scotland and in Catalonia (where such explanations based on failure do not fit). The consciously anti-nationalist language of multiculturalism also seems to be in decline in Western Europe.²⁰²

Every single day, national feelings are being confirmed and reconfirmed by political speeches referring to patriotism, referring to our nation as 'us', and referring to foreigners as 'them'.²⁰³ They are confirmed every day by the newspapers when domestic and foreign news are separated, or when sports news give rise to national pride.²⁰⁴ Streets and squares, awards and prizes all reflect national(-ist) narratives of history.

198 Francis Fukuyama, *The End of History and the Last Man*, St Ives, Penguin, 1992; Thomas M Franck, *The Empowered Self: Law and Society in the Age of Individualism*, Oxford, OUP 1999, 1.

199 Nationalism can even become stronger in the people's hearts after losing a nationalist struggle, as George Bernard Shaw expressed it: 'A healthy nation is as unconscious of its nationality as a healthy man of his bones. But if you break a nation's nationality, it will think of nothing else but getting it set again.' Shaw, *John Bull's Other Island* (preface).

200 Craig Calhoun, *Nations Matter: Culture, History, and the Cosmopolitan Dream*, London - New York, Routledge, 2007, 1.

201 See Hobsbawm (n. 8) 173 quoting an unpublished paper by Miroslav Hroch stating that after the fall of communism the nation was 'a substitute for factors of integration in a disintegrating society. When society fails, the nation appears as the ultimate guarantee.'

202 Steven Vertovec - Susanne Wessendorf (eds), *The Multiculturalism Backlash. European Discourses, policies and practices*, London - New York, Routledge, 2010.

203 Michael Billig, *Banal Nationalism*, London, SAGE 1995, 16-17, 55, 99-101, 106-109.

204 Billig (n. 202) 119.

But on the other hand, an overheated national feeling in an economically and partly also politically integrated world, especially in Europe seems less likely than ever before. It would also be difficult to imagine that young conscripts would be as enthusiastic (or willing at all) to go to war in the same way as at the beginning of the First World War. The role of national languages seems to have declined in the scientific elites (meaning the pervasive use of English).

Thus any simplistic thesis about either growing or fading nationalism would be difficult to prove, as parallel contradicting developments can be seen.

2.5 Constructive vs. Destructive

Nations are *not* held together by rational calculation:²⁰⁵ most individuals do not desert their nations even if it is in their interest.²⁰⁶ Some people were or are ready to die for their nations, which by definition cannot be a rational choice. In this sense it is definitely 'irrational' which, however, does not say much about whether it is a useful or a harmful, a morally good or a morally bad, phenomenon.²⁰⁷ Hobsbawm famously denoted nationalism as 'self-destructive' and as necessarily leading to bloodshed.²⁰⁸

The logical implication of trying to create a continent neatly divided into coherent territorial states each inhabited by a separate ethnically and linguistically homogenous population was the mass expulsion or extermination of minorities.

Some even assert a contradiction between constitutionalism and nationalism: Nationalism generates power, provides a basis for political mobilization and encourages the ambition of elites, whereas constitutionalism tames power, channels it through formal institutions and often brings to an end the populist impulse of nationalist movements.²⁰⁹

Some characterize nationalistic logic primarily as *autistic* (and only as a consequence thereof as destructive): you are so much enclosed in your own circle of self-righteous victimhood that you cannot listen to anybody outside.²¹⁰ Nationalism – so the argument goes – means intolerance, and intolerant groups are unable or unwilling to perceive those they despise as individuals, because intolerant individuals are unable or unwilling to perceive themselves as such. Their own identities are too insecure to permit individuation: they cannot see themselves as the makers of their individualities, and hence they cannot see the others as the makers of theirs either.²¹¹ Nationalists thus find anything, even violence, – so the argument goes – as justified and natural if it is the

205 Hobsbawm (n. 21) 269.

206 Özkirimli (n. 124) 124.

207 For more details on the moral debates on nationalism see Margaret Moore, *The Ethics of Nationalism*, Oxford University Press 2001.

208 Hobsbawm (n. 8) 133, 186 referring in this respect to Adolf Hitler as a 'logical Wilsonian nationalist'. Similarly: Sanford Levinson, Is liberal Nationalism an Oxymoron? An Essay for Judith Shklar, *Ethics* 1995/3 626-645; Brian Barry, Nationalism, in: David Miller (ed.), *The Blackwell Encyclopedia of Political Thought*, Oxford, Blackwell, 1987, 352-354.

209 Bill Kissane – Nick Sitter, National identity and constitutionalism in Europe, *Nations and Nationalism* 2010, 2. For an opposite view stating that liberalism (the idea of freedom, esp. the right to culture) and nationalism are complementary see Tamir (n. 153).

210 Ignatieff (n. 161) 97.

211 Ignatieff (n. 161) 99.

interest of their nation (esp. making the territory of the country as big as it ever was in history, even if it was just for a short period of time, even if it was many centuries ago or even if today's ethnic maps do not converge with their claims).

Quantitative research, however, proved that nationalism *on its own* does not lead to any violence.²¹² As a matter of fact, nationalism can be combined with universal ideals such as liberalism and democracy.²¹³ Present-day nationalisms in Scotland, Belgium, Catalonia, Wales and Quebec are peaceful and democratic, fitting in well with a liberal concept of society.²¹⁴ Moderate nationalists like Neil MacCormick rather blame different ideas coupled with nationalism.²¹⁵

[t]he problems associated with nationalism lie more with the state and with statism than with the nation [...] The principle of national self-determination becomes morally and practically problematic because (or when) it is coupled to the concept of doctrine of the absolutely sovereign state.

Others even go further, and claim the nation to be a guarantee of freedom.²¹⁶ This on its own it is neither useful nor harmful, but when combined with other factors it can have different effects ranging from violence (towards other nations' members) to altruistic sacrifices (towards the own nation).²¹⁷ Or to put it differently: for nationalists morality ends at the borders of the (targeted) political community.²¹⁸

This is not to deny that even non-violent nationalism might be harmful also to the own nation: nationalist rhetoric is often used to diverge the attention of the public from the corruption or incompetence of the elite; and even without such deliberate manipulations, it often causes the public (and politicians) not to think about socially more pressing and more important, but emotionally less straightforward questions such as nowadays the pension, social or health care reforms.²¹⁹ Once nationalist passions are awakened, it is very difficult to exert full control over them, even by those who formerly

212 David D Laitin, *Nations, States and Violence*, Oxford, OUP, 2007, 10-11, 22.

213 Margaret Moore, Globalization, Cosmopolitanism, and Minority Nationalism, in: Michael Keating and John McGarry (eds), *Minority Nationalism and the Changing International Order*, OUP 2001, 58. Cf. Anderson (n. 39) 103 on the twin stars of 'nationalism' and 'liberalism' during the revolutions of 1848: both were based on the rhetoric of 'liberation'. For an opposite view (i.e. the antagonism of liberalism and nationalism) see Elie Kedourie, *Nationalism*, Oxford, Blackwell 4th ed. 1993, 104. On the combination of nationalism and communism in Asia, however, see Stein Tønnesson, *Globalising National States, Nations and Nationalism 2004*, 185.

214 Kain Nielsen, Cultural Nationalism, Neither Ethnic nor Civic, in: Beiner (n. 14) 121.

215 Neil MacCormick, *Questioning Sovereignty*, Oxford University Press 1999, 190.

216 Anthony D Smith, *Nations and Nationalism in a Global Era*, Cambridge, Polity Press 1995, 155: 'the only safeguard against imperial tyranny'.

217 Lorenz Khazaleh (interview), Benedict Anderson - I like Nationalism's Utopian Elements, 2005 www.culcom.uio.no/english/news/2005/: 'Nationalism encourages good behaviour. [...] nationalism is like the human body. Sometimes it is healthy, but occasionally it might become sick, feverous and do ill things. But normal body temperature is not 41 degrees Celsius but 36.5 degrees Celsius.' For a similar view see Carlton JH Hayes, *Essays on Nationalism*, New York, Macmillan 1926, 245-275.

218 Raymond Aron, *Peace and War*, Malabar, Krieger 1962; Friedrich Meinecke, *Machiavellism*, New York, Praeger 1965 [1924]; Hans Morgenthau, *Scientific Man vs Power Politics*, Univ. of Chicago Press, 1946.

219 On this perspective during the Hungarian constitution making process of 2010/11 see András Jakab, Az alkotmányozás előkérdéseiről, *Iustum Aequum Salutare* 2010/4. 11-17.

worked on heightening them—and even if they can be tamed at the end of the day, the efforts spent on taming them also take away the necessarily limited time and intellectual resources of any society from the mentioned pressing social issues. Politicians though, do like to use both nationalist and (emotionally emphatic) anti-nationalist arguments, as their use and understanding do not require either from the politicians themselves or from the electorate major intellectual efforts, having thus a considerable, easy to reach and consequently cheap mobilizing capacity.

But on the other hand, we also have to recognize that without having the feeling of large-scale solidarity awoken by nationalism, it is difficult to run a democracy and gain the agreement of the citizens for redistributive policies which do not benefit them. The mutual trust eases not only redistributive policies, but deliberative forms of democracy in general.²²⁰

‘Our’ nationalism is considered to be normal and it is always seen as moderate and called patriotism anyway, whereas ‘their’ nationalism is by definition exaggerated and called chauvinism. ‘Our’ nationalism helps us feel as though we are members of an overarching community, it supports the ‘social duties to act for the common good of that community, to help out members when they are in need etc. [It] is *de facto* the main source of such solidarity.’²²¹ Thus the positive effects are also plausible, *if* it does not happen in an emotionally overheated way and if it respects the principles of democracy and the rule of law, and especially if it respects those who do not (want to) belong to that community.

2.6 Universal vs. Local

Nations are by definition limited.²²² If the whole world belonged to our nation then the concept would not make sense. Without ‘them’ there is no ‘us’.²²³ Therefore, nations are by definition local. But the idea is universalist: the whole world consists of nations, every person has a nationality (if not, then it is a sad handicap similar to a person lacking ears or nose).²²⁴ It is thus a universalist idea of everybody being a local of his own nation.

²²⁰ Miller (n. 144) 98.

²²¹ David Miller, In Defence of Nationality, in: Paul Gilbert – Paul Gregory (eds), *Nations, Cultures, and Markets*, Abingdon, Avebury 1994, 22.

²²² Anderson (n. 39) 7.

²²³ Billig (n. 202) 78-79.

²²⁴ Gellner (n. 5) 2, 6.

The Intractable Relationship Between the Concepts „Integration” and „Multiculturalism”:

About conceptual fluidity, (substantive) context specificness and fundamental rights perspectives¹

KRISTIN HENRARD²

Introduction

In Europe ‘a backlash against multiculturalism’ is noted, often accompanied by the statement that this goes hand in hand with a ‘shift towards integration’.³ These statements seem to proceed from the presupposition that it is crystal clear what these concepts mean and present them as embodying opposite realities.⁴ The following analysis will demonstrate that the relationship between these two concepts is actually rather intractable, which is inter alia related to their considerable conceptual fluidity and their substantive context specificness. The conceptual fluidity refers to the fact that these two concepts do not have just one meaning but that it means different things for different interlocutors, and have different connotations and implications in different countries.⁵

In order to explain the ‘substantive context specificness’ it is important to realize that ultimately this debate takes place against the background of an increasing population diversity in societies and concerns the question what needs to be done in such diverse societies to achieve (sufficient) social cohesion. More particularly, the key controversial question in such plural societies is how does the goal of a cohesive society relates to allowing, protecting and/or even promoting separate identities of distinctive population groups. This is intrinsically related to the debate about how to treat differ-

1 This article is developed on the basis of a conference paper presented at the conference Challenges of Multiculturalism, which took place in Belgrade 23-24 march 2012.

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3 Steven Vertovec and Susanne Wessendorf, *The Multiculturalism Backlash: European Discourses, Policies and Practices*, London: Francis & Taylor, 2010

4 The book edited by Sujit Choudry (Choudry 2008) seems to hint at an analogous opposition in its title ‘accommodation or integration: ...’.

5 Yngve Lithman, *The Integration-Citizenship-Social Cohesion Nexus*, Europeshere Working Paper 2011/36, 2011, p.3

ent population groups with separate identities -often qualified as minorities⁶ within the same state. It is common knowledge that there are many different substantive opinions about where and how to strike the balance between unity and diversity and about special (accommodation) rights for minorities, etc. Substantive context specificity then refers to the fact that what works in one society, might not in another, in the sense that the success of a particular strategy depends on all relevant circumstances, like the degree of population diversity, the relative number and relative territorial concentration of the groups concerned, as well as the history and related sensitivities. In other words there are no 'one size fits all' solutions for these questions.

This article attempts to address the intractability of the relationship between 'integration' and 'multiculturalism' both in relation to the conceptual fluidity and the substantive context specificity, while considering the usefulness of mechanisms that permeate the supervisory practice of fundamental rights. Since the concepts concerning fundamental rights norms are often vague and open to multiple interpretations, it is assessed whether and to what extent the fundamental rights (supervisory) practice offers useful tools to address the conceptual fluidity of the concepts 'integration' and 'multiculturalism'. Attention for fundamental rights perspectives invites furthermore to proceed with an investigation whether fundamental rights and the related supervisory practice have also something more directly to say about the concepts integration, multiculturalism and the way they interrelate. In this regard, the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) is evaluated.⁷ The conceptual discussion will indeed reveal that multiculturalism tends to be related to rights for persons belonging to minorities. Furthermore, the FCNM does not only include (exceptionally) explicit references to 'integration', but also multiple, more indirect references can be denoted.

Furthermore, substantive context-specificity is also in several respects an inherent feature of fundamental rights, in terms of both qualification and (legitimate) limitations. Also, there are several relevant circumstances that need to be considered and weighed, whereas searching for the appropriate balance is the key. Hence, it is worthwhile considering whether the way, in which the supervisory practice of human rights instruments deals with this context specificity (when confronted with actual fundamental rights cases), exhibits features that might be useful to address the (intractable) relationship between 'integration' and 'multiculturalism'. In this respect, particular societal dilemmas concerning the quest for a cohesive society are discussed. Also in this regard, not only the attention is not paid only on the relation of multiculturalism and integration, but also on the more direct relevance of particular considerations in the field of human rights.

In the end, on the basis of the fundamental rights perspectives that have been developed in this article, some conceptual suggestions are formulated, while calling for the need to be at all times explicit about the way in which the concepts concerned are

6 In relation to the supposed backlash against multiculturalism, Will Kymlicka has rightly pointed out that there is an important distinction to be made between multiculturalism as applied to traditional minorities and to migrants, in the sense that the backlash is only a vav letter, while the rights of traditional minorities and indigenous peoples seem strongly and convincingly entrenched: Kymlicka 2010: 4.

7 The FCNM may be confined to Europe but it is the only legally binding convention which enshrines (only) minority specific rights, thus generating supervisory practice that can be analyzed.

used. It is also argued that further research is warranted, including case studies, in order to identify relevant factors that can shed light on the seemingly intractable relationship between ‘integration’ and ‘multiculturalism’, while taking into account relevant fundamental rights considerations.

The article starts with an overview of how the concepts ‘integration’ and ‘multiculturalism’ are featured in academic writings, reviewing different models that can be adopted related to the population diversity encountered in societies, in search of the appropriate balance (in the specific circumstances) between unity and diversity. This first notion of the conceptual fluidity is followed by a section which zooms in on ‘multiculturalism’ and, even more detailed, on ‘integration’. Especially the wide range of meanings attached to the term ‘integration’ explains the conceptual fluidity of its relationship to ‘multiculturalism’. Thirdly, some insights are provided about the way in which the supervisors mechanisms of fundamental rights deal with the conceptual fluidity in the standards they need to monitor. These insights are drawn from the supervisory practice of the European Court of Human Rights, which is undoubtedly an international human rights court with widely and highly regarded jurisprudence. Fourthly, the text and supervisory practice of the FCNM is analyzed with the objective of deducing views on the meaning of the concepts ‘integration’ and ‘multiculturalism’ as well as the way they interrelate. The fifth section then turns to the substantive context specificity of fundamental rights and especially the approach of the supervisory practice in this respect. In the following section a few societal quandaries in the quest for a cohesive society are discussed through an outline of the related conflicting considerations and fundamental rights perspectives.

In the conclusion, some conceptual suggestions are made about the reduction possibilities of the conceptual fluidity of ‘integration’ and ‘multiculturalism’, underscoring the need for further (inter-disciplinary) research concerning the substantive context specific nature of several societal dilemmas regarding population diversity and social cohesion.

1. Conceptual fluidity: State policy models concerning population diversity

Several authors present models which a state can adopt relating to the population diversity, in the attempt to find (in the specific circumstances) an appropriate balance between cohesion and diversity. While few of these accounts seem to be identical in the sense that just different concepts/titles are used, on closer scrutiny the categories that are distinguished are de facto rather similar (while some might distinguish more categories, making further sub-divisions). Still, as it will become clear, the same concepts are/can be used to convey very different meanings, which tends to add some confusion in debates. Enumerations of possible models, which can be adopted to deal with the population diversity tend to include concepts of assimilation, integration, multiculturalism, segregation, isolationism and the ‘melting pot’. For purposes of this article, the focus will be on the presentation of the three possible models of state policy in this field, which are most interesting to study, namely ‘multiculturalism’, ‘integration’ and ‘assimilation’.

'Assimilation' tends to refer to a one-way process, whereby the minorities are expected to discard their own identity in order to create a homogeneous society with the majority population.⁸⁹ However, several authors differentiate slightly in their views by making further distinctions. Brian Barry, for example, distinguishes between absorptive assimilation and additive assimilation, with the latter denoting a situation where a cultural membership (an identity) is added to the original identity which is preserved.¹⁰ Brubaker distinguishes between a general and abstract assimilation on the one hand, and a specific and organic assimilation on the other. The latter would imply complete absorption, while the former would be more limited in scope and would refer to becoming similar in certain respects (only), thus implying the retention of particular identity features.¹¹ In other words, while the baseline of assimilation would seem to imply that separate identities are to be abandoned, it can be a matter of degree. Indeed, in some accounts assimilation would still go hand in hand with the retention of core identity features and related values.¹²

Conversely, the baseline of the multicultural model would be the acceptance of separate identities.¹³ On closer scrutiny, various shades of multiculturalism can be distinguished, depending on the extent to which the state is actively supporting these separate identities, beyond tolerating them. Kukathas, for example, distinguishes between weak and strong forms of multiculturalism. The former would be confined to just tolerating other identities,¹⁴ while the latter would go further and also positively protect and promote the identity of minorities.¹⁵ Shachar also distinguishes between weak and strong multiculturalism, but defines it markedly different. Weak multiculturalism would go beyond accepting separate identities and would concern accommodation policies going hand in hand with positive obligations for the state. Strong multiculturalism would have a stronger group focus and would concern inclusion of these groups in the constitutional framework, at times even en-

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- 8 Roberta Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion*, Baden Baden: Nomos, 2009, p. 20 and Joshua Castellino, *Order and Justice: National Minorities and the Right to Secession*, International Journal on Group and Minority Rights, 1989-1999, p. 405
- 9 See also the category 'nation building' used by Allan Patten, 'Beyond the dichotomy of universalism and difference: Four responses to cultural diversity' in Sujit Choudry (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation*, OUP 2008, 97-101. Brubaker distinguishes between a general and abstract sense of assimilation and a specific and organic sense. The former would refer to becoming similar in certain respects and thus not morally objectionable. The organic meaning of assimilation would imply complete absorption and this would indeed be morally repugnant: Brubaker 2003: 42.
- 10 Brian Barry, *Culture and Equality: an Egalitarian Critique of Multiculturalism*, Harvard: Harvard University Press, 2002, p. 81
- 11 Rogers Brubaker, *The Return of Assimilation? Changing Perspectives on Immigration and its Sequels in France, Germany and the United States* in Ch. Joppke & E. Morawska (eds.), *Towards Assimilation and Citizenship: Immigrants in Liberal Nation-States*, Palgrave, 2003, p. 42
- 12 Bhikhu Parekh, *A New Politics of Identity: Political Principles for an Interdependent World*, Palgrave, 2008, p. 84
- 13 Roberta Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion*, op. cit. p.21
- 14 This can be related to the 'disestablishment' model used by Allan Patten, which also seems more about tolerating, accepting differences: Patten 2008: 93-97.
- 15 While Patten's category of 'cultural preservation' seems more about strong multiculturalism, his 'equality of status' in the sense of evenhandedness towards all cultures arguably is closer in kind again to weak multiculturalism: Patten 2008: 101-109. See also Chandran Kukathas, *Theoretical Foundations of Multiculturalism*, 1992, p. 7 available at www.gmu.edu/departments/economics/pboettke/workshop/fall04/theoretical_foundations.pdf.

compassing self-governance.¹⁶ This distinction seems closer in kind to the distinction made by Spinner Halev between thick and thin or inclusive multiculturalism. At least, his vision of thin multiculturalism also relates to accommodation policies aimed at the inclusion of the minorities. His understanding of thick multiculturalism would seem to be more radical than Shachar's strong multiculturalism, since he relates thick multiculturalism to attempts to full separation or partial withdrawal.¹⁷ Arguably, Castellino's model of 'pluralism' also refers to multiculturalism, but then rather to weak multiculturalism à la Kukathas: it focuses on interdependence and cooperation, while permitting different identities.¹⁸ Castellino also distinguishes ethno-development which seems to consist of strong forms of cultural autonomy, and can thus arguably be related to strong forms of multiculturalism.

When considering the concept 'integration', it is striking that at times it is not used as one particular model of state policy addressing population diversity, but rather as an umbrella term to refer to the policy a government adopts towards the population diversity, towards its minorities.¹⁹ In case when 'integration' refers to a particular model, an astonishing diversity of meanings can be distinguished. Castellino, for example, considers integration as amounting to a partial melting pot and a partial demand to discard separate identity features: 'diverse elements of different cultures are merged while retaining their separate identity (...) only those differences harmful to overall unity need to be discarded'.²⁰ When considering the title of the volume edited by Sujit Choudry, 'Integration' is opposed to 'Accommodation'. According to this view, integration seems to be rather aiming at a homogeneous unit, promoting a single public identity, while accommodation would promote multiple public identities and respect differences.²¹

The preceding account has revealed that while multicultural policies have a clear core, it is still possible to distinguish a variety of 'shades' of multiculturalism. Integration at its core does not seem to have a clear meaning, especially in relation to the question of allowing, protecting and/or promoting separate identities (one of the key controversial questions in relation to plural societies). Hence, a more in depth study of the latter concept seems especially appropriate. It is, furthermore, generally accepted that the different models are of abstract nature, while each country adopts its own unique response to diversity by combining elements from each model according to their specific circumstances.²² This accounts for *substantive context specificity* at the level of overarching the state policy to deal with population diversity.²³

16 Ayelet Shachar, *The paradox of multicultural vulnerability* in Joppke, Ch. and Lukes, S. (eds.), *Multicultural Questions*, Oxford: OUP, 1999, pp. 87-111

17 Jeff Spinner Halev, *Cultural Pluralism and Partial Citizenship* in Joppke, Ch. and Lukes, S. (eds.), *Multicultural Questions*, Oxford: OUP, 1999, 69-70

18 Joshua Castellino, *Order and Justice: National Minorities and the Right to Secession*, op. cit. p. 407

19 See also Gilbert 2009: 343-345 who distinguishes between the melting pot vision of integration, the assimilationist one and the multiculturalist accommodationist one.

20 Ibid. pp. 405-406

21 John Mc Garry, Brendan O'Leary, and Richard Simeon, 'Integration or Accommodation? The enduring debate in conflict regulation' in S.Choudry (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation* Oxford: OUP, 2008, p. 41

22 Christian Joppke and Steven Lukes, 'Introduction: *Multicultural Questions*' in Joppke, Ch. and Lukes, S. (eds.), *Multicultural Questions*, Oxford: OUP, 1999, p. 16

23 Ibid. see also Thomas Faist, *The Blind Spot of Multiculturalism: From Heterogeneities to Social (In)Equalities*, COMCAD Arbeitspapiere – Working Papers no 108, 2102, p. 13, available at [http://www.politiquessociales.net/IMG/pdf/Workingpaper_108_Faist.pdf].

2. Conceptual fluidity: a closer look at ‘integration’ and ‘multiculturalism’ and their relation

This section starts with a further clarification of the meaning of multiculturalism, not only by the identification of a variety of dimensions (that go way beyond pure cultural questions), but also through the analysis of accounts that either support or criticize multiculturalism, since they reflect particular understandings of this term. Subsequently, the meaning of ‘integration’ is further investigated through the identification of its scope (persons it applies to and dimensions) as well as underlying values, which in turn can be related to particular fundamental rights.

Multiculturalism, when it is not merely meant to describe a society demographically, referring to state policies on how to deal with population groups of different ethnic, religious and/or linguistic identities, stands for state policies that are not negatively inclined towards these different, separate (minority) identities. It was already noted that this means a continuum of policies ranging from mere acceptance, to policies that accommodate these different identities, and even promote them. In other words, there are different shades or degrees of multiculturalism. Multiculturalism does tend to be related to minority rights in the sense of minority specific rights, but typical about minority specific rights is also that they leave a lot of scope for variations so that the rights can be tailored to the concrete circumstances.²⁴ At the same time it is important to underscore that multiculturalism is not limited to cultural policies *pur sang*, but that multicultural policies also have economic, political and social dimension.²⁵ This broad, multidimensional scope is similarly visible in relation to minority specific rights, as is clarified through their supervisory practice.²⁶ While political participation is explicitly regulated in minority rights instruments, various dimensions of socio-economic participation are increasingly recognized to be interwoven with substantive equality concerns and right to respect for identity concerns.²⁷ Effective access to employment, to education and to services might have a linguistic component in relation to linguistic minorities, and/or might require reasonable accommodation on religious grounds.²⁸ Notwithstanding, the absence of explicit attention to socio-economic themes in the formulation of minority specific rights (with the exception of education) also in the FCNM, the supervisory practice is increasingly addressing questions pertaining to socio-economic participation at large (like access to employment, access to services, etc).

The discussion between critics and proponents of multiculturalism and multicultural policies do provide some further insights of what multiculturalism is about. Critics claim

24 Francesco Capotorti, ‘*Les Développements Possibles de la Protection Internationale des Minorités*’, Cahiers de Droit, 1986, p. 247 – 248

25 Will Kymlicka, ‘*The internationalization of minority rights*’ in Constitutional Design for Divided Societies: Integration or Accommodation Oxford: OUP, 2008, p. 38

26 This is to some extent visible in the supervisory practice under article 27 ICCPR, but comes out loud and clear in the supervision of the FCNM (see also the reference in the following footnote).

27 See *inter alia* Henrard (ed.) 2013 which focuses on the interrelation between the right to identity of minorities and their socio-economic participation.

28 Kristin Henrard, ‘*Duties of reasonable accommodation in relation to religion and the European Court of Human Rights: A closer look at the prohibition of discrimination, the freedom of religion and related duties of state neutrality*’, ELR, (2012 – forthcoming) p. 21

that multicultural policies will maintain and even deepen ethnic divisions by emphasizing the existence of different and separate ethnic identities. This is bound to lead to balkanization and fragmentation, which is clearly contrary to the goal of achieving a cohesive society.²⁹ This argument is countered by those promoting multicultural policies who underscore that the claims of minorities tend to concern claims for accommodation, ultimately aimed at their inclusion in society. The related accommodation policies would stimulate solidarity and commitment towards society at large on the side of the minorities,³⁰ indeed it would help to build more inclusive democratic societies. According to Shachar, multicultural accommodation policies are ultimately about inclusion and enabling participation, which would make multiculturalism a way to reach the goals of integration.³¹

In view of the above, it is not surprising that these discussions pro and contra multiculturalism tend to use citizenship language. Citizenship, indeed, refers to being part of something, which resonates well with ideas about inclusion and cohesion.³² Whereas the critics focus on the fact that multicultural policies and related special measures would lead to differentiated citizenship which would undermine the integrative function of citizenship, the supporters underscore that these multicultural policies are about drawing in the minorities, about citizenization and multicultural or inclusive citizenship, redefining the current conception of citizenship.³³

Another important line of argumentation put forward by the promoters of multicultural policies is that these are actually about realizing real, substantive equality. Indeed the aim of multicultural policies would be remedying disadvantages which minorities suffer because the state is implicitly tilted towards the needs, interests, and identities of the majority group.³⁴ This line of argumentation is put in the frame of justice and fairness, and would arguably also contribute to cohesion, as it will make feel minorities committed to the society they are living in.³⁵

Nevertheless, whether or not social cohesion is realized does not only depend on the attitude and reaction of minorities to state policies but also of those of the majority. In this regard it is essential that awareness is raised that multiculturalism is not about giving in to minorities and any claims they may have, but rather about realizing substantive equality and fairness. Substantive equality also implies proportionality and reasonableness considerations. This is related to the need for multicultural policies to be tailored to the specific circumstances of the society concerned, and the needs of the population groups concerned.

29 See inter alia the account in John Mc Garry, Brendan O’Leary, and Richard Simeon, ‘*Integration or Accommodation? The enduring debate in conflict regulation*’ op. cit. pp. 71 – 72

30 See also Iris Marion Young, *Inclusion and Democracy*, Oxford: OUP., 2002, p. 105; Ayelet Shachar, ‘*The paradox of multicultural vulnerability*’ op. Cit. P. 88

31 Ayelet Shachar, ‘*The paradox of multicultural vulnerability*’ op. Cit. p. 88

32 See also Yngve Lithman, ‘*The Integration-Citizenship-Social Cohesion Nexus*’ op. cit.

33 Will Kymlicka, ‘*The Rise and Fall of Multiculturalism*’ in Vertovec, S. and Wessendorf, S. (eds.), *The Multiculturalism Backlash: European Discourses, Policies and Practices*, London: Francis-Taylor 2010, p- 37. See also Spinner Halev ‘*Cultural Pluralism and Partial Citizenship*’ op. cit. p. 69 on moral citizenship, which would be about mutual understanding and acting together.

34 Will Kymlicka, ‘*Comments to Shachar and Spinner Haleve: an update from the multiculturalism wars*’ in Joppke, Ch. and Lukes, S. (eds.), *Multicultural Questions*, Oxford: OUP, 1999, p. 112; Iris Marion Young, *Inclusion and Democracy*, op. cit. p. 105

35 Iris Marion Young, *Inclusion and Democracy*, op. cit. p. 110

Kymlicka remarks in this respect that indigenous peoples, traditional minorities and new/migrant minorities³⁶ may have overlapping interests and needs, but their respective priorities are different.³⁷ Shared interests and needs of all these minority groups would concern language rights, affirmative action aimed at redressing discrimination and fair representation in public office. Indigenous peoples though have strong self-determination and self-government claims, while traditional minorities with strong territorial concentrations can similarly turn to autonomy claims. References to self government and autonomy do trigger questions about the extent to which these kinds of multicultural policies (different from accommodation policies) contribute to inclusion and social cohesion. While it – as always – depends on the specific (including also historical) context, granting degrees of autonomy and self-government may be just the way for the population groups concerned to accept that they are at the same time part of the state, combining separateness with commonality. Their ‘inclusion’ would be different but they would, nevertheless, be a composite part of the state.

The fluidity and related variety of shades of multicultural policies make it important to specify the way in which one uses the concept ‘multiculturalism’. Unfortunately, politicians at times deliberately confuse the debate by using labels that are intended to obfuscate their real intentions, due to perceived sensitivities. This is clearly visible in relation to the so-called backlash against multiculturalism in Europe. Indeed, even when the official policies towards migrants may no longer explicitly mention multiculturalism, the ‘new’ policies have often clearly multicultural features. In other words, the new policies would fit the core understanding of what multiculturalism is about. This is even more interesting when one notes that in some countries, like Sweden, these so-called new policies are called ‘integration’.³⁸ Similarly in Quebec the rejection of the official multiculturalism of the federal government in favor of ‘interculturalism’ is criticized because both policies would ultimately cover the same load.³⁹

The fluidity of the concept ‘**integration**’ similarly concerns a question of conceptual demarcation: to some integration is a particular model to deal with population diversity, for the other it is more of a generic term, for some it means more or less the same as assimilation, while for others the extent to which integration goes hand in hand with assimilation is not a given but something that needs to be discussed, decided, and planned. The latter relationship of integration to assimilation versus identity retention covers the same ground as the relationship discussed here between multiculturalism and integration, and concerns at the same time one of the central and fundamental debates on integration.⁴⁰ This question of identity retention (or not) is intrinsically related to the ques-

36 It is important to realize, though, that ‘new minorities’ are no longer new, so the line between traditional minorities and new minorities is bound to become blurry as time proceeds and the related communities develop local roots.

37 Will Kymlicka, *The Rise and Fall of Multiculturalism*, op. cit. pp. 36 – 37

38 Thomas Faist, *The Blind Spot of Multiculturalism: From Heterogeneities to Social (In)Equalities*, op. cit. p. 10

39 Darryl Leroux, ‘*Debating Québec’s Interculturalism as a Response to Canada’s Multiculturalism: An Exercise in Normative Nationalisms?*’, *Canadian Diversity*, 2012, 67-72.

40 The perceived need to move beyond the integration paradigm arguably stems from a conception of the concept ‘integration’ which is closely bound up with assimilation and nation-state pressures: see the article by Lithman 2011. See also Brett Klopp, *German Multiculturalism: Immigrant Integration and the Transformation of Citizenship*, Greenwood Publishing, 2002, p. 23.

tion whether integration is a one way process or a two way process, referring to the question whether or not integration also requires changes of the dominant or 'receiving' society. Irrespective of the normative question, it has already been noted that de facto integration processes implies a gradual alteration of the fabric of society at large.⁴¹

A closer look at what integration is all about entails a reflection on the nature of the groups that are being 'integrated', as well as the kind of issues that are at play in integration (the integration process). Integration talk tends to refer to population groups different from the majority or the dominant groups in a society. The link with 'minorities' is easily made. Actually, and as also visible in the EU documents on this subject, explicit integration policies are most often used in relation to migrants.⁴² Notwithstanding, the reticence of quite a number of states and some academic discord, migrant groups are increasingly considered to qualify as 'minorities', the so-called 'new minorities'. In this respect, it has been argued that a gradual but certain shift can be noted towards an acknowledgement, an understanding that migrants, their needs and concerns are in many respects similar to those of national minorities.⁴³ Furthermore, the fact that 'integration policies' target migrants does not mean that integration would not matter to national minorities – on the contrary. Indeed, also national minorities need to come into terms with another society, namely the society which reflects the majority and/or dominant group.⁴⁴ In this respect, the link which is made in all instruments with minority specific rights between an appropriate minority protection on the one hand, and concerns of stability and peace on the other, confirm that 'integration' also and crucially matters for traditional minorities. Indeed, concerns of stability and peace arguably speak for the integration, the extent to which a multinational society is actually integrated and is not riddled by ethnic tensions, desires to secede, possibly escalating into ethnic conflict and even civil war.

When considering the ever expanding scholarly literature on integration, it is obvious that integration touches on all spheres of societal life, taking place at every level and in every sector of society.⁴⁵ Considering this all encompassing nature of 'integration' it is not surprising that it is characterized as a process, and more particularly a holistic process, which develops over time, and takes time.⁴⁶

41 See also William Bernard, *The integration of Immigrants in the US*, *International Migration Review*, 1967, p. 24

42 In the EU integration policies are targeting a specific category of migrants: third country nationals (TCN). EU citizens that migrate have very strong rights but not on the basis of 'integration policies' but rather as a consequence of their status as EU citizen: see the Common Basic Principles of Integration, which concern TCN: 2628th Council Meeting of Justice and Home Affairs, 14615/04 (Presse 321), 19 November 2004, 15-18 and the annex 19-25.

43 This is extensively argued by Roberta Medda Windischer in her book referenced in footnote 3, and has been documented by several authors in relation to the practice of the Advisory Committee of the FCNM. See inter alia Ringelheim 2010: 99-128. See also Adrian Favell, *Integration Nations: The Nation-State and Research on Immigrants in Western Europe* in Bommès, H. and Morawska, E. (eds.) *International Migration Research: Constructions, Omissions and the Promises of Interdisciplinarity*, Ashgate, 2005, p. 15.

44 Roberta Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion*, op. cit, pp. 247 – 248

45 Roberta Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion* op. cit. 247

46 Ibid. 248

This overarching nature of integration and the integration process is nicely captured by Hartmut Esser and the four dimensions which he distinguishes: legal or structural integration, social integration, cultural integration and identificational integration.⁴⁷ Legal or structural integration refers to rights and access to positions in core institutions of society. This includes effective access to education, to the labor market, to housing, to social services and also to political citizenship. Cultural integration captures the cognitive, behavioral and attitudinal change in persons of both the dominant group and the minorities. Social integration refers to the extent to which one has friendships, romantic relationships, marriages with persons from the dominant group. It also concerns one's inclusion in mainstream clubs, organizations and the like. Finally, identificational integration materializes when minority members have a sense of belonging and thus identify with the society at large. While social inclusion and social cohesion may not seem to have all these different layers and dimensions, there is at least an overlap c.q. close relation between them and the concept 'integration'. This arguably explains that the former concepts are at times used interchangeably with 'integration' or that they are considered to be close proxies for integration.⁴⁸

None of these dimensions of integration have a clear or direct link with multiculturalism and multicultural policies (as described above). In so far as multiculturalism is related to mutual understanding and tolerance this could indirectly lead to cultural and social integration, and possible also to identificational integration.⁴⁹ The description of the four integration dimensions demonstrates that public authorities have actually little direct influence on social, cultural and identificational integration. In terms of structural integration, there seem to be two key themes with various sub-themes, namely equality (rights to equal treatment) and participation (participatory rights).⁵⁰

It has been underscored that integration policies are geared towards the highest equality standard.⁵¹ This primarily concerns effective protection against (invidious) discrimination as unjustified disadvantageous treatment. In addition, substantive equality demands would encompass duties of differential (= special) treatment, like (including) duties of reasonable accommodation. Participation, as second central theme of structural integration, would encompass political and socio-economic par-

47 Hartmut Esser, 'Welche Alternativen zur Assimilation gibt es eigentlich?' 23 IMIS beitrage, 2004, p. 46

48 Hyman, I., Meinhard, A. and Shields, J. (2011), *The Role of Multiculturalism Policy in Addressing Social Inclusion Processes in Canada*, prepared for the Canadian Multicultural Education Foundation, 2011, pp. 1 - 2; Lithman, 'The Integration-Citizenship-Social Cohesion Nexus' op. cit. pp. 1 - 5;

49 See however the literature on segmented integration (in US literature 'segmented assimilation'), following which integration in one dimension does not necessarily goes hand in hand with or lead to integration in another dimension: inter alia Alba and Nee 2003: 8; Portes and Zhou 1993: 74-96. See also several EU documents on social inclusion.

50 The related questions of (legal) status, rights to family reunification and access to nationality may not be relevant for traditional minorities and tend to be specific to the situation of migrants, these themes do play a significant role in the former's integration (process). Security of one's status can indeed be considered to amount to a key feature of integration: it is hard to feel integrated in a society when one does not have a permanent residence permit. In this respect, the ongoing relevance of having access to nationality also deserves repetition. Furthermore, being allowed to get one's family over, sends a strong signal of inclusion, of membership in the polity (Niessen 2009: 54).

51 Jan Niessen, and Thomas Huddleston, *Legal Frameworks for the Integration of Third-Country Nationals*. Den Haag: Brill, 2009, p. 6

ticipation. Effective (and substantively equal) access to quality education and access to the labor market clearly speak to socio-economic participation.⁵² Various dimensions of political participation can be distinguished, including formal political rights or voting rights, informal political rights related to membership in political parties, the establishment of consultative and advise bodies⁵³, the representation in the police force, the army, public administration and the judiciary. It has been argued persuasively that effective participation, especially in decisions of relevance to them, will make minorities feel more confident that their interests and concerns will be taken into account, and thus more committed to the society they are part of.⁵⁴ Similarly, integration through participation is an important element in forging links of mutual understanding and loyalty between the distinctive communities in a state.⁵⁵

The preceding more in depth discussion of the concepts ‘multiculturalism’ and ‘integration’ have revealed that there are quite a few parallels: the effective protection against discrimination and substantive equality is essential for both; political participation plays a key role for both and now that socio-economic participation aspects are increasingly getting a place within multicultural policies, another parallel is emerging. Nevertheless, none of the implicated rights are absolute. Hence, it is a question of degree, of proportionality, which is related to the substantive context specificness, which will be elaborated infra, in relation to more concrete dilemmas.

The considerable potential for overlap between multiculturalism and integration is also borne out by the prevalence of ‘citizenship’ language in relation to both terms. The critics of multiculturalism underscore that it would lead to differentiated citizenship, undercutting citizenship’s integrative function⁵⁶, whereas the proponents rather underscore the integrative benefits of a redefined and inclusive or multicultural citizenship.⁵⁷

The potential overlap comes out even more clearly in certain readings of ‘multiculturalism’ that consider multicultural policies as contributing to integration, having integration as their goal.⁵⁸ This would, of course, presuppose an understanding of integration which goes hand in hand with the retention and protection of separate identities of minorities. This leads us back to the biggest factor of contention: the question about the overlap between integration and multicultural policies in respect of identity retention. The role in this respect of proportionality considerations (and related substantive context specificness) will be developed infra.

52 For an application to the EU context, see the book edited by Niessen and Huddleston 2009. Nationals.

53 Ibid. p. 6

54 Annelies Verstichel, *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, Antwerp: Intersentia, 2010, p. 215

55 Ibid. p. 230

56 Will Kymlicka, *Comments to Shachar and Spinner Haleve: an update from the multiculturalism wars*, op. cit. pp. 120 – 121

57 Spinner Halev ‘*Cultural Pluralism and Partial Citizenship*’ op. cit. p. 67; Shachar *The paradox of multicultural vulnerability*’ op. cit. pp.88-89; Faist *The Blind Spot of Multiculturalism: From Heterogeneities to Social (In)Equalities*, op. cit p. 6

58 Shachar *The paradox of multicultural vulnerability*’ op. cit. pp.88; Hyman, Meinhard and Shields *The Role of Multiculturalism Policy in Addressing Social Inclusion Processes in Canada* op. cit. pp 2, 9; Faist *The Blind Spot of Multiculturalism: From Heterogeneities to Social (In)Equalities*, op. cit p. 6

In the end, it seems that the extensive conceptual fluidity discussed here can only be tackled by being explicit about the exact way in which one uses these concepts, especially the concept integration.

Following the third section which will consider the way in which fundamental rights deal with conceptual fluidity, the fourth section will explore whether and to what extent fundamental rights, and especially the FCNM, provides guidance about the meaning and implications of multiculturalism and integration and/or shed light on the way they relate to one another. The fifth and sixth session will then take up the theme of substantive context specificness which was already introduced in the preceding lines.

3. Fundamental rights and conceptual fluidity

Fundamental rights standards often use terms that are open to multiple interpretations like privacy, house, family life, torture, forced labor, etc. Within one national legal system, the highest court's jurisprudence will ensure that ultimately one particular meaning is withheld. However, these terms can thus have different meanings in different legal systems. Hence it is interesting to see in what way international supervisory bodies of international conventions deal with this phenomenon. It is in the interest of coherence, consistency and the rule of law (legal certainty) that when a term features in an international convention, it has the same meaning in relation to all the countries that are state parties to that convention. The extent to which this can effectively be realized depends on the supervisory mechanism of these conventions. In so far as a Court has the power to make binding legal decisions in particular cases (complaints procedure), this has the power, as final arbiter under the convention, to impose a set meaning for a convention term. This is exactly what the European Court of Human Rights has done in its jurisprudence pertaining to 'autonomous meaning' of the concepts in the ECHR. National authorities cannot invoke their own national interpretation of a concept in relation to matters that fall under the Convention. In relation to the latter is the European Court which determines the meaning of the concept concerned.⁵⁹

In terms of supervisory mechanisms that are not legally binding, and especially those that only work with periodic reporting procedures, like the Framework Convention for the Protection of National Minorities, one notes a different type of language. The Advisory Committee of the FCNM cannot pronounce legally binding decisions for the state parties and thus rather invites them to follow its points of view through persuasion and repetition (through subsequent supervision cycles) (inter alia several contributions in Verstichel et al. (eds.) 2005).

In other words, the supervisory mechanisms of human rights conventions set out to impose a unified meaning of the concepts used in the convention to the state parties, through mechanisms that are adapted to the particularities of each mechanism.

There is no human right to integration yet, and obligations in terms of integration have not yet been laid down in legally binding conventions endowed with supervisory

59 In the end, the actual compliance with judgments (including the reading of particular concepts) cannot be enforced and hence, the Court has to contend with concerns about political legitimacy. Nevertheless, so far it has been rather successful in aligning the state parties.

mechanisms. Nevertheless, it cannot be maintained that fundamental rights have nothing to say about the meaning and implications of ‘integration’, ‘multiculturalism’ and the way they interrelate. The convention which is most suited to consider in this respect is the Framework Convention for the Protection of National Minorities (FCNM), since its minority focus sets it in the multicultural frame, while the concept ‘integration’ features not only in one of its articles, but also a few times in the Explanatory Report.⁶⁰ The interpretation of general human rights can also reveal particular visions of ‘integration’ and of ‘multiculturalism’⁶¹, but an in depth investigation would go beyond the scope of this article. Some relevant general human rights perspectives will be highlighted below in section 6 in relation to particular dilemmas.

4. Fundamental rights perspective of ‘integration’ and ‘multiculturalism’: the Framework Convention for the Protection of National Minorities

In view of the variety of groups that are relevant for an integration perspective, it should be highlighted that the Framework Convention for the Protection of National Minorities may not have a definition of the concept minority enshrined in it, the supervising committee (Advisory Committee or AC) adopts an inclusive approach, clearly including indigenous peoples like the Sami, and also not excluding migrant groups. It has invited numerous states not to restrict the Convention to traditional minorities.⁶²

Considering that the FCNM’s focus on minorities and their rights and its fundamental goal to protect the separate identity of minorities, it clearly fits the multiculturalistic frame. Most interesting for purposes of the conceptual analysis conducted here is that it is proclaimed that the FCNM is all about the ‘integration’ of minorities.⁶³ The aim of achieving tolerance, intercultural dialogue, mutual respect and understanding (particularly through education and media), as per Article 6, clearly touches on themes that are crucially relevant for cohesive societies. This is confirmed by the Explanatory Report which highlights that article 6 aims at strengthening social cohesion, eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups and to integrate these persons into society whilst preserving their identity (par 48).

Article 12 FCNM underscores the importance of an inclusive curriculum because that would foster knowledge of culture, language and religion of minorities, which is important for the creation of a climate of tolerance and dialogue (Explanatory Report: par 17) and thus also for the goal of a cohesive society.

The AC itself underscored more generally in its *Thematic Commentary on Education*: ‘the role of the Framework Convention in the task of balancing, on the one hand, the

60 Kristin Henrard ‘*Tracing visions on integration and/of minorities: an analysis of the supervisory practice of the FCNM*’, *International Community Law Review* 2011 (special issue), 333-360.

61 Geoff Gilbert, ‘*The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights*’, *Human Rights Quarterly* 24/3, 2002, 736-780

62 See also Verstichel *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* op. cit. pp. 139 - 141

63 Roberta Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion*, op. cit. introduction

maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live.' A particularly interesting discussion is also reflected in the first Opinion on the Netherlands. In response to the Dutch argument not to extend the FCNM to migrant groups because it would hamper their integration, the Advisory Committee underscored that 'the Framework Convention was conceived as a tool for ensuring the preservation and development of the specific identities of persons belonging to various groups while, at the same time, allowing for interaction and their integration into the societies where they live' (at par 10).

Considering its overarching goal, it is not surprising that the AC adopts a vision of integration which is compatible with the protection of the separate minority identities. It is important though that it explicitly underscores that integration policies are possible and can be successful when special rights are granted to minority groups to protect and promote their separate identity. This is particularly important in relation to article 5's prohibition of assimilation which is said to be 'without prejudice to measures taken in pursuance of their general integration policy'. The supervisory practice (exemplified by the opinion on the Netherlands) has added the important clarification (which is absent in the Explanatory Report) that while state parties are not precluded from taking measures in pursuance of their general integration policy, these should never take the form of forced assimilation.

The Advisory Committee does reflect an awareness of concerns that special minority rights might reinforce ethnic differences and enhance fragmentation in its opinion on Bosnia Herzegovina. The AC urges the state to be careful with systems of power-sharing, that make ethnicity a key factor in determining participation in public affairs, because it would be essential for purposes of social cohesion that the ethnic group identity would not become the most salient identity of the persons concerned (Second Opinion on Bosnia Herzegovina, par 9 and 15). The AC also seems to hint at a possible tension between the preservation and protection of the minorities' separate identity and integration, where it notes 'the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live.'⁶⁴ Importantly though it does not put them at opposite ends; it is rather a question of degree of proportionality (hinting once more at substantive context specificness).

The Advisory Committee has not clarified yet though to what extent the multiple positive obligations to protect and promote the separate identity of minorities in the FCNM, going beyond merely accepting (tolerating) minority identities, are important, or required for, a successful integration (of minorities). Its supervisory practice does confirm the cross cutting relevance of equality, for example where it highlights under article 6 the AC the importance of fighting racial violence and racial crimes for integration related purposes.⁶⁵

In relation to education and rights of minorities in education, the Advisory Committee explicitly talks about 'integration in diversity' and argues that this implies that a balance should

⁶⁴ AC, Commentary on Education, p 6. See also p 27 and compare with p 11 where the sole focus seems to be on integration and social cohesion.

⁶⁵ Inter alia AC, Second Opinion on Germany, par 13.

be struck between attention for a common language, and common values on the one hand and the protection of the separate identity of minorities on the other hand. This is meant to have repercussions for the place of religion, language and cultural values in education as well as information on the minorities (history, cultures, religions, etc) in the curriculum.⁶⁶

The special importance of participatory rights (of minorities) for integration is also clearly confirmed where the AC underscores in its Thematic Commentary on Participation that the ultimate aim of the FCNM (and especially its participatory rights) is ‘to help advance participation of persons belonging to national minorities in various areas of life...and to help State authorities build a more integrated and better functioning society’. The Advisory Committee also urges states to prevent that lack of capacity of public services and institutions to cater for the specific (linguistic, religious and cultural) needs of minorities would lead to hampered access to the administrations and public services concerned (including social services, health, housing etc). Specialized training to personnel is envisaged in this respect (par 5 and 16).

5. Human rights supervisory practice and substantive context-specificness

Substantive context specificness is not bad in itself and does not make the concepts concerned unworkable. Also here a useful parallel can be drawn with fundamental rights, since substantive context specificness is a hallmark of these rights. The European Court on Human Rights often refers to the need to take into account all relevant circumstances of the case in order to determine whether or not the respondent state has lived up to its human rights obligations under the Convention.⁶⁷ Most evidently these references can be found where the Court weighs whether an interference with a right is legitimate or not, proportionality considerations playing a key role here. Nevertheless also at the level of qualification ‘all relevant circumstances’ are decisive in order to determine whether something qualifies as for example a ‘house’ or as ‘torture’ in the sense of the ECHR. This is indeed related to the doctrine of the autonomous interpretation already referred to and which applies to all the concepts that feature in the Convention. This context specificness is not problematic per se, to the contrary: it confirms the importance of a thorough weighing process which is paired by a similarly thorough argumentation on the side of the Court in which it specifies what circumstances it considers relevant and how it proceeds to weigh the respective interests.

However, the Court has not always been explicit and transparent enough, and has not worked with clear check lists. Still, over time it has been possible for academics who study the ever developing jurisprudence of the Court to distill relevant parameters as well as the ways in which these operate.⁶⁸

⁶⁶ AC, Commentary on Education, 16.

⁶⁷ Janneke Gerards, and Hanneke Senden, ‘*The Structure of Fundamental Rights and the European Court of Human Rights*’, *International Journal of Constitutional Law* 7/4, 2009, 619-653.

⁶⁸ For example regarding the complex question of conflicting rights: Kristin Henrard Botsende gronddrechten en het EHRM: een pleidooi voor meer zorgvuldige argumentatie en minder ‘margin of appreciation’ voor staten’, in E.Brems, R. de Lange & K. Henrard (eds.) *Botsing van Grondrechten*, Den Haag; BJU, 2008, 29-61

6. Substantive context-specificness of 'Integration' and 'Multiculturalism': Dilemmas in some particular societal fields and related human rights considerations

In addition to the need for the overall state policies aimed at addressing population diversity to be tailored to the specific context and circumstances, substantive context specificness also applies to dilemma's in particular societal fields, like education, housing and the range of integration requirements that are imposed on migrants (as well as their enforcement). Particularly in relation to these dilemmas and the complex underlying concerns it all depends on all relevant circumstances.

In relation to education there is at least one problem which has a clear answer, from both the integration and the multiculturalism angle. Indeed, in relation to the practice of segregated, sub-standard schooling for Roma, the importance attached to fighting invidious discrimination (at least at the level of indirect discrimination) is common to both perspectives or angles (see also the Thematic Commentary on Education under the FCNM, par 17).

The emergence of so-called 'black' schools in various European countries is way more intractable as it is a result of 'private' action and results from a combination of the wish of parents of white children and of migrant children. Parents of white children 'flee', often not because of racism but because of worries about the standard of education (related to the fact that migrant children have adaptation problems). The parents of migrant children are drawn towards 'black' schools because they believe these schools will offer a safe environment for their children. The problem here is how far a government can go to counter this because it is the result of the autonomous choices of the parents. Government cannot interfere disproportionately, while it could be argued to have a positive obligation to interfere to some extent in order to guarantee effective access to education?

Another difficult education theme from the perspective of integration concerns separate schools for minorities. The right to establish private schools is a general fundamental right as well as a minority specific right. Furthermore, it can be argued that separate minority schools (with minority language education) may be important for effective and substantively equal access to education. In the latter respect separate minority schools would thus contribute to minorities' socio-economic integration. However, separate schooling does not contribute to interaction between minority pupils and majority pupils and thus is not conducive to social integration.⁶⁹ The Committee supervising the FCNM actually does not take an explicit negative stance on separate minority schools, which would be difficult considering the fact that article 13 explicitly caters for it. However, it is striking that the Committee strongly promotes inclusive and multicultural education and thus integrated schools. The Committee also underscores the importance of learning the official language for integration purposes also and especially when being taught (in) the minority language (Thematic Commentary on Education under the FCNM, 24).

Regarding housing residential patterns following ethnic lines that occur through private choices and traditional home lands seem to imply integration challenges, in

⁶⁹ Thomas Faist, *The Blind Spot of Multiculturalism: From Heterogeneities to Social (In)Equalities*, op. cit. p. 11

the sense that in these areas there will be little interaction with the dominant group(s), and thus less chance for social integration, which is bound to have some repercussions for cultural and identificational integration as well.^{70 71} Here the same question arises how far a government can go to counter ethnic residential areas (especially in bigger cities). To the extent that this is the result of ‘white flight’, one could imagine that the state could attempt to counter this, in line with article 6 FCNM, through awareness raising campaigns and initiatives to improve mutual knowledge and understanding of the groups concerned. However, these segregated residential patterns may also be the result of a positive choice on the side of the minorities: people might prefer living in neighborhoods with people of similar ethnicity, as it makes them feel more ‘at home’, safe, and comfortable.⁷² This shows that integration and multicultural perspectives might not point in the same direction.

Demands of states that migrants (of all generations) learn the national language are becoming stronger. This is not contrary to the multicultural perspective as it does not prevent people from using their own language, and can even go hand in hand with support for minority languages. To some extent linguistic requirements are legitimate in the sense that it will improve one’s access to the labor market, one’s ability to communicate with neighbors, people in the street etc. However, also here it is a question of degree: what proficiency level can you ask in what respect. Indeed, legitimate linguistic demands for someone behind an information desk are much higher than those for cleaners. Similar proportionality considerations are relevant concerning the punitive structures in case migrants do not obtain the required linguistic proficiency level: would it be reasonable to stop someone’s access to social funds?

All of these examples show how much the answer to all of these difficult ‘integration’ questions depend on all the relevant circumstances of each concrete case and setting. Furthermore, there is a striking variety of the way in which integration and multiculturalism perspectives relate to one another: in some respects they point in the same direction, in other respects they represent virtual opposites, and sometimes there are even two opposing integration perspectives.

7. Conclusion

In view of the multiple meanings that can be given and implications that can be attached to the concepts ‘integration’ and ‘multiculturalism’ (conceptual fluidity), it is important to always be explicit about the way in which the two concepts are used. This would surely contribute to reduce the intractability of the relationship between these two concepts, which is especially important in view of the extent to which these concepts permeate public discourse (and academic writings).

70 Similar concerns can be voiced towards traditional homelands of indigenous peoples, see above in relation to autonomous powers.

71 Eric Oliver, *The Paradox of Integration: Race, Neighbourhood and Civil Life in Multi-Ethnic America*, Chicago: University of Chicago Press, 2010, p. 165; Lithman ‘*The Integration-Citizenship-Social Cohesion Nexus*’ op. cit. pp. 6 – 7

72 Ibid.

Substantive context specificness applies both to the overall policy choices of a state to deal with its population diversity and to more specific societal questions (and related dilemma's) pertaining to education, housing (patterns) and integration requirements imposed on minorities. There may not be a guaranteed way out of this facet of the intractable relationship of the concepts 'integration' and 'multiculturalism', but the substantive context specificness points to the need for further research – including case studies – in order to (attempt to) identify the relevant markers/parameters⁷³ for an optimal balance between unity and diversity, between commonality and separate identities, between civic and ethnic (differentiated) citizenship, which would be conducive to cohesive and integrated societies.

⁷³ See also John Rex, *Ethnic Minorities in the Modern Nation State: Working Papers in the Theory of Multiculturalism and Political Integration*, London: Macmillan, 1996, p. 131

On the Relation between Constituent Power, Constituent People, and National Minorities in Serbia¹

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Introduction

This paper aims to examine the relationship between concepts of constituent power, constituent people, and national minorities and, more specifically, to answer the question of whether both constituent (usually titular) people and national minorities exercise their constituent power.

There is a revival in constituent power scholarship both in constitutional theory³ and radical democratic theory.⁴ Damian Chalmers points out that this concept engages authors in a time of constitutional destabilization or when the authors anticipate or root for constitutional destabilization.⁵ My decision to apply this concept in this particular paper coincide with a period when timid voices uphold the necessity of constitutional revision or even constitutional change in Serbia, and has the intention to reveal the displacement of constituent power which, as a consequence, has produced apathy among Serbian citizens lacking a stronger democratic imagination. At risk of being accused of belonging to the latter group, I reflect on these concepts and outline a few potential strategies of titular people and national minorities. While the problem can be examined in general, in this paper I will be looking for a contextualized answer setting my eye on Serbia. The question is interesting for the entire region of South East-

1 The paper has been result of the work within the research project „**Constitutionalism and the rule of law in state-building – the case of Serbia (number of the project: 47026)**”, supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia and co-implemented by the University of Belgrade’s Faculty of Political Sciences and the University of Belgrade’s Law Faculty.

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3 Martin Loughlin and Neil Walker (eds.) *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2008)

4 Andreas Kalyvas *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, Hannah Arendt* (Cambridge University Press, 2008); Antonio Negri *Insurgencies: Constituent Power and the Modern State* (Minneapolis: University of Minnesota Press, 1999)

5 Damian Chalmers „Constituent Power and the Pluralist Ethic’ in *Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2008), 299.

ern Europe because it could be argued that the protection of minorities and their rights has been the result of a conditionality policy of the international community – most prominently the EU, COE and OSCE, and not of internal majority-minority negotiations. A number of theorists have already noticed this role of the international community in constitution-making which sometimes takes up the form of constituent power. While some of them question the legitimacy of such involvement in constitution-making⁶, that is, the legitimacy of imposition of constitutional settlement, others claim constitutional theory needs to embrace great powers as a new constituent power.⁷ The issue at stake is to what extent have the national minorities themselves been involved in the constitution-making, or more broadly, have exercised their constituent power, and were not just mere object of constitutional politics.

My argument is twofold.

Firstly, majority or constituent, titular people exercise constituent power by way of exercising national self-determination and honoring their merits in creating independent statehood.

Secondly, by re-conceptualizing itself as a group demanding the status of a constituent people, a minority exercises constituent power and willingness to change social relations between majority and minority (by way of eliminating, to a certain extent, majority-minority discourse). The key issue is whether this constituent power is a part of the entire people's constituent power or a separate constituent power of a minority nation. Differently put, by renegotiating social relations with a majority, minorities may either approximate the ideal of self-determination of, say, citizens of Serbia taken as a whole, or they can aim for self-determination of the minority nation, potentially leading toward the creation of a new polity.

The argument is developed over the next three sections. In the first section I elaborate on Sieyès's and Schmitt's theory of constituent power. In the following section the concept of constituent people is introduced, mainly seen through the prism of Yugoslav and post-Yugoslav constitutional history. In the third section, incarnations of constituent power are identified, or lack thereof, in both constituent people and minorities in Serbia.

The who and how question of constituent power

Constituent power is „the ultimate cause of the polity”⁸. It is the supreme secular power that authors a constitution of a political society. Classical theory of constituent power differentiates constituent power from constituted power. There is almost a consensus between the main theorists of constituent power constituent power is singular,

6 Lidija R. Basta Fleiner „The International Community and Constitution-Making“, in Milan Podunavac (ed.) *State and Democracy* (Beograd, Službeni Glasnik, Fakultet političkih nauka, 2011), 203-212.

7 Zoran Oklopčić „Constitutional (Re)Vision: Sovereign Peoples, New Constituent Powers, and the Formation of Constitutional Orders in the Balkans, *Constellations* 19:1 (2012), 81-101.

8 Ulrich K. Preuss „Constitutional Powermaking for the New Polity: Some Deliberations on the Relations between Constituent Power and the Constitution“, in Michel Rosenfeld (ed.) *Constitutionalism, Identity, Difference, and Legitimacy: Theoretical Perspectives* (Duke University Press, 1994), 143

characterized by political unity, whereas constituted power is considered multiple, characterized by a plurality of powers, a plurality of legal and political institutions (e. g. executive, legislative, judiciary power, etc.).

Andreas Kalyvas has recently reminded political and constitutional theorists of the connection between sovereignty and constituent power. Instead of regarding sovereignty as the highest power of command (born in the Roman Empire and perpetuated by Jean Bodin) which relies on the vertical inegalitarian structure of the relation between the sovereign and its subject, we should conceptualize sovereignty as the power to found, to posit, to constitute. Kalyvas traces the origin of this alternative conception in George Lawson, John Locke, Thomas Paine, Emmanuel Sieyès, and Carl Schmitt. Sovereignty as constituting power – is better suited to address emancipatory promises of popular sovereignty.⁹ Kalyvas explains the origin of the term *constituere*, to constitute, as a combination of the prefix *con-* (meaning, among other things, „with” or „together”) and the verb *statuere* (deriving from the word *statuō* and meaning „to cause to stand”, „to set up”). Therefore, *constituere* signifies the act of founding together or, differently put the act of creating jointly.¹⁰ This alternative understanding of sovereignty as constituent power allows us to account for the request we make today about legitimacy of the constitution. Only if the people were included in the process of constitution-making, the constitutional order arising from this act of supreme legislation can be regarded as legitimate. One can really talk about democracy only if the citizens are „jointly called to be the authors of their constitutional identity and to decide the central rules and higher procedures that will regulate their political and social life.”¹¹ Such constitutional moments are rare and extraordinary moments of popular mobilization when the people embrace their political freedom to live under their own laws. As Kalyvas accurately concludes, this formulation of popular sovereignty is a more sophisticated re-statement of the well-known democratic principle of self-government and self-determination.¹²

For matters of space, I shall briefly put forward only two of the most prominent theorists of constituent power – Sieyès and Schmitt. Emmanuel Joseph Sieyès is usually credited with being the first to make the distinction between constituent power and constituted power, constituent power being identified as possessed by the nation which is, for him, the same as the people. „The nation is prior to everything. It is the source of everything. Its will is always legal; indeed it is the law itself. Prior to and above the nation, there is only natural law.”¹³ In Rousseauian style, the common will is the same as the national interest for Sieyès, but constituent power can express its will by majority, a concession Rousseau was not willing to make.¹⁴ Although constituent power has the capacity to adopt constitutions and create constituted powers, it is not to be reduced to the new constitutional order. It remains extra-constitutional. That implies

9 Andreas Kalyvas, „Sovereignty, Democracy, and the Constituent Power”, *Constellations* 12:2 (2005), 225.

10 Kalyvas, „Sovereignty, Democracy, and the Constituent Power”, 235.

11 Kalyvas, „Sovereignty, Democracy, and the Constituent Power”, 237.

12 Kalyvas, „Sovereignty, Democracy, and the Constituent Power”, 238.

13 Emmanuel Joseph Sieyès, *What is the Third Estate?* (London: Pall Mall Press, 1963), 124.

14 Sieyès, *What is the Third Estate?*, 80.

that „a nation can neither alienate nor waive its right to will; and whatever its decisions, it cannot lose the right to alter them as soon as its interest requires.”¹⁵ The nation can, then, recapture its constituent power and constitute new political order. But what constitutes the nation? Sieyès defines the nation as „a body of associates living under common laws and represented by the same legislative assembly, etc.”¹⁶ The problem is that he delineates who exactly those associates would be by way of means (laws, legislative assembly) that those very same associates were yet to create as a result of their authoring a constitution. An important question would be whether a preexisting collective identity of the people is necessary in order to be able to act as constituent power. As close as it comes to this pre-constitutional identity we can find the wish to unite expressed by a number of isolated individuals in Sieyès’ writing – „by this fact alone, they already constitute a nation”.¹⁷ Even though Sieyès’ conception of nation seems not to be ethnic, it was certainly not as inclusive as we might expect from his definition of the nation. By enjoying a privilege an individual or a class can be alienated from the nation.¹⁸ For instance, the sans-culottes were not part of the Third Estate and thus not part of the nation. So even though Sieyès has been using the language of universal democracy, he was promoting the cause of a propertied class.¹⁹ Along the same lines it has been widely argued that under the banner of universal democracy the so-called civic nations promote the causes of particular nations or ethnic groups.

Carl Schmitt has been usually accused of an ethnicist conception of constituent power²⁰ although his position is, in my view, more complex than that. For him, the people exercise their sovereignty and constituent power by making a genuine decision (on the exception²¹) to create a constitution. During constitution-making the people become conscious of their political unity, but their unity is not created during the constitution-making process. Schmittian political unity of the people is pre-constitutional, because only as a political unit would these people be capable of action in the first place – without a feeling of commonality, collective action cannot emerge as identity is needed for mobilization. Following in Sieyès’s footsteps, Schmitt’s constitution-making will of the people exists prior to and above every constitutional procedure.²² He prefers the term nation for the subject of the constitution-making power, since it denotes „the people as a unity capable of political action, with the consciousness of its political existence, while the people not existing as a nation is somehow only something that belongs together ethnically or culturally, but it is not necessarily a bonding of men existing *politically*. The theory

15 Sieyès, *What is the Third Estate?*, 127.

16 Sieyès, *What is the Third Estate?*, 58.

17 Sieyès, *What is the Third Estate?*, 121.

18 Peter Campbell, „Sieyès and What is the Third Estate?”, in Emmanuel Joseph Sieyès, *What is the Third Estate?* (London: Pall Mall Press, 1963), 10-11.

19 Campbell, „Sieyès and What is the Third Estate?”, 13.

20 Ulrich K. Preuss „Constitutional Powermaking for the New Polity: Some Deliberations on the Relations Between Constituent Power and the Constitution”, in Michel Rosenfeld (ed.) *Constitutionalism, Identity, Difference, and Legitimacy: Theoretical Perspectives* (Duke University Press, 1994), 153.

21 “Sovereign is he who decides on the exception”. Carl Schmitt, *Political Theology: Four Chapters on the Concept of the Sovereignty*, trans. by George Schwab (Chicago ; London : University of Chicago Press, 2005 [1922]), 5.

22 Carl Schmitt, *Constitutional Theory*, trans. by Jeffrey Seitzer (Durham: Duke University Press, 2008), 89.

of the people's constitution-making power presupposes the conscious willing of political existence, therefore, a nation."²³ Thus, once we take into account the Schmittian notion of the political, distinctive for its public differentiation between friend and enemy, it might be reasonably concluded that unity of the people is achieved against the background of an enemy, as this distinction „denotes the utmost degree of intensity of a union or separation, of an association or dissociation”.²⁴ Yes, Schmitt's enemy can coincide with, but is not necessarily and reducibly, an ethnic enemy.

If we are to ask the 'how question' of constituent power, that is, how the constituent power can be recognized, having in mind that according to Sieyès it could be expressed by majority, and to Schmitt by acclamation and „people-in-the-public”, without regulated procedure but by recognizable expression of the people's direct comprehensive will,²⁵ there are several types of such manifestations that can be discerned. Revolutions, protests, crowds (an assembled multitude's affirmation of their consent or disapproval), voting in referenda or voting in especially significant elections of almost revolutionary circumstances are all examples for it. By recognizing that there will always be a democratic „constitutive surplus”²⁶ deriving from the fact that all claims to represent the people are partial, I do not perform a complete withdrawal from the ideal of pre-constitutional unity, but simply acknowledge its impossibility. Precisely because of that, those excluded may rightly generate claims for inclusion in future constituent moments. But I would refrain from reducing the people to some useful fiction about the people as the sovereign. To be exact, if the people use the idea of constituent power to demand appropriation of their popular sovereignty that has been allegedly already recognized and sanctioned in constitutions of all the liberal-democratic states, then this act can no longer be associated with a fiction – this act is a real political action of existing empirical people.

There are calls, most recently coming from Zoran Oklopčić, for considering replacing the idea of constituent power of the people (and ultimately its flipside, popular sovereignty) with the constituent power of an „assemblage of political powers who participate in polity formation both from within and without of fragile, and always tentative political boundaries”.²⁷ Oklopčić develops this altered understanding of constituent power relying on Carl Schmitt's post-World War II work – the book *The Nomos of the Earth*. He views the new Balkan polities, such as Bosnia and Herzegovina, Montenegro, and above all Kosovo, as arising from the clash and cooperation between existing and emerging actors within the existing boundaries, and external actors (the US, the UK, France and other Western states, with or without Russian Federation) who impose comprehensive constitutional settlements. These elements of imposition are clearly visible in the great powers' actions of legal interpretation of, what they agree to

²³ Schmitt, *Constitutional Theory*, 127.

²⁴ Carl Schmitt, *The Concept of the Political*, Expanded Edition, trans. by George Schwab (Chicago: University of Chicago Press, 2007[1932]), 26.

²⁵ Schmitt, *Constitutional Theory*, 130.

²⁶ Jason Frank *Constituent Moments: Enacting the People in Postrevolutionary America* (Durham, N.C.: Duke University Press, 2010), 3.

²⁷ Zoran Oklopčić „Constitutional (Re)Vision: Sovereign Peoples, New Constituent Powers, and the Formation of Constitutional Orders in the Balkans”, *Constellations* 19:1 (2012), 81

be relevant, international Nomos, economic sanctions, diplomatic support and pressure, and violence and military intervention.²⁸

These constitutional settlements are constituted and sustained by the great powers, and not mainly by the peoples of these polities. The external third parties are, in fact, the ultimate cause of these new orders. This version of constituent power, it seems, represents more a realistic description and explanation of how the youngest political communities really came into being than an attractive normative concept. Understood this way, constituent power indeed is no longer only a positive idea of a people's capacity to „act, resist, cooperate and assent” but also the capacity to „control, dominate, co-opt, seduce and resent”.²⁹ Note that this negative idea is precisely what we have tried to avoid with this alternative understanding of sovereignty. It is of utmost importance to take into account the insight that Oklopčić cares so much about – that all actors should be attentive to the political constraints. Those who are aspiring to constituent power need be mindful of the international arena and its Nomos, and those who are aspiring to impose constitutions must not forget the main ingredient of a stable political community – legitimacy of the order maintained by the support of the local people.³⁰

Constituent people

What are the grounds, if any, for a pre-constitutional political unity necessary for the people to evoke their constituent power in the case of contemporary Serbia? It is very difficult to discern the ultimate ideals and values alongside which Serbian citizens could form a consensus. An easy answer is to claim that all of them wish to live a better life, but they differ significantly in their ideas of what comprises „a better life” and how it is to be achieved. If Serbian citizens are to recapture their constituent power, under current circumstances of acute disagreements between different ethnic communities, within ethnic communities themselves, and among citizens in general, who will be the people to prevail in making the constitution? Even Will Kymlicka contends that the presupposition of a singular sovereign people has been implicit also in multicultural models of citizenship. He uses the British people as an exemplar of the diverse and multicultural people who accept that differences need to be publicly acknowledged, but that does not preclude the right of self-determination resting with the British people as a singular whole.³¹ Whether this example still works we will learn upon the Scottish referendum on the issue of independence from the United Kingdom. But even if the referendum does not succeed, it is unlikely that the British case can be exported easily. Specifically, the notion „British” offers a more comfortable space for embracing differences, unlike the notion „English”, as the term British does not emphasize one group

28 Oklopčić, „Constitutional (Re)Vision: Sovereign Peoples, New Constituent Powers, and the Formation of Constitutional Orders in the Balkans, 92-93.

29 Oklopčić, „Constitutional (Re)Vision”, 93.

30 Oklopčić, „Constitutional (Re)Vision”, 93.

31 Will Kymlicka, „Transitional justice, federalism and the accommodation of minority nationalism” in: Arthur Paige (ed.) *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (Cambridge: Cambridge University Press, 2011), 313-314.

being a titular group. I borrow the definition of titular peoples from Tim Potier – these are „persons who identify themselves as being members of the ethnic group(s) with whom a country is normally associated”.³² It would be dishonest not to admit that France is still primarily associated with the French as the descendants of the Gauls, and not with all those who are legally French. This is easily identifiable by tracking the usage of the term „immigrants” in official as well as vernacular language long after immigrants have become citizens with the same rights as any other French citizens. Less controversially, Germany is usually associated with the Germans, and similarly, Serbia with the Serbs. The idea of the Yugoslav nation had an inclusive dimension, allowing people to identify both as Yugoslavs and Serbs, or Yugoslavs and Bosniaks, and avoided naming a titular group (although the name of the country signified a titular race of South Slavs). I doubt that most members of national minorities would ever freely call themselves Serbians as opposed to Serbs as an ethnic term, as even the more civic notion „Serbians” resembles too much the ethnic one³³. The citizens in question would probably use some more descriptive expressions for their identification such as „I am a Serbian citizen of Hungarian ethnic origin”. Is there anything particularly wrong or problematic with this? I do not think there is, as long as there is still a meaningful sense of rendering a sort of unity among the citizens of different ethnic, religious, and linguistic backgrounds. The required unity, should we follow Sieyès and Schmitt, is a precondition for constituent power to re-emerge in the moments of crisis and rescue any chances for democracy. I do not present any solution to this thorny problem of pre-constitutional unity in this paper, but I wish to put forward some thoughts about how we ought to think about it. To that end, I need to uncoil the term constituent people and I shall do that by making a short journey into the constitutional history of Serbia and Yugoslavia.

As I am mostly interested in linking constituent power with popular constitutionalism, I will disregard the constitutions of the Principality of Serbia (1836, 1838, 1869) and the Kingdom of Serbia (1888, 1903), as well as the constitutions of the Kingdom of Serbs, Croats and Slovenes (1921) and the Kingdom of Yugoslavia (1931), since in these constitutions the sovereignty rested with the monarch or was, at best, shared between the monarch and the National Assembly. During communism, the titular of sovereignty has been located in the Yugoslav constitutions in a rather confusing manner. In the Constitution of the Federal People’s Republic of Yugoslavia (1946) we observe the first formulation of popular sovereignty („all authority comes from the people and belongs to the people” (article 6, line 1), but the following constitutions innovatively narrowed the titular of sovereignty down from „people” to „working people”. The Constitutional Law of 1953 says „all authority belongs to the working people” (article 2, clause 1). The Constitution of the Socialist Federative Republic of Yugoslavia of 1963 and 1974 add to the above-mentioned confusion by referring to the working people, citizens, working class and the entire working people as titular of sovereignty.³⁴ Although a very

³² Tim Potier, „Regionally non-dominant titular peoples: the next phase in minority rights?” *Journal of Ethnopolitics and Minority Issues in Europe*, 2 (2001), 6.

³³ I here use the terms civic and ethnic (citizenship) because of their prevalence in academia, however, I find them analytically suspicious along the lines of Roger Brubaker restatement in his essay „The Manichean Myth: Rethinking the Distinction between ‘Civic’ and ‘Ethnic’ Nationalism” in Hanspeter Kriesel et al. (eds) *Nation and National Identity* (Zürich: Rüegger, 1999).

³⁴ Pavle Nikolić, *Ustavno pravo* (Beograd: Prosveta, 1995), 230.

unusual formulation compared to the liberal constitutional practice of spelling out popular sovereignty, the last two constitutions addressed the whole of the population by including both working people and citizens, and not only the working class which could have been rightly described as a minority.

In discussing constitutions of Serbia (and other federal units) within communist Yugoslavia, I intend not to mark the people of Serbia as a sovereign nation, as they were solely a nation among other nations who constituted the peoples of Yugoslavia.³⁵ What I hope to achieve is to trace the origin of the idea of constituent people. For instance, Article 2 of the Constitution of the People's Republic of Serbia of 1947 states „Accomplishing its people's state, the People's Republic of Serbia, during its emancipation struggle together with all the nations of Yugoslavia, and expressing its free will based on the right of every nation to self-determination, including the right to secession and unification with other nations, the Serbian nation, based on the principle of equality, has been united with other nations of Yugoslavia and their nation's republics...” Similarly, in the introductory note of the Constitution of the Socialist Republic of Serbia of 1963, it is stated that „*the Serbian nation* has fought, together with other Yugoslav nations, headed by the Communist Party, in the war for the emancipation of the people and during the socialist revolution to overthrow the old order based on classes and grounded in exploitation and national oppression, and based on the right of self-determination, including the right to secession, *has united with the rest of the nations of Yugoslavia* into the socialist federative community of *the free and equal nations and nationalities*.”³⁶ The Constitution of 1974 offers almost the same statement.

What we can inspect from this constitutional narrative is that nations were those peoples who had their own states within the Yugoslav federation, while nationalities were all the other ethnic communities. Nations were not mentioned as constituent nations in the respective constitutions, but they were understood as such.

Contemporary comparative constitutionalism does not recognize the concept of constituent nations or constituent people. Only the constitution of Bosnia and Herzegovina, which is in fact the Annex 4 of The General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) adopted in 1995, employs the concept by affirming those people identifying themselves as Bosniaks, Croats and Serbs as constituent peoples.³⁷ All other ethnic minorities and persons „who do not declare affiliation with any particular group because of intermarriage, mixed parenthood, or other reasons” are considered „others.”³⁸ The European Court of Human Rights in its decision in the case *Sejdić and Finci v. Bosnia and Herzegovina* understood this concept as a result of a power-sharing model of government which served as a means to put an end to a brutal conflict. Sead S. Fetahagić, writing in the context of contemporary Bosnia and Herzegovina,

35 It is doubtful the people were really the sovereign at the time, but I cannot discuss this here.

36 Emphasized by B. Đ.

37 „Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), citizens of Bosnia and Herzegovina, hereby determine the Constitution...” The Constitution of Bosnia and Herzegovina, 1995, pmbl.

38 Grand Chamber Judgment, *Sejdić and Finci v. Bosnia and Herzegovina*: Applications nos. 27996/06 and 34836/06 (ECtHR, 22 December 2009). Available from: <<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860268&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>> Accessed on 29 September 2012.

traces back the first usage of this concept by an official political body to the Declaration of the Assembly of Serb people of Bosnia and Herzegovina from 1991,³⁹ although admitting both the long-existing presence of the constituent people narrative and the possibility that another political body has used the term before. Asim Mujkić calls the concept „obscure”⁴⁰ and quotes Enver Imamović who said that „from historical-legal aspect that type of constituency is impossible to explain”.⁴¹ Their analysis proceeds from a liberal constitutional perspective, so a cynical remark of Mujkić that we do not really know what collective rights exactly constituent peoples have except for „the right to oppress citizens, their individual members and their interests whom they have completely eliminated from democratic procedure,”⁴² is not surprising. I may even agree that in the context of contemporary Bosnia and Herzegovina this assessment correct. But these authors fail to see the potential of the concept of constituent people in transcending the gloomy reality of Bosnian ethnic democracy. They assess constituent people only as a concept that can be institutionalized exclusively in a particular Bosnian manner, whereas I am more interested in linking it with constituent power by remaining careful not to confuse the exclusion from the government with the exclusion from the community.⁴³ They also neglect, as almost all liberals, existential questions about the period in which the people/nation was constituted and overlook numerous criticisms of the assumption that the liberal democratic states they romanticize so much are ethno-culturally neutral formations.⁴⁴ This is hardly the case.

Let me get back to the issue of constituent people: the former constituent peoples within socialist Yugoslavia, but also the so-called nationalities (*narodnosti*) had stronger constitutional presence as nations and nationalities than they were to have later on as national minorities in post-Yugoslav space. (Note that the former nations and nationalities have not been granted a status of national minorities in Slovenia, an EU member state.) This is the argument of Dejan Jović, who sees the fear of becoming a minority as the main motivator for conflict in the former Yugoslavia. This should be understood

39 Sead S. Fetahagić, „Povijesni (dis)kontinuitet konstitutivnosti naroda BiH i zahtjevi (post)moderne državnosti”, *STATUS Magazin za političku kulturu i društvena pitanja*, 15 (2011), 112.

40 Asim Mujkić, *Mi, građani Etnopolisa* (Sarajevo: Šahinpašić, 2007), 5.

41 Enver Imamović, *Porijeklo i pripadnost stanovništva BiH* (Sarajevo: Art 7, 1998), 114, in Mujkić, *Mi, građani Etnopolisa*, ft. 15.

42 Mujkić, *Mi, građani Etnopolisa*, 7.

43 I, however, agree that there is a problem with the remainders of the constituent peoples narrative. The ‘others’ seem not to be included in constitutiveness. But aside from the obvious problem of breaching political rights of the ‘others’ in Bosnia and Herzegovina the ‘others’ do not differentiate much from the national minorities in the countries of the region where post-communist constitution-makers have opted for an exclusionary approach aiming the domination of the majority nation. „There are, constitutionally speaking, two types of citizens in these states: members of titular nations and ‘others’.” Nenad Dimitrijević, „Ethno-nationalized States of Eastern Europe: Is there a Constitutional Alternative?” *Studies in East European Thought* 54: (2002) 253.

44 The distinction between „Western/civic” and „Eastern/ethnic” forms of nationalism, the new credo says, should be understood more as a consequence of the international hierarchy of nations grounded in power and historical contingencies, than as a significantly different concept based on unciviness of particular cultures. Brubaker draws a distinction between state-framed and counter-state understandings of nationhood, where those nations deprived of civiness are those who opt for a strategy of united people in order to legitimize their claims for statehood. Brubaker, „The Manichean Myth: Rethinking the Distinction between ‘Civic’ and ‘Ethnic’ Nationalism” in Hanspeter Kriesl et al. (eds) *Nation and National Identity* (Zürich: Rüegger, 1999), 67.

„within a context of the collapse of the ideological narrative of self-management, which was not based on the rule of the majority, but on the notion of consensus and „self-managing harmonisation”. Destruction of this self-managing narrative of „no-minority-no-majority” and its replacement with the one of representative democracy (which included the „creation” of both majority and minority) fundamentally disturbed inter-ethnic relations in Yugoslavia.”⁴⁵ Most importantly for the issue of constituent peoples I am furthering here, the former „constitutive nations” (the six Slavonic nations) and „nationalities” became minorities in territories they once had regarded as their own and where they had once been recognised as a constitutive part of the polity.⁴⁶

What exactly is the problem with the concept of national minorities, and with belonging to one of them?

National minorities are often territorially concentrated ethnic/cultural communities which had some form of self-governance prior to their involuntary incorporation into a larger state. Within this very definition is the noticeable presumption that minorities will always be an object of constitutional politics, as they have never expressed their will to live together with a majority. One type of justification for their special group rights comes precisely from this historical situation of their involuntary inclusion in the wider community – which is rather an unusual argument for liberals, even if they are liberal multiculturalists!⁴⁷

Being a minority is in essence less a problem of relations between numbers, than a problem of social inequality between majority and minority, hence the qualification of social relations among the majority and minority as domination, exploitation, discrimination, and exclusion.⁴⁸ I presume that legitimate remedying of the consequences of inequality would be possible, while manipulation with numbers could never pass a legitimacy test. Vlachs, for instance, will always remain a numerical minority, but this does not mean they should always feel dominated only because they are a minority. So, if the main feature of minorities is the inequality that results from exclusion, two questions arise, one for the majority and another for the minority, with regard to remedying inequalities.

45 **Dejan Jović**, „Fear of becoming *minority* as a motivator of conflict in the former Yugoslavia”, *Balkanologie*, V:1-2 (December 2001) Available from: <http://balkanologie.revues.org/index674.html>. Accessed on 20 September 2012.

46 „The six Slavonic constitutive nations were not treated as „minorities” in any part of the Yugoslav territory, not even in those areas where they were minority (for example, Serbs in Croatia or in Kosovo, Croats in Vojvodina or Bosnia, etc.). Accordingly, unlike Italians, Albanians and Hungarians, they were not offered institutional protection which would normally accompany their „minority” status (autonomous provinces, publishing houses, newspapers, separate schools, etc.). Nationalities were also not treated as „minorities”. Where they were in majority of the local population (such as Albanians in Kosovo), their position was institutionalised. Where they were in minority (such as Albanians in Macedonia, Italians in Croatia and Slovenia, Hungarians in Vojvodina) – their status did not differ much from a status of „constitutive nations” when in a minority.” **Dejan Jović**, „Fear of becoming *minority* as a motivator of conflict in the former Yugoslavia”, *Balkanologie*, V:1-2 (December 2001) Available from: <http://balkanologie.revues.org/index674.html>. Accessed on 20 September 2012

47 The historical argument is one of the three arguments for minority rights offered by Kymlicka, the other two being equality and diversity. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), 10, 117.

48 Elke Winter, „How does the nation become pluralist?”, *7 Ethnicities* (2007) 489

Firstly, how does the majority assert its authority over the minority? I assume that authority is justified, otherwise it would have been by brute force. The majority basically has three options:

- a) to subject minorities to benign neglect or, worse, assimilation;
- b) to protect minority rights, which often translates into the minority being treated more as an object of politics, or
- c) to renegotiate majority-minority relations by allowing a minority to be a subject of politics and a part of constituent power.

Assimilation is hardly considered a legitimate option nowadays, while the ideal of benign neglect ignores the disadvantages of national minorities. The protection of minority rights usually comes as a consequence of a policy of conditionality and international obligations, whereas the option of renegotiation of majority-minority relations comes as result of more prominent claims of minority groups and often a struggle between two powers. Majority, as a rule, does not upgrade the status of a minority on its own. The dominant group comes to accept that it is one particular ethnic group among others, and that it shares society with other groups.

The second question is the following: what justified strategy can a minority adopt? It can opt for:

- a) self-exclusion;
- b) legitimating the power of the majority in exchange for protection;
- c) assuming a proactive role and exercising constituent power, one manifestation being a demand for the status of a constituent people;
- d) non-violent secession.

The argument for self-exclusion may be the flip-side of the historical argument for minority rights, basically that the larger state, or constituent people, never acquired legitimate authority, or that the terms of some previous historical agreement between the constituent people and the minority have been breached, or that the right self-determination has not been exhausted by the one-time practice of previous generations.⁴⁹ The same set of arguments can be employed for the strategy of non-violent secession, although the former does not necessarily leads to the latter. Strategies b) and c) do not necessarily mean that minorities wish to segregate or present themselves as completely disparate groups. Just the opposite, people can sustain different identities at different levels without substantial conflicts. David Miller calls that „overlapping circles” of identities.⁵⁰ At any rate, fear of being a minority can produce demands to be recognized not as minority but as something more, or simply put, something different. It explains why minorities would opt for being „part of the referent, and not merely define itself in relation to the referent”.⁵¹

49 Will Kymlicka, „Multicultural citizenship within multination states” *Ethnicities* 11 (2011) 287

50 David Miller, „Nationality in Divided Societies”, in Alain-G. Gagnon, James Tully (eds.) *Multinational Democracies* (Cambridge University Press, 2001), 304, ft.7.

51 Elke Winter, „How does the nation become pluralist?”, *Ethnicities* (2007) 493.

The people robbed of their constituent power

Let me finally resume my argument. Considering the last two decades of Serbian constitutional history, that is, the 1990 and 2006 Constitutions, I shall delineate the existing relationships between the three concepts I have announced by comparing them to the concept of constituent power. The first claim was that the majority nation, that is, the constituent people, exercises its constituent power by way of exercising national self-determination and honoring its merits in creating independent statehood. The constitutional definition of Serbia from the preamble of the 1990 Constitution reads:

„Proceeding from the centuries-long struggle of the Serbian nation for freedom, their freedom-oriented, democratic and state-forming tradition, the historical development and mutual life of all nations and nationalities in Serbia, determined to establish a democratic state of the Serbian nation, in which the national rights of the members of other nations and nationalities have been secured based on respect of freedom and rights of man and the citizen, on sovereignty that belongs to all citizens, grounded in the rule of law, social justice and equal conditions for the progress of the individual and society, the citizens of Serbia enact this Constitution of the Republic of Serbia.”

This Milošević's constitution was adopted by a one-party National Assembly, preceding the first post-communist multi-party elections, and as such, it cannot be taken as a result of people exercising their constituent power. The referendum that followed was a referendum on Milošević as a leader, not on the constitution of the polity. Ten years later, the people of Serbia united against Milošević and now, in retrospect, we can argue that the federal elections on 24 September 2000 and the republic elections on 23 December 2000 were those extraordinary constitutional moments of reconstitution of the peoplehood that should have led to reconstitution of statehood. The 5th October 2000 was the day when Serbian voters defended their votes and voices, demonstrating their constituent power in making publicly known what the new ground rules were supposed to be. Unfortunately, Serbia ended being the exceptional case of a country unable to crown its transition to democracy with constitutional changes. In fact, another date – the 6th October 2000 – became equally important in the political history of Serbia as a day when the revolution has been interrupted, when nothing really important has happened, in spite of the expectations of so many citizens of Serbia who took part in ‘the 5th October Revolution’. It denoted entire epoch of non-action in post-Milošević Serbia.⁵²

While there have been many propositions for the new constitution prepared by various non-state actors, these have not influenced the government to initiate the constitution-making process. In the meantime, Serbia regained its independence in May 2006, but as a consequence of the Montenegrin referendum on the independence from the State Unity of Serbia and Montenegro, not because of the will of the people of Serbia. Citizens did not learn prior to early September 2006 that the parliamentary committee comprised of the members of political parties was working on a new Constitution.⁵³ These parliamentary party members were representatives elected in the 2003

52 Aleksandar Molnar, „5.oktobar, 6.oktobar, 12.septembar...” *Reč* 74/20 (2006), 33-34.

53 Nenad Dimitrijević, „Rodoljupci pišu ustav” *Reč* 74/20 (2006), 23

parliamentary elections as constituted power, not the constituent power per se.⁵⁴ Therefore, even if we interpret the results of the referendum on the constitution in 2006 as a success (*a majority* of those residing in Serbia exercised their constituent power in confirming the Constitution, a majority that in great respects coincides with a constituent people), it was hardly a political unity achieved among all the citizens to stand behind the new Constitution. Ethnic minorities were offered good reasons, in the form of very detailed constitutional provisions on the protection of minority rights, to accept the constitutional framework. An important criterion for a democratic constitution is that everyone living under it can regard it as his or her own, thus the new constitution symbolizes the identity of the political community. An argument furthered at the time of the 2006 Constitution adoption was that unity was achieved in breaking with the Milosevic' past, and thus symbolized the discontinuity of the regime. But, as shown before, this discontinuity was long overdue and was not the real reason behind the constitution. But even if we accept that as correct, it is very difficult to assert that the same unity existed in the envisioning of future projects among different communities within Serbia. These conflicting visions are, to a certain extent, noticeable through contested points within the Constitution – its preamble⁵⁵, the status of the province of Vojvodina, and the definition of the Republic of Serbia as „a state of Serbian people and all citizens who live in it” (article 1). Procedure-wise, there was almost no public debate on the constitution which testified yet again to the lack of democratic constitution-making. Overall, this constitutional account of the post-2000 period serves to illustrate how self-determination as an ongoing project⁵⁶ has been blocked even for the constituent people. This adds a twist to the first part of my argument.

The second part of the argument deals with minorities exercising their constituent power and their willingness to change social relations between majority and minority by way of eliminating to a certain extent majority-minority discourse. Applying these incarnations of constituent power to minorities in Serbia, three interesting examples of minorities can be observed:

a) Albanians in south Serbia did not support the 2006 Constitution in the referendum. In fact, the last referendum they participated in, exercising their constituent power, was in March 1992 and was organized by ethnic Albanians in the Bujanovac and Preševo municipalities. Albanians from these two municipalities demanded territorial and political autonomy with the right to unite with Kosovo. Additionally, Albanians rarely vote in presidential elections, although they participate in parliamentary elections where they can support the political party of the Albanian minority. The highest level of political participation is still associated with the local elections in the two mentioned municipalities where Albanians compose the majority of the population. Therefrom, it might be inferred that they have opted for the strategy of self-exclusion.

⁵⁴ Molnar, „5.oktobar, 6.oktobar, 12.septembar...”, 44-45.

⁵⁵ It has been widely written about the meaning and purpose of the preamble that says: „Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations” Constitution of the Republic of Serbia, 2006.

⁵⁶ S. James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2000)

b) The Bosniak minority supported the 2006 Constitution in the referendum, affirming discontinuity with Milošević's regime and their willingness to participate in building the future of Serbia. However, in 2012, representatives of the Bosniaks' national minority councils from Serbia and Montenegro together with a group of Bosniak intellectuals from Bosnia and Herzegovina signed a declaration on the status and rights of Bosniaks. One of the most striking declaration demands was the reciprocity in status, that is, a status of constituent people for Bosniaks in Serbia, along the lines of the status that Serbs already have in Bosnia, on the basis of their endangered right to have a national identity.⁵⁷ The demand is in many ways incoherent but I cannot discuss it here. It is still the leaders – although they represent conditional constituted powers – and not the people as such that expressed their will, nevertheless it gives the impression that Bosniaks' feeling of local ownership of the polity is unquestionable.

c) It is questionable whether the 2006 referendum on the Constitution in Vojvodina was a complete failure – 43,93% of those who voted said „yes”, and 2,71% said „no”. An interpretation that those refraining from voting in the referendum were actually opposing to the Constitution is also contestable, having in mind the level of political apathy among the Serbian citizens. Nevertheless, it is unquestionable that in two multi-national counties – North-Banat county (29,12% said „yes”) and North-Bačka county (27,42% said „yes”) – the referendum failed.

Conclusion

My attempt to clarify the relationship between three different concepts, in the context of Serbia, turned out to be a difficult task with high risk of total confusion between normative, analytical and empirical concepts. The term constituent power, as used in this paper, stands for a positive and normatively loaded concept, directly related to popular sovereignty understood as self-determination of the people. Constituent people is almost a localized term, with a specific constitutional history which may blur the potential alternative usage of the concept as, for instance, an element of the heterogeneous and, to certain extent pluralized, but still singular constituent power, capable of evoking „we, the people”. Empirically, constituent people and national minorities may consist of the same group of people, but conceptually, the former is a subject, while the latter is often only an object of constitutional politics. Unfortunately, I ended up pointing out the overall displacement of constituent power of both titular people and national minorities in Serbia. Before and shortly after the 2000 revolution, the people of Serbia, including both titular people and most of the national minorities (except Koso-

57 It could be argued that this was a strategic move serving more as a pressure toward Republika Srpska, an entity of Bosnia and Herzegovina, than as a demand for constitutional inclusion addressed to Serbia. The resolution reads: „Bosniak National Council supports the territorial integrity and sovereignty of Bosnia and Herzegovina, condemning the aggression and genocide against the Bosniak people, and on this basis and construction of a special arrangement of entities in it, arguing for the principle of reciprocity status and rights of Bosniaks in Serbia in relation to the position and rights of Serbs in Bosnia and Herzegovina.” Resolution on the position and achievement of rights and freedoms of Bosniak people in Serbia, 2012. Available from: <http://www.bnv.org.rs/> Accessed on 20 September 2012.

vo Albanians and Albanians in south Serbia), became conscious of their political unity, intensified by fighting against a common enemy – the dictator. Regrettably, that extraordinary moment, an opportunity for democratic reconstitution, was not seized. A constitution, many have hoped, has the capacity to constitute the people and its identity, apart from constituting the polity. But this can only be done in a limited way and if the constitution is accepted by the people. The political decision of the people endows the constitution with legitimacy. Therefore, I do not think that all the problems between majority and minority in Serbia would be solved by redefining the state in the constitution by mere constitutional amendment, yet again without the re-emergence of the constituent power.⁵⁸ Both constituent people and minorities need to mobilize and induce political unity of the whole people, in order to produce an exceptional moment revealing constitution-making power. As such, these old and new constituent peoples can make appeals to the people as a shared future project.

58 Many commentators have pleaded for this change. Even the Bosniak national council has explicitly referred to this issue in the resolution and asked for „adequate redefinition, therefore, change of the Article 1 of the Constitution of the Republic of Serbia from 2006”. Resolution on the position and achievement of rights and freedoms of Bosniak people in Serbia, 2012. Available from: <http://www.bnv.org.rs/> Accessed on 20 September 2012.

Multiculturalism, Liberalism and Christianity: Some Elucidations (concerning Europe)

BOJAN ŽALEC

1. Introduction

Is the topic of multiculturalism really as important as many of us think? Let me answer this question by using the words of Mark Kleyman:

„On 22 July 2011 seventy-six persons were killed in Norway, and many of them were under the age of 18. A certain man decided that the practices founded in the idea of tolerance and multiculturalism threatened Europe, and a ‘right’ of defending European culture would justify any means of reaching it.”¹

The term *multiculturalism* bears many different meanings. The aim of this paper is to explain these different meanings. This is very important, as there are both positive and negative connotations attached to the term *multiculturalism*; hence, some forms of multiculturalism should be supported and others rejected.

A substantial part of this paper is devoted to the consideration of the damaging effects of some forms of multiculturalism on the democracy in Europe and on the future of the EU, in general. The role of the Christianity will be explained in relation to this subject, while a considerable part of the paper is dedicated to elucidation of the utilitarian attitude towards multiculturalism and its implications.

This paper aims to be a philosophical text. This implies that the methods used are philosophical. More specifically, a lot of attention is paid to conceptual analysis and conceptual distinctions. These distinctions significantly enrich and enlighten the discourse on this subject. They enable us to see some crucial aspects which otherwise would remain hidden. A debate without the awareness of these distinctions and their consideration is inevitably inferior. To discover, explain and productively employ such distinctions is fundamental and probably the most important philosophical task.

The problems concerning the immigrant groups, cultural minorities, and fundamentalism are some of the most essential and burning issues in Europe and all over the world. Some extremely consequential and even fatal judgments and actions

1 Mark Kleyman, *Urban development, grassroots authoritarianism and the problem of reconciliation in post-Soviet Russia*. In Juhant, J. and Žalec, B. (eds.), *Reconciliation: The Way of Healing and Growth*. Berlin: Lit, pp. 241-248.

– coming from the highest authorities and those holding the greatest power – are formulated in speeches which use the term *multiculturalism*, often undefined and hard to interpret, hard to find out what exactly has been meant by it. Therefore, the task of distinguishing between several different meanings of *multiculturalism* is not just a speculative problem about which academic philosophers can use their privilege to waste time in vain; it has serious ethical and political implications.

The second general goal of this paper is to fulfill the two tasks of discussion in political philosophy, i.e. to contribute to the proper dealing with the issue from two aspects: from normative (the aspect of justice) and from the pragmatic or deliberative point of view. In short: an attempt to found out what is just to do and what is best to do (regarding the problems considered). Beside the already mentioned, other typical philosophical methods are also used, as, for instance, thought experiments.

As the central frame of reference for the following discussion serves the work of the English (and American) scholar Larry Siedentop *Democracy in Europe*.² Other relevant components of this frame represent the works of Amartya Sen, Michael Walzer and Joseph Weiler. Every contemporary philosopher who deals with multiculturalism owes a lot to Will Kymlicka. Also in my case, the ideas, arguments and findings of Kymlicka are always on my mind when I am dealing with multiculturalism.

My own general and basic views – which provide the background of all considerations in this paper – can be best described with the terms *solidary personalism*, *liberalism* and *dialogic universalism*.

1.1. Solidary personalism, liberalism, dialogic universalism and secular argumentation in public matters

Solidary personalism can be best understood when compared with nihilism and instrumentalism which form its antipode.³ Nihilism is a condition of an individual, a group, a society, culture in which on the experiential and intellectual horizons everything is leveled. Nihilistic subject cannot honestly experience one thing or being as more valuable than any other. As nihilism is practically impossible, it usually transforms into some kind of instrumentalism. Instrumentalism is an attitude that does not regard a particular person as a goal, but (at best) just as a means. Contrary to this, for a personalist, every person is always the goal. The main aim of a personalist is flourishing of every person. The problems of nihilism and instrumentalism are the fundamental problems of our age. They seriously hinder or even stop the dialogue, solidarity, approaching other as other etc. All mentioned and to them related goods are essential moments of a personalistic attitude, ethics, relationships and existence. The fundamental (ethical) task (of our age) consists in (finding the ways for) the sufficient and adequate diminishing or limitation of the extent of the instrumentalist reasoning and practice. Deontological ethics is a positive factor of the cultivation of solidary personalism.⁴

2 Especially Ch. 10 „Europe, Christianity and Islam”, in which Siedentop deals with multiculturalism.

3 Bojan Žalec *Personalism, truth and human rights*. In Juhant, J. & Žalec, B. (eds.). *Humanity after Selfish Prometheus: Chances of Dialogue and Ethics in a Technicized World*. Münster: Lit, 2011, pp. 29-41.

4 Ibid.

The term *liberalism* as used above refers to the philosophical view according to which human freedom represents one of the central values. *Freedom* here denotes the (cap)ability (outer and inner) of a person to live according to his or her reason and conscience.

*Dialogic universalism*⁵ includes the aspiration for universally valid ethics, which however should be developed and established through the dialogue between all concerned parties. There are important universals common to all people that provide the basis on which a consensus about universal ethics can be reached, despite the fact that actual lives of cultures and individuals have their own particularities. The endeavor for experiential and intellectual solidarity is a crucial constituent of dialogic universalism.⁶ Intellectual solidarity is the realization of a genuine dialogue. Dialogic universalism is a reasonable and realistic stance, as there are factual universals of other human conditions. Let's us capture some evidence for the last thesis and reflect on the possibility of pursuing the common global good in the spirit of dialogic universalism by applying the capability approach, pioneered by Amartya Sen and originally philosophically developed by Martha Nussbaum (for more about dialogic universalism and capability approach see Žalec 2008). Dialogic universalism is compatible with and can be supplemented by the belief in the universal common core of the (main) global spiritual and moral traditions, the so called world ethos,⁷ which consists of facets or moments of personalism. Yet, the belief that total intellectual participation in the (intellectual) life of another person is possible – or even striving for it – could be dangerous, because it could mean that we actually do not believe anymore that such a person is transcendent and, hence, we renounce the personalistic attitude towards him or her. We should aim to participate in the lives of the 'other' however not at the expense of disrespecting his or her transcendence. The belief that we can totally participate in the experience or life of the 'other' is a dangerous illusion. Solidary personalists always treat themselves and the other as in principle transcendent.⁸

The probably most appropriate attitude towards (cultural) identities might be called – using epistemological terms – critical realism.⁹ Neither an attitude that takes the identities as untouchable or overestimates their importance or superiority, nor a stance that diminishes the importance of identity – or even considers it as something that should be destroyed or eliminated because it can only be used for some bad aims, namely to instrumentalize people's attachments, affections, emotions for certain goals (political, economical, etc.) – are proper. Neither a subordination of some individuals to some (collective) identity nor the „nihilistic“ attitude about identity, are acceptable. Collective or moral identities are necessary for the individual flourishing, they have their irreplaceable value that should be respected, yet they should also be developable and transformable. The good and acceptable should be accepted and some other elements should be discarded or modified.

5 The term was first used by Hollenbach in 1979 (see Hollenbach 2003, 152, n. 23).

6 David Hollenbach, *The Common Good and Christian Ethics*. Cambridge (UK): Cambridge University Press, 2003, p. 137.

7 Hans Küng, *Projekt Weltethos*. München: Piper, 1991.

8 Bojan Žalec, On not knowing who we are: the ethical importance of transcendent anthropology. *Synthesis philosophica*, vol. 26, fasc. 1, 2011.

9 *Ibid*, p. 112.

The proper stance in liberal democracy toward religion is not outdated, excluding religion from all public life. I think this is clear enough. But some constraints should be set to the religious discourse in the public debate, in particular to what reasons it may be used in public debate on religious issues, especially when certain claims support policy that restrains freedom of citizens. Robert Audi has formulated a set of useful principles, suitable for liberal democracy.¹⁰ The fundamental and most important of them is the principle of secular rational value, stating that a citizen in liberal democracy has a *prima facie* obligation not to support any law or public policy restricting human freedom or conduct unless he or she has some adequate secular reason for supporting it. The reason must be adequate from the point of view of public comprehensibility and acceptability.¹¹

Will Kymlicka says that there are three stages in the philosophical discussion about multiculturalism: multiculturalism as communitarianism, multiculturalism in the liberal setting, and multiculturalism as a response to the state nation-building. The discussion in this paper will mostly deal with the second stage.¹²

2. European identity is liberal and of Christian origin

In his well known book *Democracy in Europe* the British scholar Larry Siedentop claims that the European cultural identity¹³ is liberal. Identity is the consciousness about which culture is mine and that this culture is specific and particular, being thus distinctively mine. The identity is what binds people together and at the same time distinguishes them from each other. Siedentop further thinks that for the cultivation of the European identity (which is liberal) the narrative must be narrated – to us and to the others – that liberalism is a secular child of Christianity – or its secular twin – and, hence, that the origin of the European identity is Christian.

Siedentop claims that the narrating of this narrative is dangerously jeopardized by two phenomena in Europe: anticlericalism and multiculturalism in the sense of normative leveling of all cultures or opposing to favoring one culture at the expense of others. Let's name such multiculturalism a leveling multiculturalism. Siedentop adds to the above that there is a certain similarity between utilitarianism and leveling multiculturalism: as for a utilitarian all desires are equally valuable, so for leveling multiculturalism are all cultures. Let us immediately add to this some further elucidations about utilitarianism.

On the one hand, the term *utilitarianism* refers to quite different sets of accounts. But still they all share the view that any pleasure is intrinsically good, per se good, in principle good. Otherwise, certain forms of pleasure could be relationally bad, due to their effects or consequences. But if there are no adverse effects or consequences,

¹⁰ Robert Audi, *A Liberal Theory of Civic Virtue*, *Social Philosophy & Policy*, Vol. 15, 1, 1998, pp. 149–170.

¹¹ *Ibid.*, pp. 160–161.

¹² Will Kymlicka, *Contemporary Political Philosophy: An Introduction*. Oxford: Oxford University Press, 2002.

¹³ In the text that follows I will use a shorter term *identity* to refer to cultural identity.

then any pleasure would be good. So, for instance, the pleasure of Hitler was bad only relationally, because of its implications: Hitler had pleasure, only if millions of people suffered. But if it had been possible that Hitler pleasurable experiences without causing any pain (to others), his feeling of pleasure would have been something good. To illustrate this point, a thought experiment called Nozick's tank could be used.¹⁴ Nozick's tank is an experience machine in which individuals can make unrealistic, pleasurable experience, thinking that all their wishes have been fulfilled and that they live the life they desired at most. They live with the illusion of having a perfectly happy life according to their own criteria and wishes. If Hitler had happily lived in Nozick's tank, in illusion that he had ruled the world and that he had killed all the Jews without causing any (adverse) effects in the rest of the universe, then his pleasure would have been something good and he should have been enabled – if only possible – to enjoy it. This is the utilitarian account. It is incompatible with the Christian view. According to Christianity, Hitler's pleasure is intrinsically bad. It is bad as such, regardless of the consequences for the rest of the world, because a man who enjoys such things lives in sin.

In the light of this more precise outline of utilitarianism the Siedentop's thesis about the similarity between leveling multiculturalism and utilitarianism can be more specifically formulated: as utilitarianism claims that any pleasure is intrinsically good, so leveling multiculturalism claims that every culture is intrinsically good. Hitherto, we can set the question: who – if anybody at all – defends such a form of multiculturalism as defined by Siedentop? Is it not rather that such multiculturalism – without any limitations – is only one of the possible accounts which, however, nobody represents? What form of multiculturalism would correspond to Siedentop's specifications and be at the same time real, having actual adherents?

Siedentop remains rather silent about this point. After all, he is a very eminent scientist. His book *Democracy in Europe* was an intellectual bestseller and echoed widely all over Europe. His thesis is quite original and provocative. It carries many interesting implications. The issue of identity and multiculturalism are of crucial importance for the future of Europe and the EU. Out of these reasons, I will try to provide a more elaborate and precise answer to this question. At the same time I will use this opportunity for a somewhat broader presentation of the space of concepts and accounts relating to multiculturalism. And at last, but not least, the outline of this space will enable us to define and station more precisely Siedentop's position and – consequently – better understand its implications.

3. Theoretical space of multiculturalism: concepts and accounts

As first, it should be mentioned that there is a difference between descriptive use of the adjective *multicultural* and the normative discourse about multiculturalism. So, for instance, we may claim that a society is multicultural or some other not, without taking any normative stance in this regard.

¹⁴ Robert Nozick, *Anarchy, State and Utopia*. Oxford: Oxford University Press, 1974, pp. 42–45.

To the second group belongs the discourse in which the normative attitude – regarding multiculturalism in certain society, situation etc. – is expressed or present. At this normative axis we can discern following normative attitudes towards multiculturalism:

1. cultural intolerance;
2. cultural tolerance;
3. cultural accommodation;
4. celebrating of cultural diversity;
5. cultural relativism.¹⁵

Which of the above attitudes could be considered as a certain form of multiculturalism? Certainly not the first one, but definitely the fourth one. Whether the second and the third attitude are forms of multiculturalism depends on what kind of positive attitude is needed for a specific attitude to count as multicultural. Is tolerance as such already enough or would something more positive or affirmative be necessary? It is also useful to stress the difference between accommodation and celebration of cultural diversity, as Benatar did.¹⁶ If merely accommodation is considered, then we are probably only dealing with pragmatics, without any positive valuation of other aspects of multiculturalism. The acceptance and positive relationship towards multiculturalism can, for instance, originate in the fear from the own consequences of a negative attitude towards multiculturalism.¹⁷ Multiculturalism is real, different cultural identities are very important for many people, etc. However, on the basis of multiculturalism many harmful phenomena have emerged, but, on the other hand, a negative attitude towards multiculturalism had even more adverse effects, as, for example, suppression of some cultures, etc.

From the point of view of cultural relativism, any culture and any cultural praxis is morally acceptable, if actually cultivated by some actual social group.¹⁸ Cultural relativism without any limitations is a totally unacceptable position, as, according to it, a very cruel and violent praxis could also be morally acceptable.

Following Siedentop, whose work will to some extent serve as a *fil conducteur* to this paper, I will develop my own views, as I cannot justifiably subscribe to cultural intolerance and even less to cultural relativism. In general, Siedentop – who is a historian of liberalism and a political scientist – rarely explicitly expresses his normative standpoints.

Considering the first three above mentioned points, an additional question appears, which actually could only help to classify the attitudes of individual subjects in one of the three boxes: (in)tolerance towards whom or which cultures? Accommodation of whom or of which specific cultures? Similarly, we can't coherently celebrate cultural diversity without any limitation and, therefore, there is practically no individual who celebrates literally all cultures without any limitation.

¹⁵ David Benatar, *Diversity Limited*. In Thomas, L. (ed.), *Contemporary Debates in Social Philosophy*. Malden: Blackwell, 2008, pp. 219–220.

¹⁶ Ibid.

¹⁷ Jacob Levy, *The Multiculturalism of Fear*. New York: Oxford University Press, 2000.

¹⁸ David Benatar, *Diversity Limited* op. cit. p. 221.

Siedentop is certainly in no sense a supporter of celebrating diversity, yet the question is what degree of (in)tolerance and accommodation of cultures he does plead for. How large and of what kind is his (in)tolerance for the presence of different cultures (in Europe) which are not conform with the European liberal culture and do not consequently respect the values of autonomy and individuality or which are even opposing to them? What are the deliberative (pragmatic) and normative (ethical) implications, in case that Siedentop's claims are true? I shall try to answer this question in the following part of my paper. Yet, even before that, I will supplement my description of the theoretical space of multiculturalism and on this ground try to define Siedentop's account and its implications more precisely.

So along the next axis, the following accounts can be discerned in the sphere of multiculturalism:¹⁹

1. National unity supporting an anti-multiculturalistic account;²⁰
2. The work of Iris Young which established the distinction between class-based inequalities and identity-based inequalities;²¹
3. Liberal culturalism (W. Kymlicka, Ch. Taylor);²²
4. Liberal pluralism (J. Rawls, W. Galston);²³
5. Egalitarian criticism of multiculturalism (B. Barry, N. Fraser).²⁴

Siedentop's account bears some features of the first of the above accounts, which has a negative attitude towards cultural diversity because its adherents think that the plurality of identities corrodes the united national identity which is needed for maintaining of a society or a community.

Siedentop claims that in order to make the EU work, we must narrate the story of the European liberal culture being the child of Christianity. But why is it necessary to do so? Because this narration doesn't tell only that this what is binding us, Europeans, is the liberal culture, but also that this liberal culture has developed from the same origin: from Christianity. Christianity gave birth to what we today underline as the core of the European identity: the liberal culture, respecting the autonomy of every individual. The central components of the liberal culture are of Christian origin. The cradle of respecting the autonomy of every individual is neither antique Greece, nor antique Rome, it is Christianity. This actually implies that the common foundation of

¹⁹ Lawrence Blum, *Ethnicity, Disunity, and Equality*. In Thomas, L. (ed.), *Contemporary Debates in Social Philosophy*. Malden: Blackwell, 2008, pp. 193–211.

²⁰ Arthur Schlesinger *The Disunity of America: Reflections on a Multicultural Society*, rev. edn. New York: W. W. Norton, 1998.

²¹ Iris Young, *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press, 1990.

²² Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, 1995; Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2002, op. cit.; Charles Taylor, *The Politics of Recognition*. In Gutmann, A. (ed.), *Multiculturalism: Examining the Politics of Recognition*. Princeton, New Jersey: Princeton University Press, 1994.

²³ John Rawls, *Political Liberalism*. New York: Columbia University Press, 1993; William Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*. Cambridge: Cambridge University Press, 2002.

²⁴ Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity, 2000; Nancy Fraser, *Redistribution or Recognition? A Political-Philosophical Exchange* – with A. Honneth. London: Verso, 2003.

the most central beliefs of all Europeans is not liberalism, but Christianity. Liberal culture is only its secular child which latter detached from its parent and even turned in some sense against it. But this detachment from Christianity is in fact not a detachment from the core of Jesus' doctrine and criticizing it is not directed towards this doctrine, but towards the church that is perceived as a bearer of privileges and as an obstacle to progress, emancipation and democratization. Nevertheless, the core elements of mentality with which we, Europeans, identify ourselves as Europeans, or having the European cultural identity, are in essence Christian beliefs with grounding in the Christian faith, metaphysics and theology.²⁵ In order to be able to better understand and formulate the Siedentopian view, I will introduce and explain my understanding of the cultural identity.

Cultural identity consists of psychology, morality, habits and praxis. It also includes certain paradigms, in relation to which the life of the bearers of a specific cultural identity proceeds. The psychological part consists of impulses, (re)presentations, thoughts, valuations and strivings (aspirations). Every morality consists of some values, principles and virtues. Principles and virtues have the function to cultivate and preserve values. Instances of paradigms are Greek temples, Jesus Christ, Bible, Sophocles' King Oedipus, the Constitution, etc. Paradigms are interpretatively inexhaustible and rationally nontotalisable.²⁶ The interpretations of paradigms and the conflicts of these interpretations are the essential motor and moments of cultural development. Cultural identity includes not only a set of needs but also ways of satisfying of those needs; not only the need for food, family, life partner, etc., but also the way of eating, living a family life or relationship, etc. It includes certain symbols and certain paradigms.

Siedentop claims that there is a special European cultural identity. Its nature is deontological rather than utilitarian because its central value is respecting individual autonomy which also includes respect of his/her conscience. Siedentop claims that the European cultural identity has developed from the Christian cultural identity and that without the latter its development wouldn't be possible. As the Christian identity, the European identity has also two central moments: deontology and respect of individual autonomy. Without them, we cannot speak about the European cultural identity.

The consciousness about belonging to that identity is crucial for the survival of a particular identity. For the cultivation of this consciousness it is crucial to narrate the narrative about the genesis, nature and structure of this identity. Our identity is intelligible, only if grounded on such a narrative, forming an individual with such and such identity. His identity arises from such a narrative. An individual with such and such identity is a moment of such a narrative. If we want that we and the others are conscious who we are, that we and the others understand who we are, understand ourselves, our identity, we must narrate the story about our identity, to ourselves and to the others. However, the cultural identity is not only presented through relevant narratives, it is also established and constructed by it. Without sufficiently wide circulation of appropriate narrative, it can't neither evolve nor survive.

²⁵ Larry Siedentop, *Democracy in Europe*. London: Penguin, 2001, pp. 210–211.

²⁶ Hubert Dreyfus, *Heidegger's Ontology of Art*. In Dreyfus, H. L. & Wrathall, M. A. (eds.), *A Companion to Heidegger*. Oxford UK & Cambridge USA: Blackwell, 2004, pp. 407–419.

Cultural identity is a way of experiencing the world, but also a way of life in which we are in some sense thrown. The knowledge about this identity, the feeling of it and the consciousness about it, the consciousness that we belong to it, that (many) others have belonged to it and still do, the feeling of solidarity with these others, this knowledge and this feeling are by different bearers of a particular identity of different quality and of different degree. Yet a sufficiently high degree of such feelings and knowledge by a sufficiently large number of people is needed that certain cultural identity actually survives. But – again – this is not possible without relevant narrative and sufficient dissemination of its narrating.

Siedentop claims that there are elements from which we can compose a narrative about the European cultural identity, that actually such a narrative exists. The problem – which jeopardizes the survival of the European cultural identity which in turn is a necessary condition for the EU to work – is that its narrative is not spread widely enough because many wish that it wouldn't be narrated, based on the fact that Christianity plays an important role in this narrative. Many either don't agree that Christianity is of such an importance for the European identity or they don't want to talk about it. Among these opponents – of both kinds – there are two major groups: opponents of the Christian church (anti-clericals) and representatives of a certain form of multiculturalism. The wide range of anti-clericalism and this certain form of multiculturalism in Europe is, therefore, the reason that an adequate narration about the European identity (in Europe) is not narrated and heard enough. The consequence of this is that the European identity (and, thus, the proper functioning of the EU) is endangered.

At this point there are some relevant questions:

1. Why depends a well functioning of the EU so critically on the existence of the European cultural identity?
2. What is the origin of anti-clericalism in Europe?
3. What form of multiculturalism hinders a sufficiently wide dispersion of the relevant narration so necessary for the survival of the European cultural identity?

Let's discuss these questions one after another. I will pay primarily attention – due to the main topic of my paper – to the third question.

4. The meaning of identity in Europe

Let's consider the first question. Siedentop doesn't give an answer explicitly to this question, but it can be derived from some other claims and views from his book.

Siedentop points out that there are two basic types or models of management and arranging of affairs in the European Union: the first is pyramidal and centralistic, the so called 'French model'. The second is a polyphonic system which can be occasionally somewhat chaotic, but which is much more democratic than the first one. It demands, however, a lot of adjustments, reconciliations, dialogues, etc. Pace Siedentop, the consistent implementation of the first model would be fatal for the European Union as

it actually renounces the democracy in Europe. Siedentop is, of course, not the only one who has pointed out the dangers of implementing this model in Europe.²⁷

Let us return to identity. Why is identity so necessary? We cannot implement the second model in the European Union without the cultivation of a common and living European identity. The first one, the bureaucratic, centralistic, commanding model is the identity of inferior importance. But this model destroys the democracy in Europe. This is already morally unacceptable as such, but beside that, it has also many other unacceptable consequences. Thus, the only way to maintain democracy in Europe is to cultivate a thriving European identity. But this is not possible without a sufficient dissemination of the narrative in which Christianity plays the foundational and fundamental role.

There are some other reputable European scientists and intellectuals that argue in the same direction as Siedentop. One of them is Joseph Weiler. In his book *Christian Europe* he argues that Christianity is the only integral element in Europe.²⁸ Many object to this, arguing that the Enlightenment is (also) an element of integrity. The reply to this objection is twofold: 1. the Enlightenment is not as integrating as Christianity; 2. the Enlightenment is an offshoot of Christianity. Both Weiler and Siedentop agree that Europe doesn't have any other common integral identity apart from the culture which is in its core Christian. They also agree that the dissemination of the truth about Christianity is hindered in Europe. Weiler – himself not a Christian but a religious Jew – speaks about the widespread christophobia in Europe and adds that he has written a book in which he tells the truth about Christianity in Europe, being seriously concerned about the destiny of his own Jewish religion.

5. The origin of anti-clericalism in Europe

A convincing answer to the second question gave Siedentop himself in *Democracy in Europe*. In essence, he claims the following: anti-clericalism in Europe is a consequence of the role and the position of the Christian church in a certain period of the European history. The church acquired several privileges and it has become a part of the ruling class which has hindered the development of freedom and progress. For that reason, many intellectuals who have had in essence Christian values turned away from the church and started to perceive it as a negative factor in society. Such perception

²⁷ Among politicians two, who made themselves very noticeable, could be mentioned. The first is Nigel Paul Farage, a member of EU Parliament (cf. for instance <http://www.youtube.com/watch?v=CrPNuHjYTdY> (accessed 10. 09. 2012)). The second is Richard Sulik, an economist and a Slovakian politician. Thus, for instance, in the discussion at German TV ARD about the „solidarity” with Greece, Sulik revealed serious problems with democracy in EU, implying that the „French” model is more and more implemented (at the expense of people's money and democracy). Cf. <http://www.youtube.com/watch?v=OljfAyU9pyM&feature=related> (accessed 10. 09. 2012). For the Farage's support of the Sulikian ideas in Slovakia cf. <http://www.youtube.com/watch?v=PfWKYBR9epI> (accessed 10. 09. 2012). For the brief presentation of the process that led to the undemocratic Europe – as it is seen by the critics of EU of the actual situation – cf. <http://www.youtube.com/watch?v=O7va2g6kJKg&feature=related> (accessed 10. 09. 2012).

²⁸ Joseph Weiler, *Un' Europa Cristiana*. Milano: Biblioteca Universale Rizzoli, 2003.

has survived until today in a considerable part of the European society and among many intellectuals in Europe. In the USA, the church has never played such a role and therefore, there is no anti-clerical (re)sentiment observed in this form.

6. Which multiculturalism?

It is the high time to consider – in more detail – what forms of multiculturalism really have (or could have) an „anti-Christian” effect, as argued by Siedentop. Siedentop himself doesn't give an answer to this, so I will try to give one.

As mentioned above, there are several forms of multiculturalism. The word *multiculturalism* is a homonym. According to Siedentop, multiculturalism's highest value means preservation of as much different cultures as possible. Such multiculturalism supports everything that contributes to the realization of this value, and refuses all other things. Hence arise some (unpleasant) consequences: the allowance of the suppression of individual freedoms (multiculturalism is a collectivistic attitude) and refusal of any criteria, principles, values etc. which could lead to the reduction of cultural diversity.

So, I cannot agree with the claim that multiculturalism doesn't have any ethical values or criteria in terms of good or bad. It obviously has. Such a criterion is the preservation of the largest possible number of cultures (the largest possible cultural diversity). Multiculturalism applies this criterion also on cultures as such, however refusing those which it perceives as a threat of reducing cultural diversity. Multiculturalism doesn't regard all cultures as equally good or equally bad. But it is true that beside this criterion, it doesn't have any other criteria for the normative judging of cultures.

We should also distinguish between a genuine multiculturalism and actions that can in certain time and circumstances accord to multiculturalism, although they are applied by non-multiculturalists. Such actions are only advantageous to serve their actual purpose. So, for instance, many leftists are not multiculturalists, yet occasionally they support multiculturalism because it serves well their (other) interests.

Multiculturalists hesitate to label some particular culture as particularly important, especially in the case of the dominant or central culture in a particular cultural environment. Thus in Europe they are not willing to stress the Christian origin of the liberal, central and defining moments of the European identity or to speak about these origins.

7. Emotivism and multiculturalism

One of the positive factors of the existence of different forms of multiculturalism in Europe is the wide distribution of emotivist view on morality.²⁹ According to emotivism, the moral statements are nothing more than expression of our (subjective) emotions, desires, preferences, and interests which however cannot be rationally justified as morally correct or wrong. Emotivists think that moral claims cannot be proved and that

²⁹ For the detailed consideration of the genesis of emotivism and its place and role in modern society see MacIntyre 2000.

they are, therefore, of a subjective nature (or that it is only fair that we treat them as such). No view is morally worse than any other because we don't have any rational criteria for such judgments.³⁰ Many emotivists, however, agree that the only criterion for refusing certain moral views would be their intolerance toward the 'other' or jeopardizing of the existence of the 'other'. Let's call such emotivists – moderate emotivists.

There is evidently a similarity between emotivism and multiculturalism. On the basis of this similarity, it could be asserted that multiculturalism is in fact a kind of collectivistic emotivism. The essential virtue as of moderate emotivism and multiculturalism is tolerance (except towards the intolerant). The main units of consideration in multiculturalism are whole cultures, i.e. cultural groups, and not individuals; the tolerance in terms of multiculturalism is a tolerance towards other cultures or cultural communities and not a tolerance towards individual as individual. Thus, multiculturalism doesn't need the autonomy of individuals – for justification of tolerance – but it argues in favor of the autonomy of cultural communities. Moreover: multiculturalism denies the autonomy of individuals, if this autonomy jeopardizes the supreme value of multiculturalism. Therefore, we may say that multiculturalism is an instrumental view, because individuals are primarily considered as means for the preservation of cultural diversity. Actually, multiculturalism denies all the rights to individuals when they oppose to the supreme value of multiculturalism. This means that multiculturalism denies also the absolute and universal validity of human rights. Otherwise partisans of multiculturalism quite frequently appeal to human rights, but only in case when they serve to advantage their core values. In the contrary case they are prepared to allow the violation of those rights or even support it. The consequence is that such multiculturalism is in opposition to Christianity, personalism and liberalism. Multiculturalism is similar to emotivism and we may even see it as an expression of emotivism which today to some extent dominates in our Western culture. Yet, multiculturalism is dangerous because it prevents us from getting the correct picture of our identity. But without such a picture we cannot act properly.

8. Pluralist multiculturalism and liberal multiculturalism: Sen's multiculturalism of freedom and choice

I agree with the Sen's thesis from his book *Identity and violence* that freedom of an individual must be preferred to cultural belonging: we must first provide the conditions for the freedom of an individual and then the individual – according to his/her

³⁰ A pragmatic or utilitarian stance often – but not always (Putnam, for instance, argues for a form of pragmatist (Deweyan) position and at the same time refuses expressivism (or non-cognitivism) (cf. Putnam 2008, pp. 377–388) – goes hand in hand with the refusal of the possibility of rational justification of value statements. This position is called expressivism or non-cognitivism, or emotivism. Richard Rorty was perhaps recently the most famous partisan of it. Accepting of expressivism (combined with a pragmatic or utilitarian attitude) is not only a characteristic of Slovenia or post-communist countries, but also of the dominant mentality in the EU (institutions) in general (cf. Mieth 2008). Siedentop directed our attention to the wide range of economicistic concepts in Europe and the dangers they imply. He claims that economicism has given a posthumous life to Marxism (cf. Siedentop 2001, p. 164).

conscience and reason – can decide, what role and place has the culture (from which she/he originates) in his/her life.

I agree with Sen who argues that not all cultures as such are good. According to Anthony Appiah, cultures are not good per se, but rather if they contribute to the autonomy and the flourishing of individuals.³¹ I think that in cultures we must search for the elements which are in favor such an attitude and support them. Such elements can also help the efforts for global enforcement and implementation of human rights. In order to achieve this goal, it is necessary to link the secular humanists (personalists) and religious humanists (personalists).

Amartya Sen distinguishes between plural multiculturalism and liberal multiculturalism. He refuses plural multiculturalism and argues in favor of the second. Plural multiculturalism claims that the identity of a person is defined with his/her community culture or religion.³² It neglects or belittles all other belongings of a person and her/his (social) relation(ship)s, placements, positions, and attitudes (language, (social) class, political views, social roles, etc.). With the habitual preferring of the inherited culture or religion, plural multiculturalism favors the individual's inherited culture or religion to his/her own deliberations and decisions.³³ Yet, plural multiculturalism in Europe is not something what exists only in somebody's mind as an unlikely possibility, it is reality. As Sen wrote:

„And yet that narrow approach to multiculturalism has assumed a preeminent role in some of the British official policies in recent years.

The state policy of actively promoting new 'faith schools,' freshly devised for Muslim, Hindu and Sikh children (in addition to preexisting Christian ones), which illustrates this approach, is not only educationally problematic, it encourages a fragmentary perception of the demands of living in desegregated Britain. Many of these new institutions are coming up precisely at a time when religious prioritization has been a major source of violence in the world (adding to the history of such violence in Britain itself, including Catholic-Protestant divisions in Northern Ireland – not unconnected themselves with segmented schooling). Prime Minister Blair is certainly right to note that 'there is a very strong sense of ethos and values in those schools.' But education is not just about getting children, even very young ones, immersed in an old, inherited ethos. It is also about helping children to develop the ability to reason about new decisions any grown-up person will have to take. The important goal is not some formulaic 'parity' in relation to old Brits with their old faith schools but what would best enhance the capability of the children to live 'examined lives' as they grow up in an integrated country."³⁴

There are several important thoughts which should be stressed or reflected on. Such is the opposition to the idea of segregated education³⁵ which can be a serious obstacle to enabling pupils to be de facto acquainted with other lifestyles (and prepared

31 Anthony Appiah, *The Ethics of Identity*. Princeton, N.J.: Princeton University Press, 2005.

32 Amartya Sen, *Identity and Violence: The Illusion of Destiny*. New York & London: W. W. Norton & Company, 2007.

33 Ibid, p. 160.

34 Ibid.

35 In Slovenia have also appeared such ideas, above all in regard to Roma children.

for them) and with the realization of the Socratic value of the examined life (in favor of which Sen argues). Unexamined life is not worth living, said Socrates. Similarly, we can say regarding freedom: unfree life is not worth living. An individual must be acquainted with the several possible ways of life in order to be able decide for himself/herself, what kind of life he or she will choose to live. This is the part of respecting an individual as a person.

Sen's ambition is to develop a philosophy and culture of non-violence and peace. He refuses any reductionist division of people according to their nationality, ethnicity, class, religion, and similar. Such reductionism is extremely dangerous also in regard of keeping the peace. As Jeffrey Sachs – one of the reviewers of the book *Identity and Violence* – wrote: „Sen brilliantly shows that when our public policies and attitudes are guided by one-dimensional simplifications of complex societies, we may unwittingly empower the most extreme and least tolerant members of those societies.”³⁶ We shouldn't fall to believe that particular one-dimensional identity – which existence is violently defended – is the only one that is good and that solely persons with such an identity can be firm and moral. This is also valid for religious identities.³⁷

Plural multiculturalism is not compatible with liberalism and hence also not with Siedentopian account presented in this paper. What about liberal multiculturalism? I think that it is compatible. Siedentopian account is not against cultural diversity as such, nor does it claims that only Christianity is good for flourishing of people. It just refuses – like liberal multiculturalism – to sacrifice truthfulness, the freedom of an individual, his autonomy and his flourishing for some other values.

9. Cultural variety or individual freedom³⁸

Partisans of cultural variety are inclined to decline individualist premises. They don't see or recognize the need to support the autonomy of an individual because they think that essential differences could be found at the level of culture. The autonomy which they want to protect is that of groups and institutions. They want to protect certain ways of life, and not just some choices of individuals. We are what we are because of the community and culture in which we were raised and not because of some universal and fundamental human nature. Yet – as Trigg points out – if we conclude from such a standpoint that there are no universal ethical criteria which transcend the frames of particular morality of particular groups, then we land in

³⁶ Ibid.

³⁷ This danger was very good expressed by Robert Kagan, another reviewer of the Sen's book: „... we need to avoid falling into precisely the trap that Osama Bin Laden has deliberately laid for us: to divide the world into Muslim and non-Muslim (quoted in Sen 2007)”. Similar thoughts could be found in the writing of Amanda Heller, another reviewer: „Religion perceived as an absolute identity with no shades of gray I privileged over any and all other human categories and raised as a banner under which not just nations but 'cultures,' equally monolithic, must clash. Drawing on his sophisticated understanding of history and politics as well as economics, Sen reasonably shows such characterizations to be grounded in ignorance of both the past and the present (quoted in Sen 2007) ”.

³⁸ See Trigg 2007, 91 pp.

relativism which is incompatible with liberalism.³⁹ The result of such thinking is also a defense of various ways of life inside the same country.

From the liberal perspective, the freedom of choice is of primary importance. For multiculturalists the real freedom is reflected in the existence of different cultures. The first is the evidence for the second. They plead for the autonomy of different ways of life inside the same country. Multiculturalists may insist on that exaggeration by arguing that the freedom of an individual can lead to neglecting of the importance of culture. Some liberally oriented person could strive for the cultural variety based on the belief that a bigger cultural variety offers more possibilities, a larger set of possible choices. Yet a bigger variety of cultures as such doesn't mean at all that an individual has (de facto) more options to choose. As first he/she must have a factual opportunity of choice at all; the autonomy of an individual and her or his choice must be first provided, in order that she or he can chose at all, and if cultural variety is provided at the expense of the autonomy of an individual, the several cultural options it provides are in vain.

Therefore, multiculturalism opens some important and fundamental questions: should the law (and if so, to what extent) protect the rights of individuals or the rights of groups? Should we support the human rights or the rights of groups?

The arguing for the primacy of culture over individuals may originate in care for the maintaining of community. The premise of this thinking is that culture (religion) is what holds community together, what makes community – a community. Culture is that what provides its members with common meanings and on the basis of these meanings they form a community. The cultures are valuable because they are origins of communities which must be maintained.

This argument is defective. Of course, it is true that cultures are essential for communities. But not all communities are good. Is a Nazi community a good community? From the fact that some cultures are indispensable doesn't necessary follow that any culture is good.

10. Paradoxes of multiculturalism⁴⁰

Some forms of multiculturalism claim that nothing remains of the („non-trivial”) self, if we give up our culture. But this is not true. The proof is provided already by the claims of many multiculturalists themselves who have put them outside their own (original) culture and they haven't lost their self. Secondly, the mere celebration of cultural diversity implies that we don't take any culture seriously. If all cultures are only a means of cultural variety, why should I truly and sincerely belong to any of them? Nevertheless, multiculturalism itself is actually a form of culture. Multiculturalism is as such dangerous, especially for religions: if there is no difference of value between religions, why should I belong to any religion at all, especially if religion sets inconvenient demands?

³⁹ Roger Trigg, *Religion in Public Life: Must Faith Be Privatized?* Oxford: Oxford University Press, 2007, p. 91.

⁴⁰ *Ibid*, p. 98.

Multiculturalism as such is thus a dishonest and inadequate position: at one hand, it looks like suggesting to people that they should remain living inside the frames of their original cultures (how can otherwise these cultures be preserved) and it takes them seriously, yet, at the other hand, multiculturalists themselves don't actually take any culture seriously and basically they step out from their own (original) cultures, they transcend and embrace the culture of multiculturalism.

I think, contrary to this, that the only coherent and acceptable position is that we honestly admit that for us not all cultures are of equal value, but that we still think that certain tolerance, dialogue, solidarity and also (pragmatic) cooperation between the cultures is needed, out of ethical as well as deliberative or pragmatic reasons.

Secondly, there is no a priori reason that we should celebrate cultural diversity. Cultural diversity is not a proper value, because cultures themselves are just a means for achieving individual freedom and flourishing. We should create conditions in which people are allowed to step out from their original cultures, to link up within new groups and collectives, with new cultures which might be even essentially opposing to their old cultures. To have such freedom is an essential part of respecting of human dignity and personal autonomy. This is one of the main reasons why we should cherish human rights: one of the most important functions and goods of human rights, understood in Western way, i.e. formulated in an individualistic and abstract way, is to allow such disconnections from our original cultures.⁴¹ Every human being must be factually enabled to convert, to cut the ties to his/her original culture, to begin a new life, to form new communities, etc. Nothing can be more alien to Christianity as denial of this right. Moreover, honoring it is one of the central moments of Christianity. Just remember Jesus' words that nothing should be prior to us then fulfilling God's will, not even blood relationships (Mr 3, 31-35). Yet, this fulfilling is not possible without following and cherishing our conscience, without us being free. For what is a free man, if he is not able to live according to the judgment of his reason and the voice of his conscience?

We may conclude that every form of multiculturalism that opposes this right opposes not only liberalism, but also Jesus' doctrine. Cultural diversity is as a proper, non-instrumental value unacceptable for liberalism, as also for Christianity. It can't be a proper, intrinsic value. But this doesn't mean that we should support any segregation of cultural minorities, that we should deny cultural rights to these minorities⁴², that we should not strive for a dialogue and for solidarity with them and among people of different cultures in general, etc. I don't oppose to none of this things, quite to the contrary. All of them are good if they serve to freedom and prosperity of individuals. Moreover, I think that they actually serve and that the so called politics of multiculturalism – for instance in Canada and in Australia – have created many good things and that there are many adverse effects of its absence in Europe – for instance in Germany and in France and in many other European countries. But – at the other hand – we should be aware of the appropriate hierarchy of values. For us, liberals, as

⁴¹ Slavoj Žižek, *Against Human Rights*. New Left Review 34 (July–August), 2005, p. 129.

⁴² In Ch. 8 of Kymlicka 2002 the author uses the term *multiculturalism* (and *minority* rights) to denote the demands of ethno cultural groups.

Christians and as personalists – no value can be above personal freedom and prosperity. No culture and no cultural diversity. Multiculturalism which opposes to this view should be rejected. But we support multiculturalism in the sense of pleading for the collective cultural rights of minorities, for solidarity and dialogue with them, for integrating them, dialogically and non-violently, into the liberal democratic society. Yet any integration and any accommodation must be accompanied by recognizing differences. We should search for common points among us, but not at the expense of missing to recognize the differences among us.

To achieve coexistence in this globalized and culturally heterogeneous world, where the majority of population will live in big multicultural cities, the sacrifice of some parts of our original cultures will be needed. This doesn't mean that we should not care about maintaining identities of people. On the contrary. Such disrespect would be fatal from the point of view of maintaining peace. Yet, realistically, the „sacrifice” of parts of our cultures is practically unavoidable. This means that the exaggerated celebrating of particular cultures or their moments is even more dangerous than in the past. So is the form of multiculturalism that I reject even more dangerous. Let me, therefore, specify more precisely what an attitude towards parochial, traditionalist or even fundamentalist groups I find appropriate.

11. Proper attitude of liberal groups toward the traditionalist, parochial or fundamentalist groups

The following question can be raised concerning education and existence or survival of these groups: Do these groups have – in order to secure their existence, survival, or their way of life⁴³ – a right to educate the pupils in a manner that is unsuitable for a life in liberal democracy or which even shapes the personalities which would oppose it or even undermine it?

I can agree with Michael Walzer that the solution certainly does not lie in the abolition of special schools which such communities (already) have.⁴⁴ What, however, the citizens of liberal democracies must decide upon is which competencies, capabilities, knowledge and virtues the pupils of these schools must develop in order for the democracy to function. Walzer suggests that such requirements should be minimal, although we may cultivate hope that pupils should achieve more. Yet, as he points out, even minimal demands represent a problem for the parochial communities and in no way bring the solution of the problem. There is simply no sound and deciding argument for both parents and authorities to find a way out of the dilemma. Both positions are in some sense justified, yet leave little room for compromising.

There are two extreme possibilities which, of course, are not the only two: first, decay of non-liberal communities, and second, destruction of democracy. Which option should a liberal egalitarian choose? In the situations in which there is a political

⁴³ Their Dasein, if we interpret this Heidegger's term as John Haugeland (1995) does, as a way of life.

⁴⁴ Michael Walzer, *Politics and Passion: Toward a More Egalitarian Liberalism*. New Haven and London: Yale University Press, 2004, p. 63.

power at stake we should proceed against authoritarian groups.⁴⁵ Yet this would be a good solution only in cases of political crisis, but it doesn't bring a solution for everyday situations,⁴⁶ it doesn't solve the question of coexistence on a daily basis. There is no theoretical deduction from a set of principles for that, only a long, tiresome and unstable succession of compromises.⁴⁷

Although the state must tolerate, it does not have the right to impose tolerance on others. As McIntyre correctly points out, local communities are autonomous regarding what to tolerate and what not. This is a decision made by them, as it is also their freedom to draw the line between tolerable and intolerable.⁴⁸

Toleration is good if it enables us to achieve some individual or common good. The same is valid for intolerance. Toleration must serve to the rational discussion in which also conflicting points may be exchanged, de facto must be, in order to achieve certain goods. But the conflict must be constructive, not destructive regarding achieving of good. Tolerance and intolerance are of service in a constructive conflict.

12. Liberal democracy and policy of recognition and representation of (illiberal) minorities

MacIntyre's ideas sketched above can be applied in creating policy concerning recognition and representation of religious minorities. Herbert has taken an example of a Muslim minority in Europe. Minorities are inheritors of important traditions. As such, they are bearers of morality (values and virtues). So, they should be protected, by adequate recognition and representation. Their protection may include certain autonomy.

But all minorities should not be equally treated. We can follow Kymlicka in distinguishing between three kinds of minorities and three grades of justifiable intervention on the behalf of the state:⁴⁹

„But he (Kymlicka, n. B. Ž.) does not believe that upholding the primacy of autonomy necessarily entitles liberals to impose their views on illiberal minorities. Rather, he distinguishes between three kinds of illiberal minorities, and grades the degree of intervention that is justifiable accordingly. These groupings are national minorities, such as the Francophone minority of Quebec in Canada; historic minorities such as the Amish in Wisconsin or Hasidic Jews in New York; and recently arrived immigrants, which would include most Muslims in Western Europe. He argues that internal interference should be limited in the first case, cautious in the second, but that

45 Ibid, p. 64.

46 Ibid, p. 65.

47 Those who care for the functioning of a liberal state and liberal democratic society should assent to compromise for good or relevant reasons cf. Walzer 2004, 65. See also Margalit (2009). We should also not forget that the ability to assent to compromise (for the sake of lesser evil) is an essential part of the virtue of public reason (or dialogic virtue) which is one of the central civic virtues, i.e. virtues needed for actual functioning of liberal democracies (cf. Kymlicka 2002, Ch. 7). On the liberalism and the politics of lesser evil see Michéa 2009.

48 Alasdair MacIntyre, *Toleration and the goods of conflict*. In MacIntyre, A., *Ethics and Politics: Selected Essays*, Volume 2. Cambridge: Cambridge University Press, 2006, p. 222.

49 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, op. cit.

for the third 'it is more legitimate to compel respect for liberal principles, (...) I do not think it is wrong for liberal states to insist that immigration entails accepting the legitimacy of state enforcement of liberal principles, so long as immigrants know this in advance, and none the less voluntarily choose to come.'⁵⁰

Secondly: Religious minorities should be collectively represented. But this should happen through and be „balanced by a plurality of alternative voices within representative forums, in particular of those who have been historically marginalized within religious traditions”.⁵¹ Also in the case of recognition and representation of religious minorities and religious groups in general, we should tend to establish a balance between tradition and political achievements of the modernity: autonomy, equality, and participation. „Thus, if different voices within minority communities can be represented, and a system of individual rights is firmly in place, it seems possible to give greater collective recognition to religious groups without compromising the rights of dissenting minorities within those groups.”⁵²

13. Tolerance of the non-tolerant

As Walzer suggests, we should tolerate the intolerant but we should deny them political power.⁵³ We should also tolerate minorities and immigrant groups, despite the fact that their ethnic brothers and brothers in faith in other countries are brutally intolerant. As Halik points out, this is the only way that we prove to the intolerant that liberal, democratic and tolerant society is de facto possible.⁵⁴ But to create such a tolerant society, the cooperation between secular humanists (personalists) and religious humanists (personalists) is needed. We must guide our ship between Scylla of fanatic secularism and Charybdis of religious fundamentalism. I may agree with Walzer that we need the separation of state from church, ethnicity and politics.⁵⁵ Both are needed not only to protect ourselves from fanatic members of religious or other (ethnic, immigrant, political, etc.) groups, but also to protect the non-fanatic, tolerant or democratic members of these groups from their own fundamentalist „brothers and sisters” or co-members. In short: in liberal democracies, we may tolerate the non-tolerant and non-liberal groups, but we must prevent them (also by law) to achieve political power. They may assemble, they may express their opinions, but they shouldn't be allowed to seize the political power.

⁵⁰ David Herbert, *Virtue Ethics, Justice and Religion in Multicultural Societies*. In Flanagan, K. and Jupp, P. C. (eds.), *Virtue Ethics and Sociology: Issues of Modernity and Religion*, 2001, p. 62.

⁵¹ *Ibid*, p. 65.

⁵² *Ibid*, p. 63.

⁵³ Michael Walzer, *The Communitarian Critique of Liberalism*. *Political Theory* 18, 1990, p. 80.

⁵⁴ Tomas Halik, *Patience with God: The Story of Zacchaeus Continuing in Us*. New York: Doubleday, 2009.

⁵⁵ Michael Walzer, *The Communitarian Critique of Liberalism*, op. cit. p. 81.

14. Conclusion

What conclusions can be drawn on the assumption that the (Siedentop's) story – about the nature of the European identity, the narrative about it, the role of anti-clericalism and multiculturalism and the meaning of this identity for the future of Europe and the EU – is true?

The first observation is that in Europe we deal with the sacrifice of truth – or with its concealing – about our own identity which means that we conceal (to us) not only the truth about who we are and what binds (or can bind) us together, but also about what distinguishes us from each other. We are dealing not only with the concealing of the truth about us, but also about the others. It is, however, necessary to choose between (speaking) the truth about the Christian origins of our European (liberal) identity on one hand and tolerance, coexistence, cooperation, dialogue, solidarity etc. between different cultures on the other? I don't think so.

The proper Christian faith is not incompatible with cultivation of tolerance and respect for the others.⁵⁶ Intolerant Christians have – in this respect at least – moved away from Jesus' way. Christianity has a potential for grounding and cultivation of tolerance and respect for the other. This ground is respect for everybody and this respect is to Christians not only suggested or advised; it is their religious duty (Volf 2011, 12).⁵⁷ So, if we support the Christian origin of the European identity, we do not oppose to respecting of other people's culture but rather we ground and justify it as a genuine and truthful European attitude. Therefore, christophobia – based on the care for other non-Christian European cultures (or cultures in Europe) and directed towards genuine Christianity – is groundless. The only thing to be afraid of is misinterpretation of Jesus' teaching as intolerant and disrespectful. But the way to prevent such misinterpretations is not to deny the Christian origins of the European liberal culture. Quite the contrary.

56 For the foundation for such attitude in The Old Testament see Măcelaru 2012. Măcelaru argues that the story of the Tower of Babel (Genesis 11) aims at promoting peaceful cohabitation in spite of cultural differences.

57 Miroslav Volf, „Honor everyone!” Christian faith and the culture of universal respect. In Volf, M., Constantineanu, C., Măcelaru, M. and K. Šimič (eds.), *First the Kingdom of God: A Festschrift in Honor of Prof. Dr. Peter Kuzmič*. Osijek: Evanđeoski teološki fakultet, 2011. pp. 3–32.

III POLITICAL STRUCTURE OF MULTICULTURALISM IN SOUTHEASTERN EUROPE

Multiculturalism and Consociation – South East European Perspective

VOJISLAV STANOVIĆ

1. Some Consequences of Strategic Geopolitics

The Balkan Peninsula had many tragic historical events, due to its geographic and strategic location. It was like a road or bridge between Middle (and the West) Europe on one side and Asia Minor, Black Sea area and Middle East on the other. Struggles for the domination over this area and strategic points were waged continuously through the complex and very long history.¹ Over long periods the region was inhabited with so many „nations”, and several populations at this territory were exterminated. Belgrade/Singidunum in a distant past was primarily frontier fortress and control-point for more than two millenniums at the confluence of two large rivers – the Danube and the Sava River, and with the large Great War Island in front of the fortress. Winston Churchill said once that the Balkan had more history than locally could be consumed. Some details of consequences of the geo-strategic position of Belgrade and surrounding territories were the destruction of that town and fortress almost 40 times. *Encyclopedia Britannica* (edition of 1911) stated that Belgrade „had seen more battles under its walls than most fortresses in Europe“. And after 1911 followed two World Wars with several heavy bombardments, holocaust of Jews and Roma, and in 1990s armed conflicts took place in Bosnia and Herzegovina, Croatia, and Kosovo and Metohija, and bombardment of Serbia for 78 days in 1999. The World Encyclopedia quotes that „Belgrade has been captured 60 times (by the Romans, Huns, Turks, and Germans, among others), and destroyed 38 times. Hungarians and Bulgarians kept conquering Singidunum from each other, and Byzantians more powerful were taking it from both sides. Serbian rulers, i.e. their government had access to keep Belgrade in the 15th century (when Hungarians donated Belgrade to Serbian leaders to strengthen the fortress and to defend it from Ottomans advance to Europe). From the mixture of elements of different cultures at Balkans – we have to confirm that multiculturalism exists, which will shown also by underlining some old roots of multiculturalism (based on religions, languages, traditions, mixed marriages, different political entities which were exchanging styles of life even across borders of empires) of this region.

1 Celtic tribes defeated Thracian and Dacian tribes, and in the 3rd century BC named the place „Singidunum“. In the 4th and 5th centuries AD, the Roman Empire established „the military frontier“ against „barbaric Central Europe“, but the Roman camp was repeatedly destroyed by the Goths and the Huns (with Attila).

In the year 476, a border was drawn dividing the Roman Empire in Western and Eastern (Byzantium), and Belgrade was the point at the borderline between two empires. The line crossed the territory roughly from Belgrade to the Bay of Kotor. That line was established before Slav population inhabited this area. But it played later a role, after 1054, by dividing the Slav population into two religions (Eastern Orthodox and Western Roman Catholic) and the cultures have developed along the two rites of the Christian religion. Max Weber concluded in his *Wirtschaft und Gesellschaft* that from one ethnic stock two versions of Christian religion resulted in two nations – Serbs and Croats.² From the influence of another religion, consequences for **political, cultural, economic and social situations** resulted in the Eastern parts of the Balkan Peninsula in the 14th century. That was the result of Ottoman (Moslems) invasion that spread Islam. The territory, which in the 20th century became Yugoslavia with specific national and religious features and also strong inclinations between West and East, was multi-religious and multicultural. Those who lived in the third, Moslem tradition opted for the name – Bosnians or Bosniaks for their nation. In the second half of 20th century, another religion different from both Christian rites, made a Moslem nation based on Islam.

Stephan Nemanja (born in Ribnica, today's Podgorica, the capital of Montenegro, and baptized in Roman Catholic rite, and again in Orthodox in Ras, part of today's Novi Pazar, capital of Raška, i.e. Serbia) was the first successful, great ruler /župan/ of some parts where Serbs lived. In 1189 Nemanja went to Nis to meet Emperor Frederick Barbarossa, who led the Third Crusaders War with 190.000 crusaders that passed through Belgrade (like two earlier Crusaders' troops in 1096 and in 1147). Nis (Niš, Nais) was a post at the road from Middle Europe to Near East, and it was the place where Emperor Constantine was born who issued the Edict of Milan in 313, giving freedom to Christians. Presently it is being discussed whether Nis will be the place of celebration next year (2013). Serbian orthodox church celebrates and built many churches with the name Saint Emperor Constantine and Czarina Jelena (a church bearing that name was destroyed at Kosovo).

Nemanja's older brother Miroslav, ruled in the Hum region (a hinterland from Dubrovnik), and ordered *Gospels* to be written in the old Slavic church script, illuminated and decorated. They were called Miroslav's *Gospels* and were during both World Wars in danger, hidden, lost and discovered. They represent a famous and oldest Serbian document, and are a part of the cultural heritage of Serbia. Nemanja strengthened the Serbian state, contributed a lot to the national church, culture and history, and in 1196 renounced the throne and went to Mount Athos. As a monk he was named Simeon. His youngest son, Rastko, decided to dedicate his time to studies and became an enlightened monk at Athos, named Sava. He was later on appointed by the Emperor and Patriarch as the first Serbian Patriarch to establish an independent church. He returned to Serbia with a lot of books and established not only the independent Serbian Orthodox Christian Church, but also public schools and hospitals. He translated Greek (Byzantine) laws and provided the legal base for learning and establishing the the rule

2 Max Weber took Serbs and Croats as an example of how different rites of the same religion had become a basis for differentiation (*Wirtschaft und Gesellschaft*, translated as *Privreda i društvo*, Prosveta, 1976, vol. I, p.334).

of law in the Serbian State. In the 14th century, Nemanja's descendant, the powerful Serbian Emperor Dusan, organized preparations for drafting Law Codex and two great Councils (Skopje, 1349, and Serrese/Greece, 1354) were convened. That Codex contained the rule that no order of the Emperor, regardless if oral or written, had to be accepted or implemented by judges. That Codex was spread in many manuscripts usually copied in monasteries. The preserved copies (with innovations in different regions and by different rulers) were analyzed and printed recently with analytical and critical comments in four volumes, published by SASA.

From Western Europe, miners, artisans (from Germany, Saxons), merchants (from Venice and Dubrovnik) were coming, and secure roads and merchants' colonies were established, and builders and painters were engaged for erecting churches. Silver mines produced metal coin silver money. The position between West and East had many advantages for Serbian rulers and many persons at high positions, in regard to not only material items, but experience and knowledge and some implemented skills – from Constantinople, Venice, Ragusa, Buda and Pest.

After five centuries of being „raya” (slaves), national sentiments began to rise under the influence of Western nationalism, and that led to several uprisings and the Balkan wars. In the 19th and 20th century, Balkan was called „the powder keg of Europe”. In the 20th century, plans were prepared to build a railway from Berlin to Baghdad and to dominate raw-oil fields, although the fields were under British and French control.

The whole history of South-Eastern Europe, i.e. the Balkans, tells about different states and empires, migrations and invasions of various peoples, about battlefields and scenes of troop movements, mass suffering of the population, and especially mass persecutions or flights. It is a territory on which various kinds of „ethnic engineering” were practiced, as well as a systematic colonization and settlement of population from other countries and regions, with the aim to strengthening certain states or reducing homogeneity and weakening the resistance of the conquered local population. In more recent history, in the 18th and 19th century, at the time of the European Romanticism and emerging nationalism, development processes of national awareness and efforts of the peoples of this region in Europe to free themselves of foreign, especially Ottoman, but also every other foreign domination, started attracting attention of great powers in connection with the decline and dissolution of the Ottoman Empire. At the Verona Congress of the Holy Alliance in 1822, the „Eastern Question” has been raised for the first time. European powers started being concerned with what will happen after the death of the „invalid from Bosphorus”, as the Empire was called at that time, and each and every one of them had their own plan on how the potential political vacuum could be filled according to its sphere of interest and influence in the Balkan. But the mixed population, with the heritage from previous ages and awareness about former borders of some states, as well as the disparity between ethnic and newly established political borders, and aspirations of newly created states to gain the largest possible influence and territory, caused tensions and conflicts among them. Interests of great powers in the Balkan intermingled and clashed, in other words, „solutions” were sought, offered or imposed from Verona (1822), Paris (1856, which referred to Turkey, Serbia, Vlachia, Moldavia, Bulgaria), Berlin Congress (1878) to the Conferences in Ver-

sailles (1919), Yalta (1945) and various other places all the way to Dayton (1995), and probably new conferences yet to come.

Due to some characteristics of relations among the Balkan states in the end of the 19th and the beginning of the 20th century, pejorative slogans were coined, such as, for example, that it is the „powder keg” of Europe, even a new term has been created – „balkanization”.³ It has become a synonym for ethnic fragmentation and conflicts, when growing national awareness and the appearance of new „national” states turned into wars in the Balkans.⁴

In the report of the Commission for the Balkans of Carnegie’s International Peace Foundation present in former Yugoslavia in the course of 1996, several contradictory stands were stated because different viewpoints were expressed by representatives of groups which live in this region and have different aims and interests, and from the other side, the Commission offered certain constitutional framework for resolving interethnic, or rather international relations. It was stated in the report: „Ethnic cleansing’ or forced assimilation that prevailed in a large part of the Balkans since the 19th century has come as a reaction to the belief that one state should be one nation, one culture, one religion. Some claim that ethnic nationalism can be moderated by granting minorities’ political and cultural rights (language, religion, etc.).” They also had doubts that „majority groups fear that granting collective rights and autonomy would cause further disintegration and irredentism”.⁵

Prospects for resolving the status of national minorities in the process of democratic changes have been seen by the Carnegie Commission in defining minority status within the framework of constitutional democracy: „The Commission believes that constitution should guarantee protection of minority rights in a state; these rights should be precisely identified and not be subject to interpretation by local bureaucrats; proportional representation, despite being a potential incentive for fragmentation, should be included in the electoral system; decentralization and a certain level of autonomy at the regional and municipal level are essentially important in areas with mixed population. However, a ‘security community’ requires a civil society (in which ethnicity is not the exclusive principle of organization), the rule of law (which guarantees human rights and minority rights) and institutional instruments of mediation and arbitration for resolving conflicts”.⁶

These recommendations are very similar to the ones advocated for more than twenty five years as a part of the solution for coexistence in mixed societies, as an institu-

3 Critically analyzed ideas on „balkanization” in order to free this region of the attributed pejorative labels. See: Stevan K. Pavlowitch, „Who is ‘Balkanizing’ Whom?”, *Daedalus*, vol. 123, no. 2, Spring 1994; and Maria Todorova, „Balkanization”: Maria N. Todorova, *Imagining the Balkans*, Oxford University Press, 1997.

4 In the Balkan Wars (1912–13) terrible crimes were committed by the Turkish troops, but also by other warring parties, and some were investigated and reported in 1913 by the Investigating Commission of Carnegie Peace Foundation. The report was re-published – in 1993: *The Other Balkan Wars, A 1913 Carnegie Endowment Inquiry in Retrospect*, Washington, Carnegie Endowment Book, 1993. See the report of another Carnegie commission to inquire problems, situations, and solutions and proposals in *Unfinished Peace: Report of the International Commission on the Balkans*, Report prepared by Leo Tindemans, Lloyd Cutler, Bronislaw Geremek, John Roper, Theo Sommer, Simone Veil and David Anderson, (Berlin, Aspen Institute, and Carnegie Endowment for International Peace, 1996).

5 See: *Unfinished Peace: Report of the International Commission on the Balkans*, pp. XVII–XVIII.

6 Ibid.

tional framework for resolving problems and overcoming tensions and conflicts.⁷ It is far more promising that standpoints similar to Commission's conclusions for the Balkans are in Serbia nowadays advocated by a considerable number of scholars and, especially, experts in constitutional law, not just on the basis of relevant references, but also as a result of their own conclusions of what would be suitable for the given situation. These processes were observed and analyzed in view of the status of national, ethno-cultural and religious minorities in the process of democratic transition.

In South-Eastern Europe, there are also some so-called hidden minorities, and some are the diaspora (the Roma being the most numerous among them). In several studies and various overviews most of the attention is devoted to major minorities that live relatively homogeneously in certain regions of the country, usually Albanians, Hungarians and Moslems (now Bosniaks) in Serbia; Pomaks and Turks in Bulgaria and Western Trakia; Greeks in Albania; Hungarians in Romania, Slovakia and Serbia; Macedonians in Bulgaria and Greece; Albanians in Macedonia. In all these countries, there are also a large number of Roma, and many other minorities or ethnic communities, living either as diaspora (like the Jews) or concentrated in some regions (like Bulgarians, Croats, Germans, Romanians, Slovaks, Serbs, Turks, Vlachs and others).⁸

7 for further reading: Vojislav Stanovic, „History and Status of Ethnic Conflicts“ in Dennison Rusinow (ed.), *Yugoslavia: Fractured Federalism*, Washington, The Wilson Center Press, 1988, pp. 23–40 (the paper was written in 1985, and presented in Woodrow Wilson Center at the Conference on Yugoslavia in September 1986); „How Political and Constitutional Institutions deal with a People of Ethnic Diversity“, presented in 1985 at a conference organized by American Enterprise Institute for Public Policy Research (AEI), and published in: Robert A. Goldwin et al (eds.), *Forging Unity Out Of Diversity*, Washington, AEI, 1989, pp. 369–410 (and reply to comments: 420–422); „Legal Safeguards for Human and Political Rights“ in Samuel F. Wells (ed.), *The Helsinki Process and the Future of Europe*, The Wilson Center Press, 1990, pp. 156–168; „Problems and Options in Institutionalizing Ethnic Relations“, *International Political Science Review*, Vol. 13. No. 4, October 1992; „Rule of Law and Coexistence of Ethnic Groups“, in *Status of Minorities in FR Yugoslavia*, Beograd, SANU, 1996, pp. 49–70 (in Serbian); and „Democracy in multiethnic societies: Populism, Bonapartism, Rule of Majority or Constitutional Poliararchy?“, in *Minorities in the Balkans: State Policy and Interethnic Relations 1804-2004* (ed. by Dusan T. Batakovic), Belgrade, Institute for Balkan Studies of the Serbian Academy of Sciences, Special Editions 111, 2011, pp. 323-353 (this was presented at the Congress of International Political Sciences Association /IPSA/ in Berlin, 1994); and „Concerning Constitutional Frames of a Multi-ethnic State“, in Miodrag Jovičić (ed.), *National Reports for the Fourth World Congress of the ISCL*, Tokyo, 1995 (presented to the Congress in Tokyo, 1995). Vojislav Stanović (ed. with Miloš Macura), *The Status of Minorities in FR Yugoslavia*, Beograd, SANU, 1996, 862 pp. with Stanovic article „The Rule of Law and Consociation of Ethnic Groups“, pp. 49-69 (with 4 pages of Summary in English); *Act on the Protection of National Minorities – Expert Discussion on Preliminary Draft of the Act on Protection of National Minorities*, Held in Belgrade, on September 20th, 2001, published in Belgrade, Institute for Comparative Law, 2002; „Democracy in Multiethnic Societies – Problems and Principles of Consociation: How to Live Together“ (pp. 13-101, in Goran Bašić (ed.), *Democracy and Multiculturalism in South East Europe*, Belgrade, Ethnicity Research Center, 2003, 472 pp); „Constitutional/Legal Frames Concerning Religious Peace, Tolerance Freedoms“ (pp. 190-214), in *Democracy and Religion* ed. by Goran Bašić and Silvo Devetak, Belgrade, ERC/ISCOMET, 2003; „Democracy, Constitutionalism and the Rule of Law“ (pp. 136-202), in Milan Podunavac (ed.), *State and Democracy*, FPN and Službeni glasnik, 2011.

8 Compare the manual which gives an overview of a number of minorities in the world and also of minorities in Eastern Europe in *World Directory of Minorities*, ed. By Minority Rights Group, Longman, 1990, reprinted edition in 1991; and in 1997 a new edition was published. The Preface for the first edition was written by Alan Phillips, and several associates participated in collecting and processing data. Minority Rights Group constantly publishes overviews of the situation and analyses of minority status.

The attention is paid to the status of these minorities occasionally, as it was the case with the German minority between two world wars. The most reliable data including legal status of minorities in Europe are published in a year-book.⁹ According to the press and statements at a series of conferences it can easily be concluded that there is the quite widespread public opinion that problems of minorities are something specific for South-Eastern Europe and that less attention is paid to similar problems in other parts of the world, but also that this is something imposed on the states of South-Eastern Europe to a higher extent than on the countries of Western Europe.

The situation is obviously not so when it comes to the obligations related to minorities in most Western European countries compared to the situation in South-Eastern Europe. This is due to the numerous obligations concerning religious and national minorities and their protection which were introduced by a series of international contracts in the 19th and 20th century, especially in 1919, when obligations were imposed on the countries defeated in the World War I and the newly created states on the former territory of Austria-Hungary or countries annexed to it, i.e. of the defeated powers. The Kingdom of Serbs, Croats and Slovenes refused to accept the set obligations, so it had sanctions imposed on it and did not become a member of the League of Nations until 1926, when it finally assumed the obligations which still bind the successor states.

In regard to the diversity level, the presently existing states have multiculturalism or multi-ethnicity, and will as such perceive the proportions of the problems resulting from the status and relations among ethnic groups, or communities. It is also true that things are easier for the states which have joined the Union, i.e. the former European Community from the very beginning or which have been among the main initiators of such an integration, as France, for instance. But, it is also necessary to realize and acknowledge that the increasingly strict European standards on certain issues are binding for all members of the Council of Europe or the European Union, by the Framework Convention on the Protection of Minorities, although on some all member countries have open options, as it is in the case with the Charter on Regional and Minority Languages. But this Charter also requires a certain minimum from the countries which have adopted it, and whatever is adopted and ratified must be consistently monitored and obligations must be met, whether under domestic laws or European, i. e. according to international conventions, contracts and generally accepted rules. In many cases, prescribed by the constitution or a law, these standards are usually not too high. Also, many things guaranteed to minorities seek extensive financial and material resources, as well as qualified personnel, and they do not see how all that can be provided in a short time.

⁹ See: Vojislav Stanovcic, „Legal Status and Rights of Minorities in Serbia and Montenegro“ (pp. 631–653) in *European Yearbook of Minority Issues*, Leiden-Boston, Martinus Nijhoff Publishers, 2004, 718 pp. It has several editors (among them Emma Lantschner and other associates of European Academy in Bolzano).

2. Multiculturalism and Diversities are Social Reality – Facts

A worldwide process of „ethnicity revival” has accelerated in the past decades bringing about an „identity explosion”.¹⁰ There are about a dozen mono-national states in the whole world and only 0,5% of the world population lives in those countries. Multi-ethnic, multinational states, multi-religious societies, multiculturalism – it is a rule, not an exception. As there are about 200 states in the world, it is assumed that there are several thousand politically relevant ethnic or national groups, or communities (there are states which alone have up to 250 ethnic communities, each of them with its own tradition, language, etc. – e.g. Nigeria, or the Russian Federation with probably around 150 groups (although their statistics state 120)).¹¹ So, the region of South-Eastern Europe is no exception in the modern world when it comes to minority communities. There are numerous studies and references written about problems and conflicts that arise in relations between ethnic groups, and between them and larger groups or the majority population within the same state, and about efforts to avoid conflicts by adequate legal and constitutional regulation.¹² In 1984, a scientific conference was held in

10 For further reading on that subject: Ali A. Mazrui (in the paper *Post Imperial Fragmentation: the Legacy of Ethnic and Racial Conflict*, Denver, University of Denver Studies in Race and Nations, I, 2, 1969–1970) writes: „Explosion of identity worldwide contributes to the increase of ethnic self-awareness.” Many books are dedicated to ethnic revival and nationalism which springs from ethnicity: A. D. Smith, *The Ethnic Revival*, Cambridge, 1981; and his other papers: *Nationalism in the Twentieth Century*, Oxford, Martin Robertson and Co., 1979; *State and Nation in the Third World: The Western State and African Nationalism*, New York, St. Martin's Press, 1983; *The Ethnic Origin of Nations*, Oxford, Blackwell, 1986; A. D. Smith (ed.), *Nationalist Movements*, Macmillan Press, 1976; Ernest Gellner, *Nations and Nationalism*, Ithaca, Cornell University Press, 1983; E. Hobsbawm, *Nations and Nationalism Since 1780*, Cambridge, Cambridge University Press, 1990. See a short and incomplete history of ethnic cleansing in: Andrew Bell-Fialkoff, „A Brief History of Ethnic Cleansing”, *Foreign Affairs*, vol. 72, no. 3, 1993.

11 Compare: Ivo D. Duchacek, *Comparative Federalism: Territorial Dimension of Politics*, New York, Holt, Rinehart and Winston, 1970; Walker Connor, „The Politics of Ethno nationalism”, *Journal of International Affairs*, 27, no.1, 1973); Ivo D. Duchacek, „Antagonistic Cooperation: Territorial and Ethnic Communities”, *Publius*, vol. 7, no. 4 (1977), pp. 3, 12. See: Ivo D. Duchacek, „Antagonistic Cooperation: Territorial and Ethnic Communities”, in *Publius*, vol. 7, no. 4 (1977), p.12. In this article, Duchacek commented one of Walker Connor's articles in which fourteen states were treated as monoethnic: West Germany, East Germany, Iceland, Ireland, North Korea, South Korea, Luxembourg, Portugal, Lesotho, Austria, Denmark, Japan, Netherlands, and Norway. Out of fourteen that were listed, Duchacek deleted five: Austria (because of Slovenian minority), Denmark (because of Schleswig, and German and Frisian groups), Japan (because of its Korean minority, the aboriginal Ainus and the outcast Eta people), the Netherlands (because of people from South Molucca Islands and other Indonesians) and Norway (because of the Lapp minority). Some years ago Ellis Katz rightly stressed that multi-ethnicity in the world is the rule, not the exception (see: Ellis Katz, „Pluralism and Federalism in the United States”, in *American and Yugoslav Views on the 1990s*, Belgrade, Center for North American Studies /in Belgrade/, 1990, p. 15). The total number of people living in their own self-contained mono-ethnic national states is less than one half of one percent of the world's population” (Duchacek, *Ibid*).

12 See: Karl Deutsch, *Nationalism and Its Alternatives*, New York, A. A. Knopf, 1969; R. Schermerhorn, *Comparative Ethnic Relation*, New York, Random House, 1970; Robert Levin and Donald Campbell, *Ethnocentrism: Theories of Conflict*, New York, John Wiley and Sons, 1972; *The Annals of the American Academy of Political and Social Sciences*, vol. 433 (1977), ed. by Martin O. Heisler devoted to the topic „The Ethnic Conflict in the World Today”; Milton J. Esman (ed.), *Ethnic Conflict in the Western World*, Ithaca, Cornell University Press, 1977; Donald L. Horowitz,

Belgrade organized by the working groups of the International Sociological Association which deal with the problems of ethnicities. International Political Science Association has for decades committees for different problems among which also for „Ethnicity and Politics” (in which Stanovčić was member).

The implosion of communism in South-Eastern Europe countries initiated a revival of ethnicities and nationalism. The new wave of religious revival stirred many problems, as well as the orientation of some of those countries towards a creation of independent „national states” and proclaimed fostering the specific differences.

Many modern states are searching for ways and forms of political and constitutional institutions and solutions which could offer a lasting foundation for resolving problems that arise due to ethnic, national, religious, linguistic and other differences. In that sense, we are not and should not be an exception. It is very important for a democratic political community that individual civil and political rights and freedoms are guaranteed.

Efforts to protect minorities after the World War I were included in the set of peace agreements and obligations imposed on the states of South-Eastern Europe. But this system did not operate well and failed. New approaches conceived during and after the World War II were based on human rights of individuals. At the end of the World War II the opinion prevailed that the best protection system of minorities is the one which considers and treats every man as a citizen and puts him before the state, regardless of their ethnic origin. Emphasis was put on individual rights, with the intention to avoid certain negative aspects which emerged between the two world wars when the protection proved to be inefficient and when certain minorities became the cause for interference of some states in the internal affairs of others.¹³ Such an approach stressing individual rights was supported both by the USA and some other Western countries, and their standpoint was accepted in 1948 by the UN General Declaration of Human Rights.

Experts argue that in regard to the international law in the sphere of minority protection, all comes down to two prohibitions: the prohibition of discrimination and the prohibition of torture of persons that belong to so-called national minorities. However, those who seek solutions for „divided societies”, i.e. for multinational, multi-confessional, or simply multiethnic societies, at the theoretical level, can find some clarification in ideas about „consociational democracy” (written about by Robert Dahl, Arendt Lijphart, Daniel Elazar, Pierre Van den Berge and others who conceived that different methods and solutions have to be studied and implemented). It seems that there are slow movements in the direction of satisfying some demands of minorities and de facto acknowledgement

Ethnic Groups in Conflict, Berkeley, University of California Press, 1985; William Pffaf, *The Wrath of Nations: Civilization and the Furies of Nationalism*, New York – London, Simon & Schuster, 1993; Gidon Gottlieb, *Nation against State: A New Approach to Ethnic Conflicts and Decline of Sovereignty*, New York, Council of Foreign Relations, 1993; Patrick Daniel Moynihan, *Pandemonium: Ethnicity in International Politics*, New York, Oxford University Press, 1993.

13 Oscar Jaszy wrote in 1945: „Minority problem can be solved only in an atmosphere in which an individual is esteemed more than the state. That is why we have only one solution for this problem, and that is the Swiss”. (Oscar Jaszy quoted by A. W. Mac Mahon (ed.), in *Federalism: Mature and Emergent*, Garden City, Doubleday, 1955, p. 25).

of certain rights of theirs which can essentially be called „collective rights” despite the fact that all relevant documents of the United Nations, and even two pacts on human rights passed in 1966 speak only of „rights of persons who belong to... minorities”.¹⁴

Since the very beginning, countries of the European Union paid great attention to human rights and freedoms, and their protection. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is a testimony of that process as well as the development of institutions and practice in that direction. In the past years the Council of Europe passed several documents which were endorsed by its member states in a binding manner.¹⁵ The obligations resulting from a series of OSCE decisions (formerly CSCE) and recommendations given on several important issues by groups of experts engaged by the Office of OSCE High Commissioner (for minorities) should be also taken into account.¹⁶ In the accession process of South-Eastern European countries to the European Union with the aim to become full members (Greece was the first member) high priority has been given to the cooperation with the Council of Europe and Western European institutions. For the purpose of a fruitful economic, commercial and political cooperation with highly developed countries, primarily with West European ones, and for the purpose of rapprochement or membership in the European Union, countries of South-Eastern Europe must adapt and harmonize a series of elements of their legal systems according to European standards. Bulgaria and Romania became members without having proper conditions. But since being close to the Black Sea, Caucasus and to several former Soviet Republics, the NATO was motivated to support them as well as several other countries which had been allies of Central Powers in WW II.

The situation of Bulgaria is different from most South-East European countries. Turkish minority in Bulgaria is numerous – about 800.000 (or more). Many people have immigrated into Turkey since.

In terms of history and impact on political life, for instance, a Bulgarian minority represent the 'Pomaks', who are ethnic Bulgarians converted to Islam during the Otto-

¹⁴ These are: „Universal Declaration of Human Rights“ (adopted by UN at Palais de Chaillot in Paris, 1948); International Pact on Civil and Political Rights (1966); International Pact of Economic, Social and Cultural Rights (1966); International Convention on the Elimination of All Forms of Racial Discrimination (1965); UNESCO Convention on the Struggle Against Discrimination in Education; Convention of International Labor Organization on Employment Policy; Declaration on the Rights of the Child; Convention Against Discrimination in Education; and a series of other documents against discrimination based on race, gender, religious or national affiliation, color of skin, etc.

¹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), [European] Framework Convention for the Protection of National Minorities (1995), European Charter for Regional or Minority Languages (1992), and then there is the European Social Charter (revised in 1996). See in: *Instruments of the Council of Europe – Human Rights*, published by Belgrade Human Rights Center, 2000.

¹⁶ The Office of OSCE Commissioner for Minorities sponsored writing and publication of several recommendations made by experts for certain fields which are usually named after the place where they were formulated: The Hague Recommendations on the Rights of National Minorities in Education (1996); Oslo Recommendations on the Rights of National Minorities to Use Their Own Languages (1998); Lund Recommendations on Effective Participation of Minorities in Public Life (1999), and Warsaw meeting in 2001 (on the support to the participation of national minorities in election processes).

man yoke and assumed the position between the Bulgarian majority with whom they share the common mother tongue and the Turkish minority whose religion they profess. The number of Pomaks, despite the fact that many of them were assimilated by the Bulgarian majority, has been growing from 20 thousands in 1878 since the foundation of the Bulgarian state to 1920 when they reached a population of 88.000 with some liberated territories, to the present day when their number is estimated to be somewhere between 200.000 to 280.000. Orthodox Macedonians, living in the Pirin region, represent another minority group in Bulgaria: in 1956 census, even though 187.789 Bulgarian citizens declared themselves as 'Macedonians', they were later on not recognized as a national minority or ethnic group. The Framework Convention for Protection of Minorities was not easily accepted by the Bulgarian government or the majority of the people. EU required from Bulgaria to accept the Framework Convention and to enact new law on minorities, i.e. on the ethnic principle, but also to include free political parties on the national/ethnic grounds, which was forbidden by Bulgarian Constitution of 1991. The Turkish minority (in Bulgaria) also required the legal status of a minority, as the result of the bad experience in 1985. In the bargaining process of Bulgaria for the EU membership, the main political parties in the country accepted and required the status of national minorities (except the extreme right and left parties). Bulgarian business block (BBB) wanted the recognition of national minorities, and the president of Bulgaria at that time (Petar Stojanov) also agreed to regulate the status of minorities.

When the European Framework Convention on Protection of Minorities was discussed in the Parliament, a majority of its members have supported the ratification except the Socialist party, VMRO and some small groups. Representatives of Pomaks have also supported the ratification. With the vote for a ratification of the Convention, another Declaration was assumed, namely that the Convention on Minorities can not be used to demand the separatism. The term „Minority” was for the first time used in Preamble of this Bulgarian legal act. The Declaration stated that the state will engage to implement the policy of protection of human rights and toleration of persons belonging to minorities. The question was asked whether the guarantees are given against Macedonian minority pretensions. The leader of the newly registered organization „Ilinden” – Pirin stated that the organization was limited in some activities, but he said that he would take efforts for recognition of Macedonian minority and everything what is based on the law.

One of the leaders of unregistered Turkish democratic party declared that he would make efforts to turn Bulgaria into a multinational state and that minorities would be granted administrative and cultural autonomy. „We wish to have our schools, courts and theaters, and we would not separate from our homeland”.

European agencies and organizations wish to achieve political stability which implies, among other things, a solution of the minorities' status on legal grounds. These requirements are not too rigid nor do they impose provisions that would be too demanding. A large part of what they require has been proclaimed in some countries, including Serbia, but it has not been adhered nor correctly codified, nor has its implementation been controlled. And minorities demanded that the rights proclaimed by constitutional provisions on rights and freedoms and acknowledgement of international standards should be codified by law increasing thus their certainty and legal security. Some coun-

tries of South-Eastern Europe have still not passed laws on minorities, and some used to prohibit political parties to be founded on ethnic grounds. It remains to be seen what the policy of the Council of Europe will pursue in such cases.

The situation in the Republic of Serbia has been aggravated and complicated by the bad policy during the nineties, by conflicts that took place on the grounds of former Yugoslavia and by a whole series of detrimental and criminal acts against minorities. After the democratic changes in 2000, the authorities in Serbia made a turn in favor of a different, democratic policy and opened new pages on many crucial issues, among other in respect to the treatment and protection of minorities. Many principled issues and expectations of minorities were considered at the conference titled „Development of Multicultural and Multiethnic Society” organized on February 2nd and 3rd, 2001 by the new established Ministry of National and Ethnic Communities. This conference was opened by the President of FRY and it was attended by the representatives of minorities and several Federal and Republican ministries, civil servants and experts, and representatives of the European institutions.

The main axiom of this new political orientation regarding laws and other legal regulations to provide the integration of minorities into the society, its political, economic, cultural and other forms and institutions, but without assimilation or ghettoization of minorities, without conflicts and confrontations, but by the way of harmonizing relations and cooperation of all minorities and the majority on principles of the rule of law and democratic commitments of the society and the authorities. It is true, though, that elaboration of laws and other regulations, and even their coming into force is just a single gesture in the good direction. It is also known, as it has happened so many times before in the past, the law can remain a „dead letter”, if it is not consistently implemented and if the necessary political, institutional, economic, social, educational and cultural and other conditions are lacking.

3. Constitutional Democracy and Legal Framework for Regulating The Status of Minorities

There are preconditions for resolving a series of problems and to achieve proper institutionalization of principles, values and „consociate” relations within societies which are faced with numerous problems that affect relations among groups or adhere to demands of these groups. Their demands could be classified in groups by their character: (1) **problems of survival and protection of all identity elements** of minorities or **ethnic groups (language, religion, tradition, history, etc.)**; (2) **rule of law**; (3) **guarantees of human rights**; (4) **minimum of collective rights** of ethnic groups; (5) a reasonable, **moderate, liberal constitutional system** and corresponding institutional arrangements; (6) **participation of ethnic groups in the political power (power sharing in legislative, executive and judiciary) relatively proportionally**); (7) **participation in local and regional authorities**; (8) **liberal political culture of tolerance, recognition of diversities, of adjustment, compromise, dialogue** and civic virtues; (9) a **developed civil society** in which the majority group lives along with all minority groups. All that can be achieved only by investing systematic efforts in this direction

over a longer period of time with simultaneous pursuance of a **wise policy guided by valid principles**; (10) **status of such groups in the control of natural resources and distribution of social wealth and „national” income**. The last issue is especially controversial since it contradicts the idea of freedom of entrepreneurship and market economy, but it is also significant for some groups, such as the ones on whose territory there is oil or other ore.

These mentioned principles represent general conditions which, if achieved, can greatly contribute to and improve the status of minorities, but these improvements as well as meeting halfway certain realistic demands of minorities, imply also other changes in the political and legal system.

Political processes and the character and course of decision-making, political institutions and constitutional provisions, as well as even some traditional principles and institutions of democracy are affected by interethnic relations and problems. Cases differ, but problems arise in both highly developed countries and the developing countries. Belgium and Spain have for decades been taken as an example of unitary national states, but lately they have introduced some forms of confederation (Belgium) and autonomy (Spain). Even in unitary and centralistic organized France, movements appear with aspirations that are headed towards federalization (and for Corsican extremists not even such a solution would be satisfactory). Situations like the ones that have arisen in Sri Lanka, Cyprus, Ethiopia, India, Nigeria, Zimbabwe, Congo, Sudan, South Africa, former Yugoslavia, nowadays in Serbia and Montenegro, but also in other republics of former Yugoslavia, Rwanda, Burundi, Russian Federation, China, successor states of the Soviet Union, Romania, Slovakia and some other countries, show that consociation in multicultural societies is a very widespread problem.¹⁷

Great difficulties in implementing the above mentioned conceptions and fundamental values and principles is due to the fact that there are established differences in the economic position and in the infrastructure of the educational network and the level of education, but also in the material and human resources of some minorities. Maybe even a greater obstacle for the progress of consociation represents the **widespread corruption, crime and anomy** which have been for quite some time in full swing in a number of Eastern European and South-Eastern European countries, since the end of the 20th century.

The generally **difficult economic and social situation**, along with the **high unemployment** rate and a large number of deprived citizens in this entire region, combined with **a large number of refugees** in Serbia and the situation in Southern Serbia, Kosovo and Metohija, have strained the relations between Serbia and Montenegro, and the situation in their surroundings, especially in Macedonia, but also in Bosnia and Herzegovina, and have slowed down the democratic processes, making political and economic stabilization in South-Eastern Europe not easy. The region is susceptible to further fragmentation, because it might threaten peace and stability.

¹⁷ Term consociation denotes joint life of the population consisting of different ethnic affiliation. Notions about consociation date far back, but have revived in references in the field of political science and sociology in search for solutions which would **replace models of domination by models of partnership**. Investigations of interethnic relations and consociational democracy (prominent authors are R. Dahl, Carl Friedrich, P. Van den Berghe, A. Lijphart, I. Duchacek, D. Elazar and others). More attention has still been devoted to these ideas in literature than in political and constitutional regulation of the existing problems and conflicts.

The overemphasized role of the state in relation to the individual and many advantages or privileges to the state make many groups interested in establishing a state of their own. The rights of ethnic groups, or the rights of minorities, i.e. minority rights, nowadays must not be denied, underestimated or disregarded, but they must be considered as supplementary to individual rights. Certain balance must be sought between individual and collective rights. However, collective rights can be achieved and exercised to the detriment of collective or individual rights of others, and this should be avoided. This is happening since the nationalistic governments established in the process of claiming collective rights can become very oppressive and authoritarian concerning the rights of others as soon as they win their rights and take over the power, especially when the latter belong to another ethnic group.

Political participation of ethnic groups in constituting and exercising power in a joint state implies for introducing an adequate election system¹⁸, a representative system which would give space to the representatives of groups, further composition and jurisdiction of different agencies which make decisions significant for the life of groups, decision-making rules (rules of procedure), vertical distribution of power (jurisdiction) to different levels and units (horizontal division of power to major branches is self-understood if authoritarian concentration of power and autocracy of individuals or oligarchic groups is to be avoided).

Democracy is often defined as the „rule of majority”, and one of the principles of liberal democracy is: **one person, one vote**. But **the implementation of the rule of majority may be unacceptable not only for minorities, but sometimes for the majority** as well, which may find themselves up against a coalition of minor groups which may outvote them. **In some other situations a truly small ethnic minority may be politically overrepresented and, although economically insignificant**, it may have the right to veto decisions of the majority.

Taking into account federal and consociate arrangements, but also **regionalization, cantonalization** or high degree of decentralization, depending on the type of representation, it may require a system which would be based upon **the principle of equal value of votes** (e.g. in the State Community of Serbia and Montenegro, for the election of one deputy in the joint assembly it was necessary to win around 65 thousand votes in Serbia, while in Montenegro a seat in the assembly required 12.500 votes).

Different options have been considered (or their implementation attempted) in order to resolve interethnic relation problems based on the principles of the rule of law and certain constitutional and institutional solutions which **offer individual and some minimum of collective rights** to ethnic groups. **These options** usually have in mind the following: **different kinds and degrees of autonomy, decentralization and delegation of power to lower instances, self-administration in local affairs** where the minority forms a significant percentage of the population of the local community, cultural autonomy (discussed by Austrian Marxists a century ago), **local self-government for minorities at a regional level (home rule)**, broad **cantonal and regional autonomy** (Switzerland and Spain are taken as good examples, and lately Southern Tyrol/Alto Adige in Italy). Some forms of eth-

¹⁸ A theoretical model of an election system for multinational societies is found in: David Chapman, *Can Civil Wars be Avoided?* London: The Institute for Social Inventions, 1991; especially the part „Electoral and Constitutional Models for Ethnically Divided Countries“.

nic federalism have been until recently considered as almost ideal, but the experience with federalism in former communist countries has discredited them, especially when exercised within an authoritarian framework in a system of political monopoly.

Consociation implies ethnic pluralism and what is required is a certain constitutional and institutional framework for such a co-existence. It was already mentioned that **this form modifies the rule of majority or majority democracy**, but there are some authors that argue in favor of „compound majorities” and „non-territorial federalism” or „**functional federalism**”.¹⁹ We treat consociation on the one hand **as a social and political fact**, and on the other **as an institutional system of partnership in power**. There are scholars who rightfully point out that even „**consociation is a specific form of domination of an elite** based on ethnic proportionality” (Pierre van den Berghe).

Some characteristics of a **political system argued by Lijphart as elements of majority democracy** should be **modified or avoided in a consociation**. Lijphart primarily has in mind **concentration of power in a single party or cabinet** consisting only of **representatives of the majority**, and this is even more pronounced **when power is concentrated in the hands of a single person**, but **history teaches us that such relations can also exist in regimes which have nothing in common with communism or socialism, or with authoritarianism and classical dictatorships**. Lijphart also believes that it is **unfavorable for the consociation if the executive power is dominant over the legislative power** (which was the case of communist regimes and it seems in all the regimes that emerged from them); **if there is a single-chamber assembly** or if there are two chambers but one of them is weak; **if a two-party system is established instead of a true multi-party system** in which parties would not be founded on ethnic grounds; if a system has **mono-dimensional parties** (meaning that political parties differ only according to ethnic grounds within which they operate or according to some other platform issue, but when they differ only in a single issue, because such mono-dimensional division always intensifies confrontations); **majority election system** (Lijphart believes that **proportional election system is better for a consociation**); **unitarian and centralist government and absence of either territorial or functional foundations** to prevent the government from interfering in everything; **unwritten constitution and sovereignty of parliament** (characteristics of the British system are not good for consociation) i.e. the situation **when the power of the majority in a parliament is not limited** by any additional requirements for passing a law (such additional requirements like a constitution are a *condition sine qua non* of moderate democracies, but requirements provided by the constitution that some laws may be **passed by qualified majority**, or that there is judicial control of constitutionality of laws); solely representational democracy in which the rule of parliamentary majority is **not limited by any elements of direct democracy** such as a referendum (like in Switzerland).²⁰

19 D. Elazar, „Federalism and Consociational Regimes”, *Publius*, vol. 15, no. 2, 1985. This volume of *Publius* is devoted to the topic: „Federalism and Consociationalism: A Symposium”. footnote #6

20 footnote #8Lijphart, „Non-Majoritarian Democracy”, op cit. In his paper *Democracy in Plural Societies*, Lijphart lays special emphasis on the effects of different combinations with the so-called **big coalition, mutual veto, proportionality, autonomy of parts, federalism**, but deals also with the **problems of secession and separation** when other ways fail. Among most **favorable conditions for consociation** he discusses the **balance of power, multiparty system and party-based representational system, loyalty** which exceeds the limits of a single group, **tradition of elites to adjust**. But,

Lijphart refers to Robert Dahl who, in reflections on the problems of democracy, suggests that conflicts can be resolved in a political process. Among most convenient instruments for resolving conflicts Dahl lists mutual veto, autonomy on territorial or non-territorial grounds and proportional representation.²¹

Contrary to the above mentioned characteristics of majority democracy, Lijphart outlines elements of **non-majority, consociational democracy: participation of several groups** in executive power instead of it being concentrated in the hands of a single party; government composed of **representatives of two or more parties; balanced relations between executive and legislative power; true two-chamber parliament; multiparty system** as an antithesis to two-party system which is **not suitable for consociation; proportional representation instead of majority** (to this principle one could add the **principle of positive discrimination** in favor of minor groups); decentralization; a **written constitution; the right of the minority to veto** (to specify: **on vital issues of top significance and interest for the survival** of minorities). There should also be an **ombudsman** who would monitor of human rights, but also a special ombudsman within such an institution who would be in charge of **monitoring if the rights of minorities are retained**, and take measures at request or according to their own decision when rights of some minority members are violated.²² An interesting proposal was given by Gidon Gottlieb in his paper *Nation against State*.²³ It is an **attempt to mitigate ethnic conflicts by reducing the significance of absolute state sovereignty** and by proposing that not just the state, but ethnic communities as well, be present on the international scene. In other words, he proposes that instead of a single form of entity in the world proportions, this being the states, **recognition of a different form of entity – ethnic nations – be introduced and its presence institutionally enabled**.

In order to establish **the rule of law, democracy, more freedom and human rights guarantees**, there are **elements of consociation** and other important elements which must be kept in mind when speaking about the so-called transition, further **political power must be limited**, elected and replaceable in an institutional manner, i.e. by **free and secret elections**, and **social power must be dispersed**. **Political power** must be

he also sees certain **disadvantages of consociational democracy**. In the analysis of the experience and causes of different outcomes of **disintegration of the Yugoslav, Soviet and Czecho-Slovakian federalism**, Valerie Bunce stresses that federal structure was the most important cause that had led to dissolution, because **single-party federalism in socialist context created proto-nations and proto-states**. **Disintegration** took place „because the political administrative structure of these federal states was based on units that were determined by ethnic territorial categories“ (Valerie Bunce, „The Yugoslav Experience in Comparative Perspective“, in Melissa Bokovoy et al. (eds.), *State-Society Relations in Yugoslavia 1945–1992*, New York, St. Martin-s Press, 1997, p. 354.); see in Valerie Bunce, *Subversive Institutions: The Design and the Destruction of Socialism and the State*, Cambridge, Cambridge University Press, 1999). Much earlier, while writing on the principles and institutions of joint life and on actions for resolution of conflicts, Eric Nordlinger stated as an important condition a stable ruling coalition, proportionality and mutual veto, but explicitly excluded federalism as a means for resolving ethnic conflicts (Eric A. Nordlinger, *Conflict Regulation in Divided Societies*, Cambridge, Center for International Affairs, Harvard University, 1972).

21 footnote #9 Robert A. Dahl, *Political Opposition in Western Democracies*, New Haven, Yale University Press, 1966, pp. 357–359.

22 More on institutions that can contribute to consociations see in author's published and above quoted contributions: See footnote 7.

23 Gidon Gottlieb, *Nation against State*, A New Approach to Ethnic Conflicts and the Decline of Sovereignty, New York, Council on Foreign Relations, 1993.

divided not only horizontally (into legislative, executive and judicial; with their mutual control and balance, and other organizational and institutional restrictions), but **also vertically (by decentralization, territorial or regional autonomy, possibly federalism)**. Also different **social, political and economic factors (such as political parties, professional associations, trade unions, church communities, universities, research institutes, the press, enterprises, corporations, foundations, etc.)** must be **autonomous and have according to some basic laws (constitution)** the possibility to have an impact on political decisions. Such a society would have a political structure which could rightfully be called a **constitutional polyarchy**.

In regard to the implementation of some ideas, problems of minorities clearly **cannot be fully resolved by a law on minorities alone**, as they are an important **part of constitutional subject matter**, and the subject matter of a series of other laws. Some solutions that could potentially be offered depend on the **future territorial and political division** (into territorial and political communities and polling districts), but also on election laws. Many solutions also depend on the nature of local self-administration which would be introduced, but also on laws on education, religious communities, information, and law on the **use of minority languages, court and administrative procedures**. In any case, **decentralization and strengthening of local and regional self-administration** would *de facto* increase the opportunities offered to minorities. **Institutions** such as the **ombudsman, deputy interpellation, parliamentary committees, police and army control by parliamentary working groups, new election laws and territory division** into polling districts, **laws on education, official language and minority languages, the media and information, state symbols** and many other issues which are not covered by these laws, would indeed reflect on the status and life of minorities. In their elaboration the existing multiculturalism and multiethnic structure of a society must be taken into account.

The policy of securing the rights and protection of minorities must be guided by principled **commitment that multiculturalism and traditional diversity, which result from different languages, material and spiritual culture, origin, customs, religion, history and tradition of citizens, represent social values which should be preserved and advanced**; that **harmonized coexistence and cooperation of national minorities and majority people is a factor of democracy, progress, internal and international security and stability**; that **within the concept of the rule of law**, with respect and **preservation of territorial integrity and sovereignty of a state**, it is necessary to provide special protection of persons who belong **to national minorities in order to enable them, without any discrimination** based on their ethnic origin, to enjoy the same rights and freedoms warranted to all citizens; that it is necessary **to develop mutual respect and understanding, tolerance, dialogue, cooperation and solidarity** among different groups of citizens.

As **concretization of principled political commitments and fundamental principles**, there are **rights and freedoms of national minorities to preserve their uniqueness**, which includes a whole series of **rights and possibilities starting from the choice and use of personal names; freedom to use mother tongue, possibility to use officially the languages of national minorities** if the percentage of persons belonging to a national minority out of the total number of inhabitants on a territory reaches the one determined by law; **the right to use national symbols along with simultaneous use of symbols of the state**;

the right to education on mother tongue in preschool, elementary and secondary schools when certain conditions are met concerning the number of students and the obligation of the state to try to create conditions for exercising this right in accordance with material possibilities, and for **opening departments or colleges at universities** for teaching staff education for that purpose; the right to a determined share of subjects that refer to history, culture and tradition of the national minority in school curricula; participation of national minority councils and/or other agencies in determining such curricula; **the right to private educational institutions** that are **self-financed**; financing of education in languages of national minorities; the right of persons belonging to national minorities to **the media** or programs and **cultural institutions** in their language which will be determined by special laws and depending on conditions and the number of persons who belong to a respective minority, and on material possibilities of the state.

It should be mentioned that the size of a minority generally does not affect its equality or the nature of their rights. This means **that all groups have equal rights, and not that larger groups have greater rights**. But, it is only **natural that larger groups will have more schools**, teachers, and probably secondary schools or colleges which will be impossible to provide for some minorities simply because of the small number of persons belonging to that minority. The so-called **effective participation of ethnic minorities**, directly or through elected representatives, about which a number of ideas and proposals are stated in recommendations from Lund, especially when decisions are made concerning minority related questions, must be ensured through relevant institutions. Such an institution can be the **council for minorities** consisting of representatives of minorities and other elected members headed by the president of the state or the prime minister, which would meet occasionally (or at proposal of one third of its members), to discuss the status of minorities, implementation of policy on minorities, and initiate necessary decisions and measures. It is very important for the status of minorities and their integration in a society whether they have **the possibility to have their elected representatives in the parliament**.

Stability of a political system and democratically elected government are certainly of general public interest and thus also of minorities. In unstable circumstances, persons belonging to minorities are often among the first to experience violation of some rights and other negative effects of legal and political instability. **Violation of the rights and freedoms of minorities** must be treated as contrary to law and liable to punishment. But in practice this has not been the case so far and even what has explicitly been requested has been disrespected, least of all what could, with some good will and by implementation of international legal provisions in good faith, easily be interpreted and implemented **for the purpose of protection of fundamental rights of minorities**. Although **written constitutions include a number of good ideas** and provisions on international standards, there was also too much violation of the rights and freedoms of citizens, and persons who belonged to national minorities or communities.

It is necessary to **develop democratic institutions and procedures** for the entire society, or state. **Only in such a broader framework can the status of minorities and persons who belong to them be resolved and improved**. In order to achieve this, it is **necessary to pass adequate liberal and democratic constitutions** and **establish constitutionality as part of the rule of law**. **Constitutionalization should ensure the rights**

and freedoms of all citizens (not just on paper), **establish relations between fundamental structures and institutions of power**, their **election (constituting) and regulation** of the manner in which power is executed, meaning the elements of the election system, **introduce institutions which would provide the independence of the judiciary**, true „**division**” of power, i.e. a **system of control and balance between branches of power**, and hence **territorial and political organization** with reinforced local and new regional administration and self-administration, the part of the political and legal system whose purpose is to enable articulation of interests of mass strata, their organization through political parties and other systems, but it is **important that people’s will is expressed in the election of people’s representatives whose autonomy in representing people and voting in assemblies should be ensured (free mandates)**, but also the **system of political responsibility to voters** and the public. Such a **constitution should also include provisions that will offer protection to national minorities** (ethnic communities) to enjoy without any discrimination all civil rights and freedoms provided by the constitution, along with a system of protection guaranteed by international law and European conventions that the state has ratified. This, in fact, means that **constitutionalization and institutionalization of power at the state level is necessary**. This implies determination of **relations between main structures and institutions of power**, their election (constitution) and regulation of the manner in which power is executed, and then guarantees of rights and freedoms of citizens (not just on paper; with **no discrimination based on religious or national affiliation, origin or language**). That is why it is necessary to reform those parts which are expected to provide what has been identified as the goal that **leads to the rule of law** and refers to **certain fundamental institutions** (the relation of elements of parliamentarism and presidentialism with elimination of elements of a super-presidential system, different election principles and laws, **laws which should provide freedom of information, opinion and expression**, i.e. freedom of the press, better guarantees for the observation of the *habeas corpus* principle).

Therefore, resolution of minority problems **in the spirit of certain democratic values** must be considered in a broader context of ideas, principles and institutions such as the rule of law, human rights and freedoms, constitutionality, „constitutionalization”, political institutionalization, democracy, regulation of distribution of power in a society, the „division of power”. A few categories of political and legal theory have been listed that are as goals often declared by reform platforms and constitutions. They are, indeed, constitutional categories and social objectives or ideals. But, the realization of these ideals is evading us, similar as in the anecdote in the former regime when ideals were said to be on the horizon, and this „horizon line” moved further away whenever we tried to approach it. Some categories mentioned above are indeed the so-called asymptotic ideals, objectives that cannot be reached, when everything would become ideal („the end of history”) and remain like that forever. It is known that institutions are constantly built up and developed and that they should be fostered and improved, so there is no country in which everything has been accomplished as ideally imagined.

Multiculturalism, Interculturalism and Transculturalism in Southeastern Europe: Legacy and Challenges¹

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The chancellor Angela Merkel was right when pronouncing her in the meantime already famous sentence which frightened the liberal-leftist Europe: *Multikulturalismus ist tot*². In fact she spoke about the defeat of multiculturalism of German (and not only German) *Sozialstaat*³. Here she was also right, however, with a large caution, i.e. that this was not only about the defeat of that distinctive multiculturalism, but also about the defeat of the *Sozialstaat* as such, the *Sozialpartnerschaft*⁴, etc., emerging in the epoch of the German „economic miracle“ and surviving, metaphorically, until 1989, that is, until the year of their triumph in Europe and worldwide.

Liberal democracies won the „Cold War“ in 1989, among other reasons, also because they supported a world without „iron curtains“, i.e. a world of universal implementation of fundamental human rights and freedoms. However, the war dissolution of the SFR Yugoslavia in 1991/1992 which chronologically coincided with the process of the constitution of the European Union, faced all Europeans – regardless their citizenship and nationality – with the cognition that Europe should in future have as well its centre and its (semi)peripheries, that the wellbeing and happiness of ones shall involve a higher or lower poverty or even unhappiness of the others. During the course of time, the „iron curtains“ have without a notice been transformed into multifunctional „invisible curtains“ which have *lege artis* become an increasingly demanding legal heritage of the European Union (*acquis communautaire*). Paradoxically they were and still are the more demanding, the more its membership has been enlarged, individually or jointly, by less and less developed countries of the continental Central-East or South- East Europe.

1 The paper was written on the basis of a presentation entitled ‘Multiculturalism, Interculturalism and Transculturalism in South-Eastern Europe: Legacy and Challenges’ at the international conference *The Challenges of Multiculturalism: the South-Eastern European Perspectives in the European Discourse*, held at the Faculty of Political Sciences of the University of Belgrade from March 22 to 24, 2012

2 *Multiculturalism is dead.*

3 *Social state*

4 *Social partnership*

From one case to another, the accession negotiations made a perception more and more unquestionable – that Europe, above all, consists of those who put conditions and those who have to meet them. It seemed that they had been divided by the „Schengen line“; however, the developments of the recent years are showing that this is only partially true. Within the „Schengen line“, Europe is obviously stratifying to a „Core Europe“ (*Kerneuropa*) and its internal (semi)peripheries, either on the Mediterranean or on the Atlantic edges of the continent. Beside it, in the entire period, from 1991 until today, each of the European countries, either member of the European Union or not, faced the internal stratifications taking place – decreasing number of ever richer citizens and increasing number of ever poorer citizens. The latter majority is regularly composed of large majorities of ethno-confessional minorities of various national origins. The images of „hell“ at the peripheral Paris or London streets as well as the human hell on board of boats full of illegal immigrants in the Mediterranean Sea are the testimonies of the new borders within or beyond „welfare states“ in the neo-liberal transformation⁵. In other words, European cultural strategies, like multiculturalism, are impossible independently of the European developmental strategies.

This is not about nostalgia for any of the past times! This is not about disbelieving in the epochal potentials of liberal democracy or „welfare state“. The least it is about the doubting the year 1989, the year that „had“ to happen. It is about a question which is today universally known in its English form: *What went wrong?* In this paper the focus is on European cultural space today. It is about questioning current notions of culture, as well as diverse implications of distinctive notions.⁶

Today's discourse on multiculturalism and interculturalism is often about two essentially different notions of culture. On one hand, it is possible to notice the derivations founded in the European Enlightenment tradition, with its immanent universal, more precisely, world notion of culture being actually historically realized as a multitude of national cultures. The European Romanticism – crucial for the constitution of modern European national cultures – denied the dichotomous Enlightenment notion of world and national culture, however, without substituting it with theoretically sustainable models that would mean the negation thereof.⁷ The „aporias“ that emerged on the basis thereon for already three centuries have been generating debates about what culture is and what culture is not. In such tradition, it was practically impossible to frame the concepts of „multiculturalism“ and „interculturalism“.

The radical questioning of modern European notions of culture was of American provenance. Among several names of different disciplinary provenances I would single

5 While today it is legitimate to talk about the transition to liberal democracy and market economy, in case of societies „beyond“ the „iron curtain“, regardless of what is understood under them, it is much more disputable how to define neoliberal transformation processes in the societies of liberal democracy and market economy. Usually, the globalization aspect is emphasized in relation thereto. I think that it is of an „epidermal“ nature, but this is not the topic of this paper.

6 On this I wrote in details in the article: „Interkulturalizam u nastavi povijesti: pristupi i koncepti“, *Povijest u nastavi*, year II, No. 4, Zagreb, autumn 2004, pp. 283-304. It is an introductory paper in the thematic bloc „Interkulturalizam u nastavi povijesti“ (eng. „Interculturalism in the history education: approach and concepts“) (pp. 279-372).

7 Johann Wolfgang von Goethe (1749-1832), an author of epochal potentials, incarnates, in fact, the Enlightenment-Romanticist „aporias“ in relation to notions of culture

out the name of Ruth Benedict (1887–1948), who practically limitless pluralized the world of „cultures“, claiming that the culture of each human community should be understood by taking into consideration its internal principles, which are relatively independent of external impacts.⁸ Many notions of „multiculturalism“ could be based on her intellectual foundations. For decades, they had remained in the space of cultural and/or social anthropology. With movements for civil equality of Afro-Americans and with an increasing interest in multitude of American ‘ethnicities’ in 1960s and 1970s, they gradually emerged in the political sense as notions which connected the individual and group rights to cultural diversity to the fundamental liberal democratic issues, i.e. the issues which in their roots are inseparable from the Enlightenment tradition. There are many classifications of such theoretical directions, but usually Will Kymlicka is the name outstanding from the American side of the Atlantic and Jürgen Habermas the one from the European side.⁹ At this point, it is useless to enter into the evaluations already done on many occasions, but it is necessary to warn that no notion of multiculturalism of liberal democratic provenance can remain free of serious objections, as universal legal principles, for example, policies of recognition of diversities (Habermas) are in some points always incompatible with the implications of prescriptive cultural relativism.¹⁰

Interculturalism is a European product *par excellence*, born in the European integration processes, and it would not be possible – which is often overlooked – if the 1980s and 1990s had not raised the question of comprehension of European culture which, among others, Edgar Morin so suggestively opened in a form of dialogue in his book *Penser l'Europe*.¹¹ In other words, no matter how much the European national cultures, in an inclusive interpretation of the notion, differ among themselves, there has always been, synchronically and diachronically, enough of what makes them mutually understandable, European.¹² On the other hand, the more civil attributes have been assigned to the notion of Europe in the political and legal sense, from „civil society“ to „Europe of citizens“, the more the understandings of cultural policies have become civilly individualized. This enabled – without abandoning the established Enlightenment-Romanticist concept of „national culture“ – the legitimization of the individual right to plural cultural affiliations („identities“).

In that sense, interculturalism as a concept in the majority of European legal documents is not nearly that innovative as it might be thought, and even less in practice.

⁸ Ibid., p. 287

⁹ See: Jürgen Habermas, „Struggles for Recognition in the Democratic Constitutional State“, in: Amy Gutmann (ed.), *Multiculturalism: Examining Politics of Recognition*, Princeton University Press, Princeton 1994, pp. 107–148; Same author, *The Inclusion of the Other*, M. I. T. Press, Cambridge, Mass., 1998; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1997

¹⁰ See: Jadranka Čačić-Kumpes, „Interkulturalizam u obrazovanju: koncepti i razvojne mogućnosti“, *Povijest u nastavi*, year II, No. 4, Zagreb, autumn 2004, pp. 305–321

¹¹ Edgar Morin, *Penser l'Europe*, Gallimard, Paris, 1987

¹² In parallel with Morin's book, key texts on the concept of Middle Europe emerged, such is Kundera's, which in difference from the inclusiveness of Morin's understanding of European culture are exclusive in their „splitting“ of Europe to its two halves, essentially „Latin“ and „Greek“. See: Drago Rokсандić, „L'Europe centrale existe-t-elle encore? Perspectives pour une politique culturelle transnationale“, *Revue d'Allemagne et des pays de langue allemande*, vol. 44, No. 2, avril – juin 2012, pp. 171–188

However, its today's importance has not been decreased thereby. On the contrary, having in mind that European nations are historically irreversible phenomena, further, that nations do not disappear nor will disappear in future in new globalization transformations, the question of how to define individual human and civil rights as cultural rights in national, international and transnational space is indeed essential.

However, the fundamental problem of an approach like Morin's is that they overlook that European culture is in any of its epochal points of division dialogically constituted not only within itself, but also in the relation towards the world. Since the 15/16th century onwards it has been entirely incomprehensible beyond its world horizons.¹³ In other words, as a subject of cultural reflection the modern European culture is possible only as a global phenomenon.¹⁴ Post-colonial studies developed the concepts of hybrid, creolized, *métissée* and numerous other cultural heterogeneities. These are very productive concepts in the intellectual sense, but their weakness from the European perspective is that they are „one-way“, focused on non-European cultures.¹⁵

From South-Eastern European perspective, the problem is much more complex as this is the only European region where until contemporary times, throughout the long historical processes, all European diversities have become autochthonous. All complexities of Europe are nowhere so obvious as it is the case in South-Eastern Europe. Everything is there. Southeast Europe is the only area where Slavic nations settled down on the Mediterranean; the only region where the last waves of migrations of Asian peoples transformed to European nations (e.g.: Bulgarians and Hungarians); that is the only space where the late Romanization persisted in the territories which had been within the borders of the Roman Empire for the shortest period of time (the case of Romania); that is the only region with continual existence of the oldest European communities, conditionally speaking, such as Albanians and Greeks, no matter how their ethnogenesis is interpreted; that is the only territory of much more discontinuity than continuity, regardless of the fact that today every existing nation, such as the Croatian or Serbian, can project themselves in the historical memory in millennium spans; the only area with deeply enrooted dominant religious traditions of the modern European world, the Western Christianity and the Eastern Christianity, and the only area where Islam is autochthonous, the only area preserving some of the most important legacies of the Jewish civilization in Europe, e.g. Thessaloniki, Dubrovnik, or Sarajevo. And finally, it is definitely the only place where there is no European power which at some point didn't try to compete.¹⁶ Therefore, from that aspect, the European failure to integrate this region

13 The fact is that the „Europeanization“ of the world have started since that time. No matter how much the nature of that process was hegemonic, it has never been one-way.

14 Of course, any other world regional culture – like Indian or Chinese – is thereby not in principal less global; but in modern epoch, all until the late 20th century, they were not hegemonic. Recent approaches to global historical research which insist on communication and exchange aspects of world history in the same time enrich the knowledge of intercultural and transcultural phenomena.

15 It is pointless to emphasize that the primary task of European judges is to „reverse“ the perspectives of the mentioned hybrid, creolized, *métissé* and many other cultural heterogeneities.

16 However, every involvement of European powers on European South-East is always realized in clientelistic instrumentalization. See: Drago Roksandić, „Shifting Boundaries, Clientalism and Balkan Identities“, in: Jacques Revel – Giovanni Levi (ed.), *Political Uses of the Past. The Recent Mediterranean Experience*, Frank Cass, London – Portland, 2002, pp. 43–48.

and prevent the war in 1991, when it was more than obvious to happen, is certainly a European tragedy as well, something that should still be thought about.¹⁷

The genuine multiculturalism of South-Eastern Europe is obviously unquestionable. Much more complex is the issue of multiculturalism. It is hard to say that in the 20th century it has existed anywhere as a rationally articulated cultural policy, which does not mean that there is no experience of multiculturalism at all. We do not know enough about it, but it is certain that it has existed and still exists in the public and/or private sphere, I repeat, independently of its past or actual official status in the cultural policy.

The experience of interculturalism is much more controversial. *Avant la lettre*, it has always existed everywhere, no matter what, when and where we chose to define as intercultural. The entire South-Eastern Europe has always been an „intercultural laboratory“. The paradox and tragedy of South-Eastern Europe is that in the 19th and 20th century, practically until the most recent times, it has never and nowhere been an official policy. Individual, human right to diversity and the right to multiple identities – the latter one with much more difficulties – are nowhere much desirable even today and have enjoy even less a conscious support. In that sense, a very instructive experience is that of the SFR Yugoslavia, which was constantly legitimizing itself both before its own and the world public as a country of „two alphabets, three religions, etc.“

On the other hand, interculturalism – in its essential meaning, i.e. independently of the concept itself – has never been a fundamental principle of cultural policy in Yugoslavia. „Horizontal“, i.e. intercultural communication in principle was legitimate exclusively with Yugoslav ideological mediation. In other words, exhausting and senseless debates whether Ivo Andrić was a Serbian, Croatian or Bosnian writer, or Vladan Desnica a Croatian or Serbian writer etc. contaminated the Yugoslav cultural space far before the dissolution of Yugoslavia.¹⁸ Factual interculturalism existed as a conscious choice of intellectual minorities, i.e. as a demographically respectable phenomenon of people to whom it was an existential, working and often creative challenge to cross the borders of their own ethno-confessional, more or less secularized patterns. In the moment when ideologically projected Yugoslavism was historically „exhausted“, the survival of Yugoslavia became impossible in any political articulation whatsoever, as it was not culturally legitimate. In other words, the right to cultural diversity, in terms of socialist self-management, was not confirmed as a democratic right to pluralism of cultural models and practices, thus challenging the non-historical, rigidly defined principles of „brotherhood and unity“ which ultimately were an instrument of a mono-party hegemony. Thus, one essentially transcultural project such as Yugoslavism has become its own negation.

That is also a precious finding for European contemporary imperatives in relation to the rights to cultural diversities, etc., understood in a prescriptive, „essentialist“ sense. Such models of cultural policy enable only a generation of established cultural

¹⁷ See: Drago Roksanđić, „L'Europe et ses frontières multiples dans le Sud-Est: problème et approches“ / Europa i njene višestruke jugoistočne granice: problemi i pristupi“, in: *La perception de l'Europe / Percepcija Europe*, Literis, Zagreb 2009., pp. 52–63, 156–166

¹⁸ Drago Roksanđić, „O Vladanu Desnici I „Desničinih susretima“, in: Drago Roksanđić, Ivana Cvijović Javorina (ed.), *Desničini susreti 2005.-2008.*, Centar za komparativnohistorijske i interkulturalne studije Filozofskog fakulteta Sveučilišta u Zagrebu – Plejada, Zagreb, 2010., pp. 255–306

and/or political monopolies. Interculturalism is most creative when it is transnational, i.e. when it critically questions the fundamental cultural values in universal humanistic sphere. No matter how much it could seem elitist, it is a principle which is ultimately legitimate in everyday life of every human in the world, so much globalized in the sense of communication that no exclusively defined border is sustainable.¹⁹ Exactly from that point of view the South-Eastern Europe is the space of the most extensive cultural chances, but also of potentially largest human failures, which are there not possible without mass tragedies and long-lasting traumas.

After all, the key is not in the regional culture. The key is in an exit from (semi)peripheral civilizational marginalization and – human misery. This brings us back to the beginning of this paper. I'm afraid that today's European Union, as an „engine“ of the future Europe, is not sufficiently aware of this or, perhaps, even refuses to become aware of it.

However, the process cannot stop here, due to a simple reason that the future of South-Eastern Europe lies, nevertheless and above all, in the responsibility of people to whom it represents „homeland“, from which they cannot run away as they cannot run away from their „neighbors“ within its borders, even when moving to apparently farthest overseas countries.

So, *what went wrong*? The year 1989 shouldn't have been the year of victory in the „Cold War“ and even less, the year of triumph of one part of Europe over another. It should have primarily been the year of a new European beginning, founded in the best liberal democratic traditions, in individual human and civil rights, i.e. in the project of „Europe of citizens“. Another utopia? I wouldn't say so. Europeans are anyway much more mobile in the last twenty years, than they have been ever before. Wherever they might find themselves and no matter for how long, it is not all the same to them whether they will enjoy the granted right to own „wellbeing and happiness“, in other words, to authentic cultural values and the right to share them everywhere with those whom they are living and working with, independently of nationality and religion. In a Europe like this, both nations and national cultures can only benefit. Therefore, alternative cultural policies in Europe are inseparable from alternative models of liberal democracies. That is nonetheless a *par excellence* European legacy that obliges.

Summary

Innovative trends in history and political sciences have been mostly ignoring each other for a couple of decades in Europe. Contrary to it, impacts of globalization, affecting political sciences, have profoundly changed current historiography (global history, world history (in opposition to the history of the Western civilization!), comparative history, **'big history'**, connected history, shared history, *histoire croisée*,

¹⁹ Jürgen Kocka in his article „Asimetrična historijska poredba: slučaj njemačkog *Sonderweg*“ (in: Drago Roksandić (ed.), *Uvod u komparativnu historiju*, Golden marketing-Tehnička knjiga, Zagreb 2004., pp. 245–258) very suggestively explains in German the phenomena in individual and collective aspects

etc.). At the same time, theories of „cultural turn“, as well as „spatial turn“ and „temporal turn“ have introduced a large variety of new concepts, approaches and research methods.

Regions like South-Eastern Europe (*a multiple borderland*), abounded with controversial multicultural legacies, come to the fore in some of those researches, demanding a redefinition of the too simplistic notions of ‘identity’, ‘otherness’, ‘strangeness’, etc. It looks like that South-Eastern Europe is again an ‘experimental research field’ for more complex, I would prefer to say, more humane societal and cultural alternatives for the European future to come. If Europe has to be envisaged not only as Europe of nation-states, but also as Europe of citizens (in liberal democratic sense of the notion), cultural diversity cannot be defined only in terms of collectiveness. It is genuinely individual and it cannot be reduced exclusively to its multicultural aspects. It has to be, in principle, primarily defined by intercultural and transcultural aspects in every South-Eastern European country. Otherwise, I doubt that there is any chance for liberal democracy in the region. What this means for Europe, is another question to discuss.

Multiculturalism in the Ideology of Ethnonationalism

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One of the axioms of modern political thought regarding the 1989 revolution suggests that „the revolutions of 1989 were dominated by the ideals of pluralist democracy and civil rights, a region-wide triumph for Western liberalism“¹. In that sense these events could be understood as particular continuation of the democratic revolutionary spirit from the end of 18th century that has resulted in creation of liberal democratic national states. Viewed in that perspective, events during the break-up of Yugoslavia, especially political populism and war atrocities were seen as something quite different to dominant currents of 1989 revolution, as a separate event, as something that did not match this overall picture. Apart from some rather orientalist explanations referring to ‘inherent backwardness’ of the peoples of the region, to ‘tribal state of minds’ of those people which will not be considered in this text, it is generally felt that it was more of a counter - revolution that had occurred in ex-Yugoslavia, or in most parts of it, than it was a democratic revolution. Old images of ‘balkanization’ reappeared in scientific discourse, sharply contrasted with ‘Europeanization’, even in writings of ex-Yugoslav intellectuals. Our view, some twenty years after, is opposite: ex-Yugoslavia followed the pattern of 1989 democratic revolution, and the events that subsequently followed were substantial part not of a *balkanization* but of an *Europeanization* of the region. Quite intriguingly on this point Slavoj Žižek asks: „At what point did the Balkans – a geographical region of South-Eastern Europe – become ‘Balkan’, with all that designates for the European ideological imaginary today? The answer is: the mid-19th century, just as the Balkans was being fully exposed to the effect of European modernization“². This process is, we believe, especially visible in the context of the disappearance of multiculturalism in terms of plurality of life forms, that was parallel to the formation of monoethnic national states, a process that in the case of Bosnia and Herzegovina took form of constitutionally and politically imposed ‘multiculturalism’, or ‘constitutional multiculturalism’ that serves as an incubator for future monoethnic national states. The driving force for the political power of constitutional multiculturalism is the conflict generated by ethno-political ideologization of ethno-cultural differences, i.e. by ideological naturalization of the

1 *International Herald Tribune* (January 15, 1990) in Lukes, 1992: 613.

2 Slavoj Žižek: „Against Human Rights“, *New Left Review*, 34; p. 115

ethnicities. Social plurality of pre-war Bosnia and Herzegovina was succeeded – first by war, ethnic engineering and genocide, and then by specific institutional design – by naturalized multiculturalism. In fact, an outcome of direct international community's intervention in Bosnia and Herzegovina after 1995 has been a specific ethno-nationalist deadlock now deplored by Washington and Brussels. However, Žižek reminds us that what Western Europeans observe and deplore in the Balkans is what they themselves introduced there; what they combat is their own historical legacy run amok. Let us not forget that the two great ethnic crimes imputed to the Turks in the 20th century – the Armenian genocide and the persecution of the Kurds – were not committed by traditionalist Muslim political forces, but by the military modernizers who sought to cut Turkey loose from its old-world ballast and turn it into a European nation-state.³

Talking about the '1989 revolution', the appearance of ethnopolitics in Bosnia and Herzegovina and in ex-Yugoslavia that followed the break-up of socialist regime was in the accordance with the general trend of democratic reaffirmation of national consciousness throughout the Eastern Europe, i.e. of thorough Europeanization. The trend of certain ethnification of politics had started, according to Vrcan, „with the beginning of the 1970's when culture was becoming more and more attached to personal identities, and thus used for the affirmation of specific identities – national, ethnic, gender, regional“, i.e. this process started after, according to this author, the culture „had become the very field of fierce conflicts“. ⁴ This trend was articulated in the events of the 1989 revolution in the form of democratic re-affirmation of ethnically homogenous national states. As Jerzy Jedlicki suggests:

One answer is that all revolutions arouse historical consciousness. A revolution implies a reevaluation of nation's history. Moreover, however paradoxical it might at first appear, the bigger the leap forward, the more anxiously we look backward. We assimilate the unknown to the known and persuade ourselves that the unprecedented enterprise we have just embarked upon is but a repetition of an old and familiar pattern. (...) Nations are coming back into possession of their history, regaining their memory, discovering their soldiers' graves scattered all over the world, reconstructing their traditions, singing their sacred, long forbidden songs and, unavoidably, creating new myths and legends in the process. So our present revolution is no less conservative than it is radical, and its Janus-like face look both ways – into the future and into the past.⁵

In a subsequent re-establishment of liberal democracies this 'old and familiar pattern' could be recognized as a 19th century perception on 'national self-consciousness' that could be realized exclusively within a unitary democratic national state. The 'democratic revolutions of 1989' were in the essential sense – politically, culturally, institutionally – re-nationalizations of their respective national states. Unfortunately, this is where the problems start and the 'romance' ends. National states with a dominant ethnical and culturally homogenous group have conducted more or less unproblematically this 'revolutionary', re-nationalizing transition. Other countries

3 Ibid. p. 116

4 Srđan Vrcan: „Kultura kao društveno opasan pojam“, Beograd, Reč, 61/7; 2001, p. 108

5 Jerzy Jedlicki: „The Revolution of 1989: The Unbearable Burden of History“ in *Eastern Europe. Transformation and Revolution, 1945-1991*, Lyman H. Legters ed (Lexington, Mass., Toronto: D.C. Heath Company); 1992, p. 636

affected by the revolution, countries with substantial social /ethnic pluralism, 'multicultural' states that followed 'national-state' model have faced challenges of transformation with more or less fierce ethno-cultural clashes. Some of them had succeeded in consolidating as national states – Romania, Slovakia, Lithuania, while some of them collapsed as single states – Czechoslovakia and Yugoslavia – with more or less violence involved. Furthermore, some former Yugoslav substantially multiethnic states, or what has very lately become referred to as 'Western Balkans' are still in period of 'revolutionary democratic transition', or 're-nationalization' – Serbia, Bosnia and Herzegovina, Montenegro, and Macedonia. Should we agree therefore, based on experiences of this lasting revolutionary upheaval with Rosenberg that „uniformity and unity are more natural foundations of democracy than pluralism and conflict“?⁶

Multinational Yugoslav political community, in fact, applied this classical unitary model of homogenous national state with its 'vision of uniformity and unity' onto its inner pluralist context. This intention, or the imagining of ever new homogeneities by political elites, introduced the entire ex-Yugoslavia into the greatest European war after the World War II. The call for restoration of national states revealed, among the leading Yugoslav political elites, that the ethnic borders did not coincide with at that time actual republican administrative borders. The democratic transition was viewed, especially by the Serbian political elite, as a process of an ethno-territorial pre-composition and integration into a single national state with a dominant ethnic majority. Latinka Perović suggests in this vein that Serbian political elite – having in mind rather dispersed distribution of the Serb people throughout this country – had considered „Yugoslavia as its own state where there are also some other peoples“.⁷ This 're-positioning' of the Serb people within decaying Yugoslavia, as anticipated by a strategic document of Serbian Academy of Sciences and Arts titled 'Memorandum' (1985) presupposed maximal border adjustment of the future national states along the ethnic lines. Subsequently, more or less all the political elites of ex-Yugoslav republics were caught in the same trap of ethno-national statehood. It is the process within which the notion of culture, being the crucial reference of an aggressive ethnic nationalism, became compromised. Ethnic nationalisms have spoken in the name of culture, utilizing this notion to justify the politics of national egoism, new relations of domination and exclusion. Thus, the democratic revolutionary transition in ex-Yugoslavia indeed resulted, as Rosenberg points, „in some form of pluralism, albeit with discrimination, ethnical cleansing and violence as means to conflict resolution“. It resulted in the unprecedented violence in wars in Croatia and Bosnia and Herzegovina from 1991 to 1995, and in the province of Kosovo in 1999 and Macedonia in 2001, and in the rise of tensions in Montenegro in 2005. Besides this, it produced a whole set of constitutional problems to these, more or less plural Yugoslav states that had begun to crumble along the ethnic lines. The worst scenarios were reserved for the most plural political entity of ex-Yugoslavia, for Bosnia and Herzegovina, but also for Serbia and, to some extent, Macedonia. While Serbia, with the international recognition of Kosovo province, has reduced its territory, Bosnia and Herzegovina with the Dayton Peace Agreement recognition of one ethnically engineered entity has faced

6 Joran Rozenberg: „Pluralistička demokratija“, Beograd, *Reč*, 68/14; 2002, p. 203

7 Latinka Perović, Razgovor s Latinkom Perović: „Teško breme odgovornosti“, Dejan Ilić i Predrag Brebanović, Beograd, *Reč*, 62/8; pp.: 85-90, 2001, p. 89

the danger of an internal ethno-territorial pre-composition based on ethnic majorities induced by war atrocities. A pluralist country such as Bosnia and Herzegovina, without dominant ethnic majority, has in years after 1989 faced with virulent ethnic homogenizations and subsequent ethno-territorial claims as substantial part of a wider process of creation of a Serb, and later on a Croatian national state. The 'democratic transition' that included a 3 and a half year long war emerged in a form of a 'constitutional multiculturalism' that was imposed in Bosnia and Herzegovina after the Dayton Peace Agreement had been signed institutionalizing the two ethnically based entities. It allowed the so-called constituent status to the dominant ethnic groups in Bosnia and Herzegovina, i.e. to Serbs, Croats and Bosniaks, however, not to the citizens of Bosnia and Herzegovina and to the ethnic minorities. This implies a fairly conclusion that this new plural social and political community of Bosnia and Herzegovina is a community without democracy, with the three centripetal unitary ethnic politics. Their present mechanical sum within the internationally recognized borders is usually referred to as multicultural or multiethnic. One rather more precise view would reveal that we are actually talking about a mechanical sum of the different, mutually exclusive ethno-nationalisms, or monocultures in construction. It is a multiculturalism that is based on politically induced reduction of interaction among different groups, prevention of sustainable return of respective ethnic groups to areas of their origin, prevention of cross-ethnic political, cultural, economic, and social organization. This political arrangement that resulted from the democratic transition relies on flagrant discrimination of minorities and individual human rights and freedoms.

The revolutionary 'multicultural' reconstruction of pluralist social and political community of Bosnia and Herzegovina as inseparable part of the wave of democratization that has splashed the Eastern Europe followed the model of national state. The ideological turn from class toward national consciousness was accomplished. It was in the ethno-cultural grouping that was constructed as the new political power base, just as elsewhere throughout Eastern Europe. Being a pluralist society vulnerable to social and political currents in the neighboring Serbia and Croatia, in Bosnia and Herzegovina 'revolutionary wave' has initiated the process of ethno-cultural differentiation. On the first multi-party elections held in 1990, the most important new political parties were the parties that advocated particular, ethnic interests and thus shaped their ethnical election body deriving it from general Bosnian citizenry. Nowadays, Bosnia and Herzegovina is being re-conceptualized as multiethnic or multicultural community consisting of its particular, self-sufficient, self-conscious constituent elements that have been introduced into legal and political discourse as 'constituent peoples', with each of them, respectively, claiming its culturally and politically distinguished autonomy, each claiming its stake or share in the sovereignty of the Bosnian state. With the assumption of 'its own stake' in sovereignty and the institutions of the state, a process of ethno-nationalization has been initiated as a transformation towards pure national state of its people, i.e. towards the territorial 'realization of national consciousness' in its fullness, i.e. in the form of a ethno-national state. Assuming its particular stake in state's sovereignty, especially in the case of the Bosnian Serbs, has been followed by a process of ethnic re-territorialization by means of war, as an important element for future full nationalization.

Prevailing current understanding of Bosnia and Herzegovina as constitutionally multicultural state is based on an essentialist concept of cultural identity, which views cultural groups as natural kinds, unified, self-sufficient entities, or things in the world that „provide the entire range of resources necessary for [their] members to construct a meaningful identity“.⁸ Such multicultural community is understood as a „mosaic of tidily bounded, discrete cultural entities, each of which ‘covers’ a specific population, and each of which is constitutive for the identities of its members“.⁹ This is the prevailing perception of multiculturalism of Bosnia and Herzegovina, shared not only by local ethno-political oligarchies, but also by the involved representatives of the international community; this perception has shaped every political approach to the Bosnian problem from the beginning of war in 1992 until today. The desired overlapping of ethnic borders within the borders of national state, both in ex-Yugoslavia in 1990, and in Bosnia and Herzegovina in 2012 are thus the first two elements of the equation of so-called ‘nationalist imperative’ as described by Ernst Gellner. This imperative of one state and one nation, requires a third element – one ‘culture’.

In that regard, Gellner concludes that „under certain circumstances the implementation of such political formula has to include the exchange of population or expulsion, as well as a more or less violent assimilation, and even an annihilation in order to achieve that tight connection between the national state and the culture which is“, according to Gellner, „the very essence of nationalism“.¹⁰ This is exactly what had happened in the struggle relating to the overlapping of Serb administrative and ethnic borders within both Yugoslavia and Bosnia and Herzegovina. The democratic turn that was understood as reaffirmation of national state in a pluralist and complex community, such as Bosnia and Herzegovina, occurred, in terms of culture, before the ‘democratic winds of change’ in such a milieu in which „particular ethnic cultural identities had not been shaped nor developed as absolute but only as relative“¹¹, i.e. standing in a complex relation to other parts of that context. As a part of the struggle due to the overlapping of ethnical and national state borders, culture has become a narrative of *differentiation*, a group-subjection. In such a context, the culture has undertaken its messianic role to enlighten, educate and save the group from disaster by calling-forth or producing the group in its particularity. In the name of such culture wars have been initiated in ex-Yugoslavia. So, the most problematic spot of this new, democratic multiculturalism in Bosnia and Herzegovina has been the culture itself. The ethno-nationalist production of culture is thoroughly ideologized, and as such, as suggested by Althusser on ideology, it has characteristics of enslaving the imagination and of naturalizing particular language games that suggest that ‘things are so, and cannot be otherwise’. Such a process of naturalization of revolutionary established communities with their highest ‘reconstructivist’ expression in form of re-naming towns, villages, city-squares and streets was followed by the establishment of the institutional network of ‘our’ national

8 Max Pensky: „Comments on Seyla Benhabib, The Claims of Culture“, Constellations Vol. 11, 2004, p. 258

9 Ibid.

10 Gellner according to Srđan Vrcan: „Kultura kao društveno opasan pojam“, Beograd, *Reč*, 61/7, 2001, p. 109

11 Ivan Lovrenović, Miljenko Jergović, *Bosna i Hercegovina. Budućnost nezavršenog rata* (Zagreb: Novi liber), 2010, p.213

culture: 'our' people's museums, universities, schools, academies and galleries. Such an important process of ethno-national construction of identity required the founding of these institutions of culture. The overall ideological national-state-building process required particular anthropo-technological procedures to produce a citizen by measures of his or her ethnic affiliation. In such a light, the complex cultural network of Bosnia and Herzegovina described by Ivan Lovrenović, along with its institutions has no place in an ethno-nationalistically based multiculturalism. The remaining institutions of culture of Bosnia and Herzegovina – if there are any left – could only serve as reminders or monuments that suggest that the dominant ethno-nationalist production of meaning is nothing else but mere ideological, and not a cultural project. Therefore, the cultural production of 'ethno-culture' is essentially a political production par excellence. What has been taken for granted today as fundamental cultural difference among ethnic peoples of Bosnia and Herzegovina is the indeed fundamental political difference between ethno-political entrepreneurs. In Bosnia and Herzegovina, cultural differences have not been the driving motors of politics, but rather the other way around, political differences have generated and produced cultural differences. As long as they remain exclusively in the field of political, these differences have the power to produce and generate social conflicts, in fact, ethnic mobilization as the crucial power base in a state of constitutional multiculturalism. Once these differences step out of the political in the attempt to establish themselves as cultural practical differences, they will display themselves in a grotesque form: for example, in the field of language, the imposition of the Serbian 'Ekavian' dialect instead of the genuinely 'Ijekavian' dialect in the language of Bosnian Serbs; the imposition of pseudo-archaic-Croatian pronunciation in the language of Bosnian Croats, or the imposition of Ottoman archaisms in the language of Bosniaks. Such attempts – mainly imposed during the armed democratic revolution – that ended in colossal failures, revealed that the only safe haven for ethnic culture in Bosnia and Herzegovina have been the political, and not cultural institutions. Yet, again, the cultural difference ought to represent the very heart of the ethno-political endeavor and the very field of their legitimacy. The ethno-politics in Bosnia and Herzegovina is forced to produce its own field of legitimacy by means of either established or appropriated institutions of culture upon directives from political centers. However, that what has been produced as 'cultural', especially in relation to the international cultural network, is usually revealed as mere political and not a cultural artifact. That is why the ethno-national cultural institutions have been bastions of political (and exactly for that reason they are incapable of their fundamental cultural function of interactive production of social meaning) expansion of reconstructive imagination within which the society could freely understand and articulate itself. As such, ethno-national cultural institutions are institutions of repression, of ideological ordering of 'absolute truths', in the gap between political and religious (since particular religions remain the sole keepers of ethnic 'cultural' particularity), and far from institutions of culture.

Things are even odder in the field of politics. Being self-conceived as 'tidily bounded, discrete cultural entities, each of which covers a specific population', as Pensky suggests, political entrepreneurs require official political recognition of such position by other tidily bounded and discrete cultural entities with whom they share the entire

country. One of the key internal political problems in an ethno-political context in Bosnia and Herzegovina is the so-called 'internal recognition', especially the recognition of Republika Srpska (Serb ethno-national entity) by what is termed by them as 'Sarajevo', implying the main Bosniak political center. Although not a single 'Bosniak' ethno-political agent, at least not publicly or openly, denies the existence of Bosnian Serb entity as legal category provided by the Constitution – Annex 4 of the Dayton Peace Agreement – the political leadership of Republika Srpska views it as insufficient, and indeed justifiably. To recognize the Other in its particularity does not mean just to 'notify' it as an existing fact or phenomenon, or as mere legal fact. It is 'superficial' recognition that does not and cannot satisfy the Other. 'Legalizing' something or someone does not necessarily mean to 'legitimize' it. So the required recognition must be thorough, meaning that also the narratives of the Other's self-understanding, self-justification, and self-legitimation must be fully accepted. The true recognition of the Other is the recognition of the Other's self-legitimation. The recognition of Republika Srpska by 'Sarajevo' – RS is legal but not legitimate – induces counter-politics of Republika Srpska which recognizes Bosnia and Herzegovina only in legal sense, while thoroughly questioning its legitimacy. Legitimation of Bosnia and Herzegovina by ethno-nationalist leadership of Republika Srpska would severely undermine their ethno-nationalist 'revolutionary cause' – ethno-national territorial, ethnically homogenous, ethnic 'would-be-state' entity, just as the legitimation of Republika Srpska would thoroughly change the legitimacy narrative of Bosnia and Herzegovina based on which this country would become loose association of three particular ethno-national, territorially differentiated states. However, the act of 'internal recognition' between ethno-political elites has already occurred: by agreement between the leaderships of Bosnian Serbs and Croats, reached on the airport in Graz, Austria in May 1992. This agreement reflects full mutual recognition of legitimacy narratives of the two 'revolutionary ethno-national leaderships'. Full text of the Graz agreement reveals the core of ethno-nationalist claim to internal recognition: it is above all ethno-territorial, and it has even been described in the Agreement as 'internal delimitation', i.e. the ethno-territorial delimitation appeared as the key element of the mutual recognition. Such a conceived recognition has remained the basis for ethno-national politics in Bosnia and Herzegovina today, and the logical consequence of constitutional multiculturalism. Viewed from this 'territorial' perspective, it is obvious that in fact it is not the ethnic people that are the basis of particular ethno-politics in Bosnia and Herzegovina – that is why, being one of the interesting practices of ethno-political entrepreneurs in this country, the ethno-national leaderships are fundamentally disinterested in the position of members of their ethnic affiliation in areas of the country where they are in minority – but rather on the imagined ethnic territory. This kind of legitimizing mutual recognition between these two ethno-national parties/leaderships proved tough through decades of temptation – following mutual armed conflicts and disagreements. Such mutual recognition is based on acceptance of the self-justification of the Other that implies that the only way the ethnic peoples of Bosnia and Herzegovina could achieve their respective political equality is ethnic territoriality, i.e. maximum of political autonomy on a certain territory on which reside as much as possible ethnic people 'represented' by this leadership.

This model of 'internal recognition' has had so far one 'blind spot': the third side to the Agreement is missing: Bosniak side, along with all others who do not seem to support that logic, i.e. the principles of internal recognition as outlined by the Graz Agreement. In the widest sense, the legitimacy narrative of this side is 'non-territorial' in ethnic terms, and could be reduced to the principle that the equality of peoples and citizens of Bosnia and Herzegovina could be achieved by efficient democratic institutional arrangements effective throughout the territory of Bosnia and Herzegovina. These arrangements must guarantee fundamental freedoms and rights equally to all citizens and peoples. So, there are two fully opposite legitimacy narratives: the strong ethno-nationalist and the weak liberal-democratic¹² within Bosnia and Herzegovina which is as a country currently being sustained as a state by facticity of legality, legality emptied of legitimacy, as well as by certain geopolitical considerations of the dominant political powers, such as USA and EU.

In any case, the democratic turn in Bosnia and Herzegovina gave birth to different, mutually exclusive ethno-politics, i.e. to ethno-nationalisms that are very hostile to heritage of liberal-democratic values, and at the same time incapable of coherent democratic transformation of the country. Apart from the obvious confessional difference, ethno-political leaders have discovered terrifying lack of their own, particular cultural content which would legitimize their political claims. The democratically elected ethno-politicians have discovered that presently available cultural content articulated within wider Bosnian context had, as Ivan Lovrenović argues, „no connotation regarding the constituent peoples and their confessional communities whatsoever, but testified the deep and complex joint heritage of this country and its numerous cults and ethnos that had occurred in its multi-millennial sequence“.¹³ In fact, the very culture, in the widest possible sense, seems to be the key obstacle for ethno-nationalism itself. That is, for a construction of a national state, the necessary cultural differentiation and homogenization has to be reshaped by instruments of ethno-politics. To drop the essentialist interpretation of cultural identity would open the possibility for us to accept the view of Seyla Benhabib according to which, in Pensky's words:

Multicultural theory, Benhabib insists, wastes its time insofar as it generates ever-finer taxonomies of the oppressed and marginalized cultural groups as natural kinds, and then finds itself ensnared in insoluble binds as it then must back-theorize the normative principles that will cover both the claims for cultural alterity that will justify group identity as a norm, as well as the universalist justice claims that would justify group struggles for equality. Benhabib therefore suggests that a differentiation between multicultural theory, for which the model of cultural holism is constitutive and democratic theory, which continues to take the problem of cultural identity seriously, but does so under the premise that what constitutes group identity *is nothing other* than discursively structured performances within a democratic public sphere.¹⁴

¹² It should be noticed that within Bosniak ethno-nationalist block there exist dissenting factions that would support the spirit of the Graz Agreement. After all, it was Alija Izetbegović who first called Bosnian peoples to collective agreement in the eve of the first elections in 1990, however, the difficulty with that would be a possible delegitimation of 'revolutionary heritage', i.e. the proclaimed principle of struggle for a multiethnic democratic Bosnia.

¹³ Ivan Lovrenović, Miljenko Jergović, *Bosna i Hercegovina. Budućnost nezavršenog rata*, op. cit. p. 213

¹⁴ Max Pensky: „Comments on Seyla Benhabib, The Claims of Culture“, op. cit. 259

In that case, the process of the naturalization of culture, especially of 'cultural differences' in Bosnia and Herzegovina, might become clearer to us by revealing itself as a *de facto political*, and not a cultural process. The performances of cultural identities in Bosnia and Herzegovina reveal their inner structure produced by specific ethno-political discourse. In fact, as suggested by Vrcan, the „culture becomes background upon which the contemporary insinuation of political legitimacy of social inclusion and exclusion is being conducted“.¹⁵ In Bosnia and Herzegovina, in situation of impossible cultural differentiation, such a background is ethno-politics itself. Ethno-politics is the background upon which the insinuation of cultural legitimation of the same ethno-politics that produce it with all its mechanisms of social inclusion and exclusion. In such way, with the ethno-political lead production of its own ethno-culture a serious gap in the realization of the nationalistic imperative, according to Gellner, 'one nation – one state – one culture' has been bridged. The multicultural reconstruction of Bosnia and Herzegovina that revealed itself as differentiation into Serb, Croat and Bosniak ethnos, is essentially political. The ethno-politics of Bosnian constituent peoples and their respective nationalist ideologies have reconstructed Serbs, Croats and Bosniaks as cultural, i.e. as natural kinds, and at the same time produced them as their political power and legitimacy bases ever since 1990. This view, of course, along Benhabib's point, does in no way make Serbs, Croats, and Bosniaks abstract or less real social groupings, but it definitively demystifies the ethno-political narrative on authentic representation of peoples, transferring the consideration of reconstruction of political community of Bosnia and Herzegovina in the field of politics, in general, that is in the field of ideological and political production of cultural entities and dominant markers of ethnic identity, in particular. This insight is particularly important today when the crisis in Bosnia and Herzegovina is usually, superficially referred to as something that is subject to so-called 'agreement of the peoples' which serves as one of the leading principles of Bosnian constitutional multiculturalism.

Multiculturalism thus appears to be another name for a political production of the three different particular cultures under one state roof. It refers to political production of the three, mutually in-communicable and vastly different cultures, cultures that by political means absolutize their own particularity that in return legitimizes the ethno-political demand for their territorialization. Multiculturalism as such is essentially an incubator for production of the three different national cultures as „distinctive packages of ways of life that necessarily demand the protectionist roof of a national state which has to promote national culture and guarantee its monopoly“.¹⁶ In this way, the 'democratic multiculturalism' of Bosnia and Herzegovina is just a transitory phase in the development of ethnos into a nation with necessary elements of statehood with a dominant ethnic majority. In truth such a perceived multiculturalism is particularly homogenous monoculturalism, and viewed in wider multinational framework of Bosnia and Herzegovina, it is mere pluralism without democracy, constantly on the verge of a violent conflict. At the level of everyday's life, this multiculturalism in Bosnia and Herzegovina reaches its full realization in the so-called side-by-side living of different ethnicities, in physical separation of children on ethnic basis in public schools, etc.

¹⁵ Srđan Vrcan: „Kultura kao društveno opasan pojam“, op. cit. p. 109

¹⁶ Ibid. 111

In the near future, it will be necessary to answer on few important questions concerning Bosnia and Herzegovina. The first one is posed by Ugo Vlaisavljević: 'Is a territorialization of collectivities necessary?'¹⁷, that is, „Is it not a right time now to consider the territorial organization of this country as the most important political subject?“¹⁸. The second question would be: Is it possible, despite all, to think of Bosnia and Herzegovina beyond the multiculturalistic, but within a pluralistic paradigm, as of a political community based on particular social and not exclusively on ethnical diversity, a political community whose general and not particular politics would be possible without the imposition of 'common' values that are generated from the vocabulary of a classic democratic national state? Is it possible, thinking in lines of John Gray, to think of the effective common institutions of Bosnia and Herzegovina within which the entire plurality of various, different life forms could flourish? As things stand now, within the existing multiculturalistic picture of Bosnia and Herzegovina where the dominant ethno-political structures have already developed their effective mechanisms „for their own production – in terms of regulated repetition of social processes, in the maintenance of conditions that requests the participation of their individual members in a generation of legitimacy ideologies and their institutions“¹⁹, in the situation of unresolved overall Serb national issue, this dilemma seems nothing but mere rhetorical.

Summary

In this text authors question the 'self-evident' utilization of the term 'multiculturalism' in everyday's political discourse of Bosnia and Herzegovina both by local and international political agents. By focusing on the term of 'political identity', this political discourse, according to the authors, has conducted a rather typical ideological naturalization of politically produced cultural differences which represents the very essence of the ethno-political processes in Bosnia and Herzegovina.

The result of such a discursive practice within a framework of the Dayton legal arrangement is, among the other, the disappearance of the political citizen, the irrelevance of constitutional minorities as well as other minorities (the 'Others'), legalization of discrimination on the basis of ethnicity, and which is worse, the creation of an interpretative pattern of multiculturalism in Bosnia and Herzegovina as triple-ethnic socio-political mosaic of distinctive and self-contained ethnic entities that contribute to the understanding of this country as some supranational 'by-appointment -only' community of the three homogenous ethno-national quasi-states.

Such essentialist multiculturalism is nothing else, as the authors suggest, as a phase of transition towards the dissolution of Bosnia and Herzegovina into three ethno-territorial communities.

17 Ugo Vlaisavljević according to Esad Hećimović: „Ustav za preuređenje države“, Sarajevo, 17.2., *Dani*, 2012, p. 31

18 Ibid. p. 31

19 Nancy Chodorow: „Gender Personality and the Reproduction of Mothering“ in *Social Theory. The Multicultural and Classic Readings*, Charles Lemert ed. (Boulder, San Francisco, Oxford: Westview Press), 1993, p. 443

Minority Languages in a Public Multicultural Space: „Ghettoized” vs. „Integrated” Minority Media¹

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1. Introduction

The right to (officially) use the own language is the most fundamental minority right in the terms of promotion and preservation of identity, culture, and tradition of a particular minority. It is equally important for both – for those minority groups whose language is different than the language of the majority, and also for those groups whose language is similar to the majority’s language, containing, however, few significant differences and distinctions that are essential to be preserved in order to save the minority group from a possible assimilation through language.

It is a widespread argument that an active exercise of this right enables minority groups and their members to preserve their cultural, ethnic, or religious peculiarities and make them publicly recognizable. The recognition and an active use of a minority language is, as well, a precondition for a full and functional democracy based on the inclusion premise of multiculturalism. On the other side, this paper will also deal with a rather ambivalent notion of the minority language use that does not lead to participation and integration, but to – *ghettoization* of a certain minority group. In this case, *ghetto* does not mean a place with obvious physical borders (blocs in the city, certain territory, walls, etc.), but rather the existence of a mental and – to be precise – linguistic boundary. Therefore, it is rather meant as a linguistic isolation which could be recognized in situations when members of a certain minority with a language different than the one of majority, use their mother tongue in education, administration, and media setting the linguistic borders between their own group and other (majority and minority) groups.

This practice of self-isolation of minority groups by language will be elaborated in this paper through the concept of public sphere. I will refer to the general definition offered by Habermas but also on a very specific notion provided by authors such as

1 The main ideas and arguments of this paper have been presented at the international conference titled „The Challenges of Multiculturalism: the South-Eastern European Perspectives in the European Discourse”, held on March 23-24, 2012, at the Faculty of Political Sciences, University of Belgrade

McKee and Brown who took into account the fact that societies today are plural and that various groups (not necessarily a minority) do participate and create their public spheres. As one of the domains where the use of minority languages is encouraged and promoted, is the media space.

When it comes to participation, it is obvious that the dominant model of national (or ethnic) minority media – which is based upon the active and exclusive use of minority language – creates a space that is limited and reduces a minority group participation and influence to their own members. For these reasons, the final part of this paper will elaborate on two models of minority media in regard to the language use – the above mentioned „ghettoized” or fragmented model, and an alternative one – the „integrative” model. Experiences of these two models in practice will come from the region of former Yugoslavia, mainly from Bosnia and Herzegovina, Serbia, and Croatia.

2. Minority Language Rights: Importance, Status, and Challenges

Generally speaking, multiculturalism means accommodation of groups of various origins (ethnic, national, cultural, religious, linguistic, sexual, etc.) within the same society, and also leveling tensions between collective and individual rights. It could be used in a descriptive and normative way. In the descriptive way, it refers to the fact of cultural pluralism and diversity in a certain entity (state, region, city), whereas in the normative way it rather encompasses ideology or policy that promotes diversities and tends to institutionalize them.

When it comes to the language, it is widely considered as a marker of minority group distinctiveness. Various ethnic or cultural groups consider the language of their own group to be one of the most important markers of their identity. Additionally, language has been included as an important element in most definitions of ethnicity. For some minority groups, the language is to a higher degree a core value of their identity than it is for other groups.² Relations between language and identity are pretty complex, and have been studied in different disciplines. When refer to minorities, relations are further complicated by the co-existence of the concepts of national and ethnic minorities. These concepts refer most commonly to the co-existence of regional (indigenous) and immigrant (non-indigenous) minorities who often demand the use of their own languages.³

The language diversity management in the EU has been presently considered as one of the most important challenges. Due to the processes of international migration, the status of immigrant minority languages has been widely discussed. In promoting linguistic pluralism, the EU addresses the issue from a five perspectives: phenomenological, demographical, sociolinguistic, in respect to language rights, and from the educational perspective.⁴ Among the most important documents adopted for

2 Secombe, M. and J. Zajda, eds., *J.J. Smolicz on Education and Culture*, James Nicholas Publishers, 1999.

3 Extra, Guus, and Kutlay Yagmur, „Language Diversity in Multicultural Europe: Comparative Perspectives on immigrant minority languages at home and at school”. Discussion Paper, No 63, MOST Programme, UNESCO, 2002: 12

4 Ibid.

the promotion and preservation of language rights is the European Charter for Regional or Minority Languages (1992), adopted under the umbrella of the Council of Europe, which defines regional or minority languages as those that are (1) traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state's population; and, (2) different from the official language(s) of that state.⁵ There is a slight difference in defining the language as minority or regional language. In the case of minority language, it is linked with a certain community (national, cultural, etc.) that could be dispersed within one or more states, while in the case of regional languages it is the one spoken in an area of a nation state, and it is linked primarily with the territory.

Today, in almost 200 sovereign states across the world, it is estimated that up to 7.000 languages have been spoken. The majority of these languages are not official, and they are in a minority position. Out of this number almost 90 percent could disappear until the end of this century.⁶ In EU, between 100 and 200 languages are spoken today, out of which 70 percent are considered as to be minority or regional languages (out of this number, 50 percent are endangered).⁷ According to Bugarski, there are three general types of minority languages in the world today: (a) languages spoken by minorities in certain states that are official or the language of majority in another state (these languages are NOT endangered), (b) languages with minority status in all states where communities that do speak it live – usually those are minorities without a ‘kin’ state such as Roma, and (c) particular languages that are in a minority position in only one state, including some specific dialects as well (such as Catalan, Rheto-Romanic, the language of Sephardic Jewish community in Serbia, etc.).⁸

Reasons for the marginalization of minority languages are various – small or decreasing number of speakers and their occasional consideration as uncultured, primitive, or simple dialects when compared to the dominant language. There are different views on how to protect them. The first approach is to do nothing and let these languages disappear. The second is to save them somehow, in forms of archives (written, spoken, audio-video, etc.), like a cultural heritage. And, finally, the third is to take an active role and imply measures in order to preserve them, on the international and national level. Those who actively promote measures for preservation and promotion of minority languages are the main international actors in promotion of human rights and freedoms, such as the UNESCO, Council of Europe, and the EU.

Under the umbrella of UNESCO, the International Mother Language Day Declaration has been adopted on 17 November 1999 and it has been worldwide celebrated on 21 February every year since. The UN General Assembly by its Resolution 61/266 has proclaimed the year 2008 as the International Year of Languages.⁹ Another international instrument, the Universal Declaration of Linguistic Rights, known as the

5 The European Charter for Regional or Minority Languages, Strasbourg, 5 December 1992, available online <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

6 XV International Congress of Linguists, Quebec City, 1992, for further information and references see: <http://www.sil.org/sociolx/ndg-lg-grps.html>

7 Bugarski, 2010: 66

8 Ibid.

9 UN Resolution on Multilingualism, available at <http://daccess-ods.un.org/TMP/9508303.99990082.html>

Barcelona Declaration, is a document adopted in 1996 among International PEN Club and several civil society organizations in order to support endangered languages.¹⁰ Together with the Council of Europe and the EU, UNESCO declared the year 2001 as the European Year of Languages, drawing attention to Europe's cultural richness and to support closer collaboration among people, schools, and institutions.¹¹ At the initiative of the Council of Europe, the European Day of Languages has been celebrated every year since, on 26 September.

3. Public Sphere and Minority Languages

The practice of self-isolation of minority groups by language could be devised through the concept of public sphere, or to be precise – media sphere. In general terms, Habermas defines the public sphere as a „virtual space where the citizens exchange ideas and discuss issues to reach agreement about matters of general interests”¹², while McKee indicates the influence of the postmodernism on the public sphere which has become more and more fragmented and particular. As McKee argues, „different cultures offer different identities to participants, including different kinds of knowledge and different ways of communicating about that knowledge”.¹³ Narrowing it down, Brown uses the concept of public sphere as „a place where ethnic minorities and the mainstream culture might acknowledge, understand, and value their similarities and differences”.¹⁴

In this – narrowed – sense, the role of minority language could be presented in two ways. First, by using it actively, a specific minority group can preserve their peculiar identity, based on cultural, ethnic, national, and – especially – linguistic specifics. In this sense, we are referring on language as a safeguard of identity (symbolic aspect). Cormack defines the „ideology of neo-nationalism” in order to describe the role of minority language in preserving minority identity which is vital for the self-awareness of minority groups.¹⁵ Second, by exercising the right on using their language, minority groups create a specific and exclusive space for communication for their own sake. In this sense, language is a tool for drawing imaginary border-lines of that space (communicative aspect).

Exactly there lies the ambivalence of the use of minority language. On the one hand, it is considered to be one of the most important minority rights, and a pre-requisite for a democratic environment, due to its active role in preserving cultural diversity and minority peculiarities, while on the other hand, its active use in the field of public administration, education, and – especially – media, leads to the so called isolation,

10 The Universal Declaration on Linguistic Rights, adopted on the World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at <http://www.unesco.org/cpp/uk/declarations/linguistic.pdf>

11 Decision No 1934/2000/EC of the European Parliament and of the Council of 17 July 2000 on the European Year of Languages 2001 [Official Journal L 232 of 14 September 2000].

12 Habermas, 1991

13 McKee, 2005: 141-142

14 Brown, 2005: 11

15 Cormack 2000: 385

instead of participation. Furthermore, the notion of the „participation“ concept should be examined. At least, from the aspect of contents and scope. It doesn't need to be inclusive in general terms, but we can rather refer on plurality of options for participation, as McKee stressed out in his work. Translated into a real-life situation, this means that minorities or individuals belonging to a certain minority group have a choice between, at least, three scenarios. First, to speak only their mother language and to limit their participation to a sub-sphere created for and used by their group members. This seems as a rather limited option and leads to ghettoization. If we, additionally, follow Brown's argument that language of majority could be considered as a precondition for an access to power, the (solely) use of minority languages could be therefore explained as a way of maintaining minority communities as far away from the centers of power.¹⁶ Secondly, to speak only the language of majority, which gives minorities an opportunity to participate in a general public sphere, could be a threat for preservation of their own identity and heritage strongly rooted in the language. This scenario doesn't sound fully democratic. Thirdly, members of a minority group will use both languages, the language of the majority and their mother tongue (which is often the case in practice), and will be able to take part in public affairs that matters all aspects of their society, not necessarily only the one related to their minority group. This scenario sounds really participatory and inclusive.

Besides the international actors, the role of the state in protecting the minority languages is of the utmost importance. States in the region of Western Balkans have an obligation stipulated by law to support the minority media. Jakubowicz considers the minority languages rights as a basis for the definition of minority media rights. He distinguishes between „negative“ and „positive“ goals in promotion and protection of minority rights in the media. „Negative“ goals encompass efforts that aim to remove all obstacles that might impede the use of the legal rights of minorities, including the struggle against discrimination, marginalization, social exclusion, racism, xenophobia, or forms of racial intolerance. „Positive“ goals are related to efforts that help minorities (or assist) in exercising their rights as well as the training for their representatives (empowerment) to be able to actively seek and use their rights.¹⁷

4. Minority Languages and Minority Media

The best way to measure active use of the minority rights in media is to analyze the status and the work of minority media in a polity. As the term „minority media“ is marred by a conflation of means and it lacks clear and contextually rooted definition, it represents a source of confusion. Valić-Nedeljković offers, at least, four potential definitions of minority media, providing examples from Serbia. According to her, minority media are:

- (a) those whose formats and contents are published / broadcasted entirely in the language of minority, and, in the same time whole managing structure and

¹⁶ Brown, 2005

¹⁷ Jakubowicz, 2004: 291–299

journalists employed belong to the respective minority group (as example, she mentioned *Hlas Ludu, Magyar Szó, Ruske Slovo, Libertatea*);

- (b) those who dedicate one part of their „space” or „time” to present and report in the language of national minorities, and some of their journalists or correspondents are members of this community. This is the case with the *Public Service of Vojvodina*, within whose structure seven departments operate in the minority language;
- (c) those that are formatted as multi-ethnic and produce media contents in various languages, and broadcast it as a mixed program. Good example for this was *Multiradio*, a program broadcasted on *Radio 021* from Novi Sad, but which does not exist anymore due to the lack of financial resources; and
- (d) in general terms, the media or programs of a religious minority community. For example, *Radio Maria*, the radio of the Catholic Church, operates in 42 countries, broadcasting in Serbia in five official (including minority) languages.¹⁸

For this paper, relevant definition(s) of the minority media refer exclusively to the minority language in their every day's informative and educative practice. Therefore, the options (a), (b), and partly (c) could be considered as a good ground for a credible definition.

According to the media legislation in the region, being informed in the own mother language is considered one of the most important minority rights. Besides provisions on the language use, any form of discrimination, hate speech or intolerance in general, but especially against members of (minority) groups is prohibited by law. In the practice, the experiences vary. While in Bosnia and Herzegovina there is no particular program or outlet in minority language, nor does the public service fulfill their role and produces program in the languages of its minorities;¹⁹ Serbia has a good reputation when it comes to the media on minority languages.

In Serbia, according to the existing research and analyses data,²⁰ the right to be informed in minority languages is fully practiced and implemented in the Province of Vojvodina where minority newspapers are published and TV/radio programs have being broadcasted in 10 minority languages. Around 160 print and electronic media publish / broadcast part or total of their contents in the language of a minority. Out of this number, 140 are from the Province of Vojvodina, and 20 are from the central Serbia.²¹ On the entire territory of Serbia, 34 public media are informing only in the minority languages and, among those media, 19 are print media, 12 are radio stations and 3 are TV stations.²² According to some estimates, the number of newspapers copies sold which are published only in a minority language does not exceed 5.000 copies, while empirical research on audiences and listeners of electronic media do not exist.²³

18 Valić-Nedeljković, „Odnos većine i manjina kroz prizmu medija”, in Marko, *PROMicanje medijske odgovornosti*, 2008: 81 – 85

19 Marko, D. „Media and Minorities in Bosnia and Herzegovina”, in Jusić, and Hodžić, *On Margins*, 2010: 131 – 175

20 Majority of them have been conducted and produced by my colleagues from the Novi Sad School of Journalism, Independent Journalists' Association of Vojvodina, Novi Sad, and the Open Society Fund Serbia

21 Ilić, *Zakonsko regulisanje položaja nacionalnih manjina*, available online: http://www.21osmeh.net/Zakonsko_regulisanje_položaja_NM.pdf

22 Serenčeš, 2009.

23 FOD, *Budućnost informisanja na manjinskim jezicima*, 2007.

5. Ghettoized v. Integrated Media: Which model should be followed?

Giving good practice recommendations of reporting on minority issues, taking the Roma community as example, Zoran Udovičić stressed out the importance and the role of the public media. As a former editor and director of the Public Service in Bosnia and Herzegovina, he considered the following question to be of the highest priority in balancing public interest and narrow interests of specific groups such as Roma minority: „How to make a special program dedicated to the Roma and to the general public, to be broadcasted in both, the language of majority and in the Romani language, in which the Roma will have, in the same time, the active and passive role (as creators of the program, and as users)?“ According to him, the ideal format and content of such a program is not, the so-called „minority ghetto“, meaning that Roma people have their own media, on their own language, reporting solely on the issues which are important for their community, and only for Roma audience. He considered the „magazine“ format as the optimal solution. According to him, the „magazine“ format sublimates informative and documentary form, dialogue, communication with the auditorium, cultural and artistic presentations.²⁴

What he proposes as a „magazine“ has been closely tied to the model of the so-called integrative minority media, which represents an alternative to the „ghettoized“ one. Similar distinction, but applied on the entire media systems, could be found in Palmer's dichotomy on consociational and integrative media systems. While first implies the strict divisions of programs, structure and stuff along ethnic, national or linguistic lines, second promotes cross-ethnic principles and shared programs.²⁵ When it comes to specific media outlets, common (and important) for both models are design (which is more a technical issue, than a strategic or essential one), the quality of the content (that is subject to the editorial policy or to the quality of journalism), circulation or rating (which is pretty small comparing to the mainstream media), and financing (minority media generally rely on the state support – and that is the case with both models – the difference lies in the fact that „integrative“ model is trying to become competitive on the market).

Starting premise for integrative model is the fact that a minority group (to which media outlets belong) belongs to a wider society, meaning that their members are the citizens of a state. As such, their role in society is multifold – at first place they have an active right in preserving their national, ethnic, cultural, confessional, and linguistic peculiarities. On the other hand, they have an obligation towards the wider society and, in order act as citizens, they have a right and duty to comment on it, to criticize it, or to demand more justice and less crime. Speaking on media content this means that topics they chose to cover go beyond the usual „minority topics“ (minority culture, religion, folklore, minority politicians, affairs in the kin state, etc.). On the contrary, „ghettoized“ model emphasizes the role of the mother tongue, minority culture, political or social affairs related to one specific minority or to the minorities in general. This model insist on members of the minority community to run this media, to work as

²⁴ Udovičić, „Ideal nije manjinski geto“, in Marko, PROMicanje medijske odgovornosti, 2008: 97–100.

²⁵ Palmer, 2001: 6-7.

journalist, it targets the members of their own minority group as the primary target group, and the content is entirely written / spoken in the language of that minority. What makes this model mainly „ghettoized” is the language. If the language of one specific minority is similar to the language of majority living within the state (which is the case with Croats in Serbia, or Serbs in Croatia), it means that media content will be accessible for all of them. Contrary to this, in the case of Romany language that is not understandable to majority, we will have a more „ghettoized” model since its content (in the case, if it is entirely in Romani) will be accessible only to those who speak or understand that language.

Table: Main Characteristics and Differences of Two Models

	Ghettoized	Integrative
Genres	<ul style="list-style-type: none"> • Mainly factography (news, reports) • Interviews • Reportages 	<ul style="list-style-type: none"> • Hybrid genres (so called – articles with authors contribution) • Comments • Factography
Target groups	<ul style="list-style-type: none"> • Minority group members • Members of other minority groups • Majority (if they share same or similar language) 	<ul style="list-style-type: none"> • Minority group members • Members of entire population
Strategy for sustainability	<ul style="list-style-type: none"> • Media which follow this model are not capable to compete on the market • These media are attractive for advertisements (maybe for social responsible companies, or for companies that are somehow linked to the minority group) • Main source of financing are state funds (combination of the host state funds and funds of the kin state) • Possible source for financing are also donors, and this support is usually project based 	<ul style="list-style-type: none"> • This model enables minority media to compete on the market, which is also risky since their opponents are usually recognizable, strong and influence media • To a certain extent, these media – as minority – still rely on state funds, but try to find other sources of financing, • Donors are also potential financers of these media
Concept	<ul style="list-style-type: none"> • Members of minority groups are running and editing their own media, covering topics related mainly to this minority group, targeting usually the members of the same group 	<ul style="list-style-type: none"> • Members of minority group together with the members of others minority and those of majority group, are reporting on all mainstream issues (with a special focus on minority affairs), to all members of the society (with a special attention to the members of certain minority)
Reporting style	<ul style="list-style-type: none"> • Usually formal and correct 	<ul style="list-style-type: none"> • Combination of formal and free (individual, authors’) style

An interesting example of the „integrative” model in the region could be found in Croatia where the weekly *Novosti*, a newspaper of the Serbian minority, has been

promoted into mainstream media informing on all relevant political, social and cultural events in Croatia, with a special focus on issues linked with the Serbian national minority in Croatia. Today, *Novosti* hosts former journalists and editors of the *Feral Tribune* from Split (Đikić, Ivančić, Čulić, Lasić, Rašeta), one of the most important media products on the territory of former Yugoslavia in the last 20 years.²⁶ This concept reflects the current politics of Serbs in Croatia that look forward to become better integrated into the Croatian society. As their editor Ivica Đikić stated, it is still too early to evaluate success of this project, but their circulation is actually increasing – every week they sell 2.000 and distribute 3.500 copies.²⁷ Eleven people are employed in *Novosti* and a lot of respectable journalist from Croatia and the region are also affiliated to this magazine on the part time basis. Main funds for this magazine are coming from the state of Croatia – in 2010 for 52 issues *Novosti* were supported with 482.746 EUR (3.65 million HRK) or with more than 40.000 EUR per month.²⁸ „It is a wrong perception that we are supported financially by the government. Firstly, this is public money, the money of Croatian citizens. Secondly, analyzing the content of our magazine you will easily notice that we are constantly criticizing this government for its bad moves or bad politics, in general. I am not a Serb, but I work for this media as a professional journalist and I think that Serbs, as citizens of this country, have the right to criticize its government and they have also the right to speak out on issues related to crime, social and economic situation, political affairs, etc.”, explained Đikić.²⁹ This is a good example of how minority media, with a clear vision and good management, can break the information ghetto.

6. Conclusion

In this paper I put some efforts to critically assess which role minority language plays in enabling / disabling the minority communities to take part in the public affairs of their society. Starting with the unquestionable assumption that the use of minority language is an important tool of promotion and preservation of the cultural (ethnic or national) identity, this paper further explores the consequences of the use of minority language in media, assessing two opposite models found in practice – the „ghettoized“ and the „integrative“ model. This effort assumes that the use of minority language in media has a dual value – a symbolic one, which is important for promotion and preservation of the minority identity, and a communicative one which is rather ambivalent when it comes to the official use of the minority languages when they are

26 *Feral Tribune*, a Split based weekly, was the symbol of oppositional and anti-nationalistic struggle during the 1990s. Its reporting was characterized by a satirical tone. *Feral* was especially famous for its provocative, satirical photomontages on the cover page. Due to serious financial difficulties, the magazine was forced to cease publication in 2008. Available at www.feral.hr.

27 Personal interview with Ivica Đikić, editor-in-chief of *Novosti*, Croatia

28 „Odluka o rasporedu sredstava osiguranih u državnom proračunu Republike Hrvatske za 2010. godinu”, *Narodne novine*, 151/2009, available on: http://www.savjet.nacionalne-manjine.info/odluke_zakljucci.html

29 Interview with Đikić

very different from the language spoken by the majority. Elaborating on the claim that exclusive use of such a minority language leads to the „linguistic isolation” (or „ghettoization”), I have provided the analytical part of the paper with examples from the practice where two extreme models could be found.

Minority Rights Protection and Majority-Minority Relations in Montenegro

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1. Introduction

Minority rights protection in contemporarity means ensuring the respect of national, ethnic and cultural diversity. Furthermore, the respect of diversity can be understood as an indispensable human right of each individual and each group, which has to be addressed as a tool for realization of multiculturalism as political concept of coexistence of differences.

The respect of the right to diversity should ensure real human security of all individuals, no matter of their ethnic, national, cultural or any other affiliation. This is actually a concept of a civil and sound multicultural society, which is supported, at least declaratory, by laws of all Western Balkans states as a goal on their transition from real socialism towards modern democracy.¹ The instrument for realization of this goal is ensuring that rule of law is functional legal and political concept, under which the law actually restrains the governments. Having in mind that all states in the Western Balkans have adopted the international law as supreme, as well as that they all have legal provisions ensuring respect of human rights and promoting cultural diversity, some further steps have to be undertaken in order for all citizens to be legally, physically and mentally secure i.e. in order for the gap between laws in paper and laws in practice to be overcome. All in all, human security could be best reached in connection with human rights protection, especially in multicultural societies. Professor Mary Kaldor emphasizes that human security is about the security of individuals and communities rather than the security of states, and it combines both human rights and human development.²

The geopolitical strategic importance of Western Balkans from ancient times until today has remained a determinative factor of its role within international relations. Even today, this region represents a special concern of the international community and the international law and at the same time a challenge to them. Namely, Western Balkans has always been a specific crossroads of civilizations, connecting East and West.

Stability in the region is *conditio sine qua non* for European and international peace and stability. This fact gives the root for additional regional minority rights protection

1 All Western Balkans states are multicultural, multinational and multiethnic. In all of them, there are so-called *old minorities*, i.e. minorities that had such status in former Yugoslavia, such as Albanians, Hungarians, Italians, Austrians, Bulgarians, Turks, Greeks, Romanians, etc. After the dissolution of the Yugoslav federation, constitutive peoples of one republic became *new minorities* in other republics, such as Montenegrins in Croatia, Serbia, Macedonia, Bosnia and Herzegovina, etc.

2 Kaldor M.: *Human Security, Reflections on Globalization and Intervention*, Polity Press, Cambridge, 2008, p. 182.

in South-East Europe, which is enhanced by so-called soft law, encompassing mainly OSCE and EU activities and documents.³

Western Balkans is a true challenge for legal protection of minority rights.⁴ Prior objectives are to ensure respect of international legal standards in the region, accepted on comparative level, and to provide the enforcement of common European standards and specific provisions granted to the region. It is highly important to bury once and forever the old principle „*Cuius regio, eius religio*”, which has become unacceptable in the current circumstances.

Having in mind all above mentioned, for the region of the Western Balkans (and consequently for Montenegro) there are also some new and additional requirements under the rule of law principle.⁵ Those requirements have been imposed in order for the rule of law to be fully implemented in a turbulent region, as follows: extinction of corruption in all spheres of social life, transparent governance and independent judiciary, integration of national, ethnic, religious and cultural minorities into the civil society.

Legal guaranties, under international and national law, have to be additionally supported in the region, as well. These are the following: strengthening anti-discriminatory and anti-assimilation provisions in practice, respect of minority rights through strengthening the affirmative action measures, protection of the local cultures and traditions, and ensuring political participation of minorities.

Montenegro was the only state in the region which managed to preserve peace in 90-ies of the twentieth century, surrounded by the armed conflicts which all were based on interethnic/religious/cultural intolerance and clashes. Although it does not have interethnic and international problems, as its neighbors do, it has been faced with another problem of divided majority, which statistics cannot resolve. Who is minority and who is majority is the question which burdens Montenegrin society and which is raised in every sensitive political moment. Not less important issue is if Montenegro is the real case of a successful integration of 'old' and 'new' minorities.

Human rights protection in a small country, composed of a nationally and ethnically diverse population, such as Montenegro, is mostly a story of minority rights protection. Minority rights as a set of specific rights of individuals belonging to specific groups, who are ethnically, nationally, religiously, culturally, and linguistically different from the majority population are implied to preserve the existence and identity of those individuals, as well as of the specific groups they belong to.

3 Apart of the so-called hard-law, which consists of universal legal instruments, such as *the article 27 of International Covenant of Civil and Political Rights*, and of regional legal instruments, such as *the Framework Convention for the Protection of National Minorities* and *the European Charter for Regional or Minority Languages*, both treaties of the Council of Europe, there are many documents of non-legally binding nature *stricto sensu*, which have special political and, consequently, legal strength, called *soft law*. The best known such a document at the universal level is *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. In regard to minority rights protection, they mainly originate from the OSCE office of the High Commissioner for National Minorities. The most known instruments in this regard are the following recommendations: Hague Recommendations – *Recommendations on the education rights of national minorities* (adopted 1 October 1996), Oslo Recommendations – *Recommendations regarding the linguistic rights of national minorities* (1 February 1998), Lund Recommendations – *Recommendations on effective participation of national minorities in public life* (1 September 1999).

4 More in: Jelić I.: „Minority Rights Protection at the Level of the Western Balkans, with Special Emphasis on Montenegro”, in: *System Changes in South Eastern Europe: Social, Political and Demographic Consequences*, Der Donauraum, vol. ½, 2009, pp. 55-67.

5 UN Secretary-General (UNSG), *Guidance Note of the Secretary-General: United Nations Approach to Rule of Law Assistance*, 14 April 2008. Source: <http://www.unhcr.org/refworld/docid/4a54bbf64.html> (01.09.2012.)

However, for Montenegro and the whole region of South Eastern Europe there is much more than stated in that definition. Namely, minority rights protection, i.e. respect of diversity is a precondition for long lasting peace and stability in the region, which is well known as very turbulent.⁶ This could be linked with the cognition that tolerance is the only alternative to the war of religions, which is one of Kymlicka's explanations for the rise of liberalism in the world, and only human response to pluralism and diversity in modern societies.⁷

Further, having in mind the human rights approach, one of the main issues in a region historically proven as insecure due to interethnic and intercultural clashes is how to be secure when there are so many examples of insecurity of those who are ethnically, nationally and most of all religiously different. This article argues that the existence of good legal infrastructure is not sufficient for minorities to be fully protected. There is need for more. On the other side, providing the political participation of minorities is just one, however an indeed huge, step towards full minority protection, which is provided in Montenegro.

Finally, it is important to protect the right to diversity as a specific human right to national, ethnic and religious diversity in its all aspects, from cultural to political. This right needs additional protection by certain mechanisms *de lege ferenda*, supporting the rule of law. When it is reached, there is no fear of being insecure due to ethnic, national and cultural, mainly religious, belonging and affiliation.

So far, Montenegro has proven to be a real example of respect of multiculturalism and life in accordance to inherent human dignity in the turbulent Western Balkans region. However, there is more to be done in relations between majority and minorities, especially concerning the employment of minorities in public administration, as well as within orthodox majority population divided in Montenegrins and Serbs⁸, which constitute the Serbian minority in Montenegro.⁹

2. Rule of Law and Minority Rights Protection

The cornerstones of the modern minority protection are integration of minorities, prohibition of discrimination and assimilation, affirmative action and political participation of minorities.

Additionally, in order to achieve full minority rights protection, it is indispensable to strengthen the rule of law in the region of Western Balkans.

Strengthening the rule of law in Montenegro was stated as one of key seven priority / requirements in the Opinion of the European Commission on Application of Montenegro for Membership in the European Union¹⁰, from 2010. According to the Commission

⁶ In the region all wars had their roots in the bad inter-ethnic or minority-majority relationships. Both Balkan wars, both World Wars and civil war in ex-Yugoslavia were initiated by inter-ethnic or inter-national clashes.

⁷ Kymlicka W.: *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford University Press, Oxford, 1995, p. 8.

⁸ According to the last census, there are 45% of Montenegrins and 28, 73% of Serbians.

⁹ Serbian population in Montenegro founded the Council of National Serbian minority in order to preserve their national identity. It uses state's funds in order to achieve the aim, as well as other five national minorities' councils (Croatian, Muslims, Bosniaks, Albanians and Romas).

¹⁰ Opinion of the European Commission on Application of Montenegro for Membership in the European Union / Mišljenje Evropske komisije o aplikaciji Crne Gore za članstvo u EU {SEC(2010) 1334}, Delegacija EU u Crnoj Gori, 2010.

Opinion, it is necessary to „strengthen the rule of law, particularly through depoliticized and merit-based appointment of members of the High Judicial and Prosecutorial Councils and state prosecutors, as well as through the implementation of independence, autonomy, efficiency and accountability of judges and prosecutors.”

Through implementation of the rule of law concerning the minority rights and minority status protection, two simultaneous effects can be reached: limitation of arbitrariness of the majority and limitation of domination of groups or individuals, institutions and entities over the law.

The rule of law means supremacy of law over powers, force and interests. Also, all persons, institutions and entities are accountable to laws. Participation in the decision-making is one of the measures to ensure adherence to the principles of supremacy of the laws, as well as to guarantee equality before the law and in human rights. Therefore, there is no implementation of the rule of law principle without participation of all citizens in decision making process, pursuing the UN approach to the rule of law.¹¹

The possibility to discuss real democracy in a multicultural society is given only in the states in which all citizens, regardless of their national, ethnic, cultural and any other belongings or affiliations, take part in decision making. Also, only in such a society the responsibility is shared by all citizens, who are enabled to feel equal and accepted by the majority in such a manner.

The integration of national, ethnic and cultural minorities into a society encompasses the participation of minorities' members in all segments of the society in the process of making social decisions. This means that they are entitled not only to vote or be elected at local, but also at regional and state level. Their participation means effective role in decision making process concerning all kinds of social decisions, rather than only those ones which are of minority interests.

To conclude, minority participation in decision making process is an important indicator of progress in establishing the rule of law.

3. Minority Rights in Legislation and Practice of Montenegro

Montenegro is a multicultural/national/ethnic state. According to the official data of the last census of 2011¹², the population of Montenegro consists of 620 029 citizens, who are of diverse national, ethnic, linguistic and religious affiliation. The following data has shown that the society is highly multicultural: 278 865 or 44, 98% declared as Montenegrins, 175 110 or 28, 73% declared as Serbs, 6 021 or 0.97% as Croats, 30 439 or 4, 91% as Albanians, 20 537 or 3, 31% as Muslims, 53 605 or 8, 65% as Bosniaks (Bosnians), 6 251 or 1.01% as Roma, and 4, 87% chose not to declare their ethnicity. Compared to previous censuses of 1991 and 2003, it is obvious that the majority in Montenegro is divided into two nations of one ethnos.

Montenegrin legal infrastructure, both at the national and local level, is just the first step and a formal legal precondition for reaching full minority rights protection. The reality is faced with the problem of the gap between written laws and implemented laws.

¹¹ UN Secretary-General (UNSG): *Op. cit.*

¹² Census of Population, Households and Dwellings in Montenegro 2011, STATISTICAL OFFICE RELEASE, Ref. No: 83, Podgorica, 2011, pp. 6–9.

Although there is a satisfactory level of minority protection norms implementation, full respect of legal provisions should be strengthened by good interpretation of laws, according to international standards and practice.

Legal protection of national, ethnic and cultural minorities consists of accepted international legal instruments and standards¹³ as well as of a rich network of relevant constitutional and legal provisions.

The domestic legislation treating minority rights protection comprises the constitutional provisions on prohibition of discrimination, granting affirmative action, protection of identity and prohibition of assimilation.¹⁴ It is also related to set of laws prohibiting discrimination and protecting minorities and their rights.

Three constitutional provisions, i.e. article 9 (Legal Order)¹⁵, article 79 (Protection of identity)¹⁶ and article 80 (Prohibition of assimilation)¹⁷ are crucial for the legal background of minority rights protection.

13 Montenegro accepted all obligations under international law (it is a party of the ICCPR & ICSECS, ECHR & FCPNM & ECMRL).

14 Constitution of Montenegro from 19.10.2007. (Official Gazette of Montenegro, No 01/07): Available at: <http://www.unhcr.org/refworld/type,LEGISLATION,,MNE,47e11b0c2,0.html> [01.09.2012.]

15 Article 9 of the 2007 Constitution: „The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.”

16 Article 79:

„Persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, as follows:

1) the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities;

2) the right to choose, use and publicly post national symbols and to celebrate national holidays;

3) the right to use their own language and alphabet in private, public and official use;

4) the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities;

5) the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings in the language of minority nations and other minority national communities;

6) the right to establish educational, cultural and religious associations, with the material support of the state;

7) the right to write and use their own name and surname also in their own language and alphabet in the official documents;

8) the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written in the language of minority nations and other minority national communities;

9) the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action;

10) the right to proportionate representation in public services, state authorities and local self-government bodies;

11) the right to information in their own language;

12) the right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs;

13) the right to establish councils for the protection and improvement of special rights.

17 Article 80:

„Forceful assimilation of the persons belonging to minority nations and other minority national communities shall be prohibited.

The state shall protect the persons belonging to minority nations and other minority national communities from all forms of forceful assimilation.”

The Article 9 introduces international legal instruments and standards into Montenegrin legal order, providing the direct application of ratified and published international treaties and generally accepted rules of international law, when they regulate the relations differently from the domestic legislation. This provision has particular importance in the area of human and minority rights, because they contain supra-state values which are out of the domain of the state sovereignty.

Provisions of different laws and bylaws, not only those ones concerning minority protection, as well as strategic papers are also relevant.

Relating to legal and soft-legal acts protecting minorities, following are relevant: Law on Minority Rights and Freedoms¹⁸, the Strategy for the Empowerment of RAE Population in Montenegro 2008-2012¹⁹, Minority Policy Strategy²⁰, and the Law on Prohibition of Discrimination²¹. Further, the Law on election of members of state and local parliaments²² was adopted in 2011, clarifying the standard of „proportionate representation” which is stipulated in article 79, point 10 of the Constitution.

The right to education of individuals belonging to national, ethnic and cultural minorities is protected and guaranteed in accordance to minorities’ mother tongue, history, culture and tradition, at all levels of education.

The right to use the mother language and letter are officially in use, according to the Constitution and Law on Minority Rights and Freedoms.

The right to religion is guaranteed to everyone and prohibition of discrimination based on religious denomination is stipulated by Law on Prohibition of discrimination.

Montenegrin constitution guarantees more rights than the Framework Convention, especially when it comes to collective rights. Namely, it guarantees the right to *authentic representation* in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant part of the population, according to the principle of affirmative action²³; as well as the right to *proportionate representation* in the public services, state authorities and local self-government bodies²⁴.

The participation in public life is also guaranteed by the Law on Minority Rights and Freedoms and concretized in the new electoral legislation, i.e. the Law on election of members of state and local parliaments. According to it, the affirmative action in regard to the participation of national minorities in decision making processes is guaranteed. The stipulated percentage for the participation of minority political parties is reduced to 0,7% of total votes in order to make a joint list and reach 3%, which is the stipulated percentage for other political parties in Montenegro. Having in mind the minority group with the smallest population, Croats (less than 1%), the new Law pro-

18 Official Gazette of Montenegro no. 2/2011. Available at:

<http://www.mmp.gov.me/rubrike/Publikacije/110954/Publikacija.html> (10.09.2012.)

19 <http://www.mmp.gov.me/rubrike/strategija-za-poboljsanje-polozaja-roma> (10.09.2012.)

20 Government of Montenegro, July 2008. Available at: www.gov.me/files/1216812900.doc (10.09.2012.)

21 Official Gazette of Montenegro, no. 46/2010”. Available at: <http://www.mmp.gov.me/rubrike/Publikacije/110954/Publikacija.html> (10.09.2012.)

22 Official Gazette of Montenegro, no. 46/2011.

23 Article 79, point 9 of the Constitution of Montenegro, Official Gazette of Montenegro, No 01/07.

24 *Ibid*, point 10.

vides a particular affirmative treatment for political parties of the Croat national minority: a minimum of 0, 35% of votes. Given that political participation is crucial for fair and transparent decision making in Montenegro, as a multicultural state, such measures granted to minorities contribute to establish the rule of law in practice.

Speaking from a practical point of view, it is obvious that representatives of minorities cover very important social roles in Montenegro. Three ministers of the Montenegrin government are members of national minorities. Also, in the present composition of the Parliament of Montenegro, there are five guaranteed seats for the Albanian minority.²⁵

However, there is also a dark side of the story concerning the participation in the public life and in the decision making process. Namely, there is an annoying lack of all national minorities' representation in the public administration structure. Also, speaking about minority representation in judiciary, it is evident that there is no a single judge from the Albanian national minority, which is not in accordance with the real state on legal education of such this part of the population.

3.1. Minority Identity Protection

In order to provide full minority protection, it is indispensable to have good legal background for minority identity protection, including the guarantee of the physical security and survival of minority groups.

Identity is a very complex issue. It consists of national, religious, social, cultural, ethnic, psychological, intellectual and political feelings and features. The contemporary theorist on the new policy on identity, Parech, states that identity of a thing consists in the properties which define it as the thing or that sort of thing, rather than another and different thing from everything else.²⁶ According to him, the national identity or membership in one political community is essential and appreciated part of individual identity.²⁷ The phenomenon encompasses two aspects: individual identity of political community members and identity of the community.

Concerning the national identity, and especially in case of the identity of national minorities, it is obvious that it is the most sensitive part of the identity. Out of history we know that national minorities have shown commitment to preserve their national feelings and affiliations, despite of long lasting legal discrimination, social prejudices and ignorance in Europe and worldwide. According to Kymlicka, Western democracies made wrong estimation on duration of national identities of national minorities.²⁸ He explains that although character of national identity can quickly change (*exeplica causa*: heroes, myths and customs), the identity as such – meaning the feeling of being of different nationality, with their own culture – is much more stable.²⁹

²⁵ This was in accordance with previous legislation, which was valid during 2008 when this composition of parliament was established.

²⁶ Parekh, B.: *Rethinking multiculturalism: cultural diversity and political theory*, Great Britain: Macmillan Press Ltd., 2000, p. 13.

²⁷ *Ibid*, p. 51.

²⁸ Kymlicka W.: *Op. cit.* p. 10

²⁹ *Ibid*

The respect and protection of the national, ethnic and cultural identity of minorities is guaranteed by the Constitution and Law on minority rights and freedoms of Montenegro, in above mentioned provisions.

In addition, legal protection of minority identity is strengthened by special measures³⁰, i.e. the affirmative action principle. This principle is an element of contemporary legal protection of minorities providing additional and special rights that are indispensable for maintenance of their specific identity, different from the majority, as well as indispensable for erasing of all inequalities. In that regard, the UN Committee for Human Rights commented that affirmative action is not needed to remain at the level of opportunity, but it may be an obligation of a state.³¹

Having in mind the latest changes of electoral legislation and assuming that the mechanism on political participation of minorities is one of the instruments for protecting their collective identity, it can be concluded that both individual and collective minority identities are protected in Montenegro.

4. National Identity Problem of the Majority

Comparing censuses of 1991³², 2003³³ and 2011³⁴ in Montenegro, it is to conclude that the only „stable” majority is the religious one – Orthodox Christians.³⁵ Namely, political factors made tremendous influence in regard to the national self-declaration of Montenegrin citizens, so that the only consistent self-declaration was the one of the religious affiliation.

It is obvious that there are huge differences among censuses’ results of 1991, 2003 and 2011. Comparing census of 1991 with the ones from 2003 and 2011, the number of

30 Constitution of Montenegro, Art.8, par. 3:

„Special measures may only be applied until the achievement of the aims for which they were undertaken.”

Law on Prohibition of Discrimination, Art. 5:

„Special measures, which are directed to creation of conditions for realization of national, gender and overall equality and protection of the persons who are in unequal position based on any ground, may be introduced by the state organs, public authority, self-government organs, public enterprises and other legal persons with public competences (further: organs), as well as other legal and natural persons.

Measures stipulated in paragraph 1 of this article are applicable in regard to reciprocity of needs and possibilities, lasting until their aims are fulfilled”.

31 General Commentary of UN Committee for Human Rights No. 18/1989, par. 10, doc. UN/HRI/GEN/1.

32 Census 1991: Total 615,035 people; Montenegrins: 380,467 or 61,86%; Serbs 57,453 or 9,34%; Croats: 6,244 or 1,02%; Albanians 40,415 or 6,57%; Muslims 89,614 or 14,57%; And Roma 3,282 or 0,56%.

33 Census 2003: Total 620,145 people; Montenegrins: 267,669 or 43,16%; Serbs: 198,414 or 31,99%; Croats: 6,811 or 1,10%; Albanians 31,163 or 5,03%; Muslims 24,625 or 3,97%; Bosnjaks 48,184 or 7,77%; Roma 2,601 or 0,42%; 5% did not declare.

34 Census 2011: Total 620,029 people; Montenegrins: 278,865 or 44,98%; Serbs: 175,110 or 28,73%; Croats: 6,021 or 0,97%; Albanians 30,439 or 4,91%; Muslims 20,537 or 3,31%; Bosnjaks 53,605 or 8,65%; Roma 6,251 or 1,01%; Without reply 4,87% .

35 However, there are two orthodox churches during last twenty years, as of dissolution of former Yugoslavia. They are: Serbian Orthodox Church in Montenegro and Montenegrin Orthodox Church. However, that division is not of greater importance comparing to religious differences between Orthodoxy and Islam or Catholicism in Montenegro.

those who declared themselves Serbs increased, on account of reduction of Montenegrins. Also, from the standpoint of the census from 1991, in 2003 the number of people who declared themselves as Montenegrins dropped by 107 101 citizens, while the number of people who declared themselves as Serbs increased by 144 439 citizens.

In addition to national self-declaration, there is a problem with majority language. Namely, according to the latest statistics, Montenegrin language, as their mother tongue, is spoken by 21.53% of the population.³⁶ On the other side, Serbian is spoken by 59.67% citizens of Montenegro. Minority mother languages (Croatian, Bosnian, Albanian, Roma and others) are spoken by about 16% of the population. About 3% of the Montenegrin population did not answer to the question.

Finally, both last censuses of 2003 and 2011 show a high percent in denying declaring concerning their national or ethnic status, which speaks for itself.

4.1. A Divided Majority?

Two last censuses, conducted in 2003 and 2011, indicate that the Montenegrin nationality is facing an identity crisis. Compared to the previous census from 1991, the number of citizens who declared their national identity to be Montenegrin decreased, while the number of those who declared as Serbs increased. The difference was not a negligible number, i.e. 22, 65% (in 2003, comparing with the data of 1991) or 19, 39% (in 2011, comparing with the data of 1991) of the total population of Montenegro. If a large number of Serbs has settled in or invaded Montenegro in the past dozen years, was the question I was asked by foreigners while traveling abroad. The truth is different, but perhaps it is only apparent to the Balkans experts or to us from the region.

People who declared as nationally Serb were mostly people who had declared themselves Montenegrin in 1991, but who preferred to stay in the same state with Serbia (state union or federation). In 2003, their declaration of identity was actually based on two fears: on one side, there was certain mistrust towards the Montenegrin authorities at that time, who valued independence more than the quality of living, and on the other, there was a fear that Montenegro could not survive economically without Serbia. In 2011, their national declaration depended mostly on opposition to the Montenegrin authority which is pro-independent and on being disaffected because of the poor living standard.

At the same time, those Montenegrins who opposed to independence are still afraid that their children and relatives would become a neglecting minority in Serbia, where many Montenegrins live.

It is also disputable if Serbs are a minority in Montenegro; because both groups share the same religion and language, neither group could ever be a minority, non-dominant population in the other country. These two peoples share strong ancestral roots, evident facts that can be neither proven nor protected by changing the national identity of Montenegrins. In the past, especially when the Ottoman Empire was dominant in the Balkans, the Serbdom („serbstvo” as it was called in archaic Serbian language used at the time; „srpstvo” is the modern version) was equated with being Orthodox Christian.

³⁶ Census of Population: *Op. cit.*, pp.10-13.

For centuries Montenegrins, as Orthodox Christians, used the word „serbstvo” as a common label for all Orthodox peoples in the Balkans, in order to differentiate themselves from Muslim or Catholic population. There are also arguments on the common history, battles, and origins of Serbs and Montenegrins, but this is a topic for historians.

However, the most relevant fact in order to answer the question if Serbs are a minority in Montenegro is situated in their national feeling. Having in mind that they established Council of Serbian national minority in Montenegro, legally speaking they accepted the status of minority.

Of course, there are differences between these two peoples. Regardless of how people viewed the decision on union or independence, they cannot deny that Montenegro was the first Slavic state in the Balkans and that Montenegrin people built their own nation. In this statement, there is no sentiment against any people in the region, and especially not against Serbs. On the contrary. Living together in one internationally recognized state is a legitimate request. However, such a request was outvoted in the Referendum on independence in May 2006 when the majority of citizens of Montenegro showed their will to live in an independent, internationally recognized state of Montenegro.

Again, after the last census in Montenegro the question of who is the majority in the country has become a burden. There are some views in favor of the concept of a divided majority among Montenegrins and Serbs. Namely, having in mind that 44.98% of population is Montenegrin and 28.73% Serbs according to the latest census, the issue of majority is again on the agenda. However, there is no dilemma on who is majority in Montenegro or if there is majority population in Montenegro. The answer on that question is given not by simple percentage, i.e. figures of over half of the total population. Majority, in political and legal terms, is the largest population with dominant³⁷ role in a society. In Montenegro, the majority population is Montenegrin.

Unfortunately, people who declared their nationality based on daily politics have forgotten one important thing: the national identity, even though just being a feeling of affiliation, is supposed to be stable, constant and very specific category, and not something to be changed from occasion to occasion.

Conclusion

Human rights protection in multicultural states, and Montenegro is one of them, is mostly about minority rights protection achievements. There are two crucial aspects of minority rights protection: 1. preservation of the minority identity and 2. ensuring their political participation, such as participation in the decision making process of importance for the whole society, at all levels of governance, from national to local ones. The last aspect is particularly important for those decisions which affect or may affect minority rights, obligations and interests in the future.

The degree of respecting minority rights is an indication as to the level of democracy development. Also, good minority protection corresponds with high level of human

³⁷ By dominant role it is meant the economic and political dominancy.

security, as well as with the stability of the society as a whole. This is especially valid for the Balkans region.

In order to grant the full minority rights protection and also good majority – minorities relations, it is useful to always bear in mind that the implementation of international legislation in this field, as well as the so-called soft law, is just a starting point in building healthy democratic society. Furthermore, it is essential to secure respect of diversity, as a precondition for long lasting peace and stability.

Highly important is to guarantee and implement equal treatment of the cultural/ethnic/national minority groups, which involves the following: equal freedoms for all and the opportunity to be different. Treating human beings equally requires to take into account both their similarities and differences. This means that equal opportunities should be given to the members of the minorities in order for them to obtain the capacities and skills needed to function in a modern society, as well as to meet their chosen goals effectively. This opportunity may involve giving additional assistance and special rights to those who need to overcome the disadvantage resulting from cultural differences, within the framework of affirmative action.

Having in mind Montenegrin legislation and practice concerning minority rights and freedoms protection, it can be concluded that there is high level of minority rights protection, even higher that stipulated by international law. Also, there is very good relationship between the majority and the minorities. This statement is especially valid after latest changes of electoral legislation, which stipulate measures of positive action in regard to political participation of minorities in Montenegro.

However, there are still things to be improved. Concerning *de lege ferenda* solutions, there is no so much left to be incorporated into the Montenegrin legislation. But, there is a lot to be done at practical level. First of all, the constitutional right to *proportionate representation* in public services, state authorities and local self-government bodies has not been respected at the level of state authorities. It would be desirable, for example, to have officers for maintaining of public order coming from the minority population in settlements in which majority population lives dominantly, and vice versa. At the level of identity preservation, both – the national minorities' councils and state authority have to work on improving identity protection and promotion, as well as better organization of those units which were established by the Law on minority rights and freedoms, in order to affirm national/ethnic/cultural diversity and preserve minority identities.

To conclude, taking into consideration the history of the region, social circumstances and traditional mentality of Montenegro, as well as the state transitional period in its final phase, this smallest Balkan state has achieved much more in the human and minority rights protection than its greater neighbors. Actually, it has proven to be a living example of multiculturalism in action, in the middle of a turbulent region.

A short note on the author's biography

Ivana Jelić, LL.M, PhD, is an Assistant Professor of Public International Law and International Human Rights Law at the Faculty of Law and Faculty of Political Sciences in Podgorica, University of Montenegro. Her research interest is focused to human rights and minority rights protection, with the emphasis to the issue of international responsibility and multiculturalism. She is a President of the Centre for Young Scientists of Montenegrin Academy of Sciences and Arts. She is a member of the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council Europe (2012-2016). She published the first monograph „Minority Rights” in Montenegro, dealing with international minority rights protection, with a special emphasis to the SEE region. Additionally, she wrote two monographs and over fifty research papers, published in national and international publications.

Political Structures of Multiculturalism and Majority-Minority Relations: The Case of Serbia¹

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Introduction

The core challenge of multicultural societies today is finding the right extent to which their political structures should be pluralized in order to ensure the universality of basic human rights, rule of law, democratic government structures, and the sense of unity and citizen allegiance. This challenge is both theoretical and practical in its nature. At the level of normative political theory, the discussion concerning the political structures of multiculturalism is based on competing solutions to the issue of defining collective identity of a political community, while at the policy level the subject of debate is the appropriacy of various multicultural politics models which publicly recognize ethno-cultural diversity. This paper places the focus on the policy level of the discussion concerning multiculturalism and majority-minority relations, offering a contextual analysis of multicultural policies in the case of Serbia.

In demographic and socio-cultural sense, Serbia is a multicultural state. According to the census conducted in 2011, national minorities comprise 12,88 % of the total population. However, that demographic fact was not always respected in a fair and mutually beneficial way. Although we have the experience of addressing ethno-cultural issues acquired during self-governing socialism, especially regarding the representation of national minorities in various areas of public life, Serbia officially declared itself multicultural and committed itself to liberal form of multiculturalism in the early 2000s.² The year 2002 was a turning point for the idea and politics of multiculturalism in Serbia, when the first systematic law on protection of national minorities was adopted.

1 The work on this paper has been granted by the Ministry of Education and Science (Republic of Serbia), through the project „Constitutionalism and the Rule of Law in the Process of Nation-State Building - The Case of Serbia.”

2 I agree with Amy Gutmann that „the challenge of multiculturalism is endemic to liberal democracies because they are committed in principle to equal representation of all.“ (Amy Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition*, Princeton University Press, Princeton, New Jersey, 1994, p. 3.). Tariq Modood also claims that „multiculturalism presupposes the matrix of principles, institutions and political norms that are central to contemporary liberal democracies, but multiculturalism is also a challenge to some of these norms, institutions and principles.“ (Tariq Modood, *Multiculturalism*, Polity Press, Cambridge, 2007, p. 8).

At the very beginning, it is necessary to define the basic terms used in the paper. The term *multiculturalism* will be used in Bhikhu Parekh's meaning to refer to the existence of long-established, intergenerational communities whose members share the same history and seek to maintain their cultural customs and belief systems which distinguish them from majority population.³ In the case of Serbia, these are national and religious minorities.⁴ Since the borders of national and religious minorities in Serbia as a rule (although not necessarily) overlap, the position of national minorities will be in the focus. *Multicultural policies* as a term refer to political and legal institutionalization of ethno-cultural diversity, mainly through guaranteeing minority rights. Drawing upon Kymlicka's typology of minority rights, in the context of Serbian multicultural experience, this paper explores the current state of three groups of minority rights: identity rights, representation rights and territorial autonomy rights.⁵

Identity rights

Ten years after the first law regulating the status of national minorities has come into force (*Law on the Protection of the Rights and Freedoms of National Minorities, 2002*) it can be said that Serbia has an acceptable system of minority rights protection, in accordance with international standards and similar to the corresponding systems in the region. The biggest progress has been made in the field of identity rights. Members of national minorities are granted a whole set of minority rights that ensure that particular ethno-cultural identities are expressed and cultivated. The creators of the constitutional text and minority laws have understandably not reduced the identity rights only to the individual rights of minority members. In Article 75 of the Constitution it is stated that minority members are granted not only constitutional rights granted to all citizens, but also „additional individual and collective rights”. It is further specified that „individual rights are realized individually, while collective rights are realized in community with others”. In Parekh words, these rights can be classed as „individually exercised collective rights”.⁶ Although it is not completely clear which criteria served as a basis for defining collective rights, the legislator's decision to include this category in

3 Bhikhu Parekh, *Rethinking Multiculturalism : Cultural Diversity and Political Theory*, Macmillan press LTD, London, 2000, p. 4.

4 According to Article 2 of the *Law of the Protection of the Rights and Freedoms of National Minorities*, national minorities are defined as „groups of citizens of the Republic of Serbia who, although constituting a minority within the territory of the Republic of Serbia, are sufficiently represented, belong to a group with a lasting and firm connection to the Republic of Serbia, possess some distinctive features, such as language, national or ethnic belonging, origin or religion, which distinguish them from majority population, and whose members show concern for preservation of their common identity, including culture, tradition, language or religion.”

5 These are in Kymlicka's view the most characteristic types of minority rights which national minorities demand in order to ensure their survival as distinct societal culture. Kymlicka defines a societal culture as „a culture which provides its members with meaningful ways of life across the full range of human activities including social, educational, religious, recreational and economic life, encompassing both public and private spheres.” See, Will Kymlicka, *Multicultural Citizenship – A Liberal Theory of Minority Rights*, Clarendon Press, Oxford 1995, Chapter V.

6 Bhikhu Parekh, *Rethinking Multiculturalism : Cultural Diversity and Political Theory*, op.cit., p. 216.

the constitution is a praiseworthy extension of the classical liberal view of individuals, where they are seen as exclusive right-holders.⁷

The right to cultural autonomy of national minorities is the key indicator of practicing collective identity rights in Serbia. The institution of national minorities' cultural autonomy was introduced into the legal system, firstly by the *Law on the Protection of the Rights and Freedoms of National Minorities* (2002), then by the *Constitution of the Republic of Serbia* (2006), and most extensively by the *Law on National Councils of National Minorities* (2009). Cultural autonomy is defined as autonomy of a personal type, which applies to all members of a national minority, irrespective of the part of the territory where they live. In a nutshell, it includes self-government rights concerning private and public use of the mother tongue and alphabet, media and education in the mother tongue, fostering culture and tradition and use of national symbols. In that way national minority members are offered the possibility to efficiently participate in decision-making processes regarding the issues directly connected to their particular cultural identities. To achieve cultural autonomy, national minorities can elect their national self-government, i.e. national councils of national minorities. After turbulent beginnings in the functioning of these bodies, it is no exaggeration to say that national councils are on the right path to fully create the content of cultural autonomy of national minorities. The specification of the roles of national councils (especially in relation to central authorities) and the establishment of a foreseeable procedure for their financing played the crucial role in this sequence of events. In areas such as education and media, which are of great importance for the preservation of the minority's cultural identity, national councils participate in the decision-making process through giving opinions, proposals, and also giving consent, with the ability to veto draft resolutions. Thus, for example, without the consent of a national minority council it is not possible to appoint the director of a state educational institution in which most classes are taught in a national minority language (*Law on National Councils of National Minorities*, Article 12, Paragraph 1). Nevertheless, obstacles to national council functioning have not completely disappeared, in spite of the advancement in achieving efficient cultural autonomy. Initially, the main obstacles were imprecise and contradictory provisions of minority laws. Today, however, we witness the situation in which the work of national councils is often paralyzed due to the tensions among minority political parties which control the largest number of seats in national councils.

7 More on this problem, see: Miodrag A. Jovanović, *Kolektivna prava i pozitivna diskriminacija – konceptualna razjašnjenja*, in: Miodrag A. Jovanović (ur.), *Kolektivna prava i pozitivna diskriminacija u ustavnopravnom sistemu Republike Srbije*, Službeni glasnik, Beograd, 2009. On the legal-theoretical foundation of collective rights, see in: Miodrag A. Jovanović, *Collective Rights: a Legal Theory*, Cambridge University Press, 2012.

Representation rights

National council formation does not exhaust all options for national minorities' participation in the public life of a state.⁸ Effective minority participation in the process of political decision-making is undoubtedly of great importance for their full involvement in a wider society. As Will Kymlicka points out „the basic impulse underlying *representation rights* is *integration, not separation*.”⁹ After all, political participation is a symbolic affirmation of citizenship and reflects an interest in the political life of the larger society. This sort of political integration is the main aim of a democratic state. Therefore, it is surprising that domestic legislators for quite a while did not dedicated enough attention to this kind of minority rights. Moreover, we witnessed a bizarre situation in 2003: on the one hand, we had a relatively good legal framework of minority rights protection and on the other hand, the parliament did not include any elected national minority representatives. Granting representation rights was not being considered even at the time when *Law on the Protection of the Rights and Freedoms of National Minorities* was being passed. Therefore, national minorities were forced to encourage a high turnout of their members at the election, while hoping for a small turnout of the majority population. That was the only way to leap over the country's 5% threshold.¹⁰

After the failure of minority lists in the parliamentary election in 2003, it has become clear that equal political rights of citizens are still insufficient for equal political representation of minorities in the parliament. Domestic legislators had several ways to modify the electoral formula at their disposal, all of which had been tested in comparative electoral legislation: to lower the 5% threshold, to introduce an arithmetic threshold for minorities, to redistribute existing electoral units (affirmative gerrymandering), to form separate electoral units for minorities, to provide favorable registration conditions, to have nationally balanced electoral lists, to reserve a certain number of seats in the parliament for national minorities.¹¹ *The Law on Altering and Amending the Law on Election of Members of Parliament of the Republic of Serbia* (2004) introduced measures of affirmative action towards the lists of minority political parties in the form of an arithmetic electoral threshold. It was written that „national minority political parties and

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- 8 *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* from 1999 contains measures which stress the importance of national minorities' representation in central institutions of power, especially in the parliament and the government. Among other things, it is recommended to draw up: special schemes of national minority representation through the guaranteed number of seats in the parliament and parliament committees or through other forms of participation in the legislative process; formal and informal agreements on appointing national minority members to government and court positions; special measures for minority participation in public institutions, such as resolutions on public services in minority languages. Available on: http://www.osce.org/dosuments/hcnm/199/09/2698_en.pdf
 - 9 Will Kymlicka, „*Multicultural Citizenship – A Liberal Theory of Minority Rights*”, op. cit., p. 132. More on normative foundation of group representation: Iris Marion Young, *Deferring Group Representation*, in: *Etnicity and Group Rights*, Ian Shapiro nad Will Kymilcka (ed.), New York University Press, New York nad London, 1997, pp. 349-377
 - 10 Of course, only political parties from large national minorities, such as the Hungarian or the Bosniak one, could count on this possibility.
 - 11 Jelena Lončar, *Izborna formula i reprezentacija manjina*, u: *Preporuke za izmenu izbornog zakonodavstva u Srbiji*, (ur.) Zoran Stojiljković i Dušan Spasojević, NDI, Beograd, 2011.

coalitions of national minority political parties participate in the seats distribution also when they win less than 5% of the total vote” (Article 81).¹² Affirmative action regarding national minorities’ representation rights has been confirmed in the *Law on Political Parties* (2009) and also in the *Law on Local Elections* (2007).

Although it represents a better solution compared to the period before year 2004, the arithmetic threshold formula has at least two major drawbacks. Bearing in mind that in the conditions of an average turnout the arithmetic threshold is 16,000 votes (0.4% of the total vote), it is obvious that most national minority parties cannot exceed this figure. In such circumstances large, well-organized and united minorities have the advantage. The Hungarian minority and the Bosniak national minority fulfill these conditions, while the Roma minority, despite being quite large, is a victim of poor organization and divisions among political parties which represent it.¹³ The second flaw of this electoral formula is connected to the disadvantage that we just presented. Since political divisions of the electorate come at a high cost, the arithmetic threshold is conducive to the tendency of ethnic and ideological homogenization of the minority group, which is surely an effect which clashes with the one established when the democratic multi-party system was introduced.

Territorial autonomy rights

National minorities’ right to territorial autonomy represents a possible form of the collective right to self-government. In contrast to the cultural autonomy which is based on a personal principle, territorial autonomy means that only inhabitants of a certain area possess a degree of independence from central state bodies, the condition being that within the area most of the population belongs to a national minority. The fields of government that the state with its public legal regulations delegates to the level of ethno-cultural territorial autonomies mainly concern the areas of public life relevant for the preservation of the identity of a national minority. From a theoretical point of view, this is the most controversial form of minority rights. Not even theoreticians of multiculturalism have an answer to the question whether ethno-cultural justice necessarily requires the state to accept the obsessive tendency for self-government on a territory populated by a minority and perceived as homeland by a minority. Kymlicka, therefore, warns that territorial autonomy is two-faced: on the one hand, it can improve interethnic trust and consequently social unity; on the other hand, it can trigger the processes of disintegration and instability.¹⁴ Despite his initial caution, this author says that ethno-cultural territorial arrangements at the end of the day did result in „political stability, peace, democracy, freedom and prosperity in Canada and countries of

¹² This practically means that a minority party gets one seat in the parliament by winning the number of votes equivalent to the value of an individual seat (this figure equals the number of voters divided by the number of seats in the parliament).

¹³ For example, In the election in 2008 Roma political parties together won 18,950 votes, which would have been enough for one seat in the parliament, had they been in a coalition.

¹⁴ Will Kymlicka, *Multiculturalism and Minority Rights: West and East*, Journal on Ethnopolitics and Minority Issues in Europe, Queen’s University and Central University, Issue 4, 2002, pp. 11-12.

Western Europe.”¹⁵ This, however, does not mean that the territorial autonomy right represents a universally preferable solution to the issue of majority-minority relations in all situations. This is confirmed by the fact that no international legal document grants national minorities the right to autonomy. For example, in the Council of Europe’s *Framework Convention for the Protection of National Minorities* the right to territorial autonomy of national minorities is not a positive obligation of the Member States.¹⁶ Although the advisory committee on the *Framework Convention for the Protection of National Minorities* pointed to the positive effect that decentralization can have on creating conditions for effective participation of national minorities in public life, it was also stressed that decentralization is not always beneficial for national minorities. This is especially the case when local authorities lack the necessary financial means to fulfill new duties.

If we leave out the case of Kosovo, which according to the Constitution possesses „essential autonomy,” which practically does not belong to the Serbian legal system and whose final status is still a subject of dispute and negotiations, there are no other multicultural territorial arrangements in Serbia. Of course, the question that arises is whether there are other national minorities that could request this form of collective rights in Serbia. The answer is positive. Three minority communities fulfill the criteria of territorial concentration, population size and social cohesion: Hungarian national minority in the north part of Vojvodina, Bosniak minority in the Raška region – Sandžak, and Albanian national minority in municipalities Preševo, Bujanovac and Medveđa. All these three national minorities, or at least their political leaders, address the society with requests for some kind of public recognition of their right to territorial autonomy, even though those proposals are not always clearly articulated and developed. The first ones who presented such a proposal back in the 90’s were Hungarians from Vojvodina and Albanians from the three municipalities in the south of Serbia. The document titled *Hungarian Autonomy* proposed the formation of a territorial unit that would have all legislative and executive bodies, symbols and an official language. Although this document never had any practical political results, the programs of the Hungarian minority political parties still contain the option to connect territories of municipalities in which the majority of population is Hungarian. The latest initiative comes from the coalition „Mađarski preokret” whose campaign for the parliamentary elections in 2012 revives the concept of three-tier system of autonomy for Hungarians from Vojvodina, which combines territorial and personal principles. Similarly to Hungarians, Albanians have also put forward their request for territorial autonomy in the first years after former Yugoslavia disintegrated. In the self-organized referendum in March 1992, they chose political and cultural autonomy with the right to merge with Kosovo. In the political declaration adopted early this year at a joint session of representatives of the Albanian minority from municipalities Bujanovac, Preševo and Medveđa, it was re-emphasized that „Albanians are decisive to fight for their autonomous status with all

¹⁵ Will Kymlicka, *ibid.*, 15.

¹⁶ Lidija R. Basta Flajner, *Participativna prava u Okvirnoj konvenciji Saveta Evrope: problem prirode manjinskih prava*, in: Miodrag A. Jovanović (ur.), *Kolektivna prava i pozitivna diskriminacija u ustavnopravnom sistemu Republike Srbije*, Službeni glasnik, Beograd, 2009, p. 50.

available political means, bearing in mind the opinion of citizens expressed in the referendum.“ At the same time, the Bosniak national council adopted *The Resolution on the position and rights and freedoms of Bosniak people in Serbia*, which, among other things, requests the right to regional autonomy for six municipalities from Sandžak that would have the right to establish cooperation with the south part of Sandžak, which belongs to Montenegro. The most ardent supporter of Bosniak autonomy is surely the religious leader, Muamer Zukorlić, who in his public speeches proposes the autonomy model of South Tyrol. In his opinion, this model is the most adequate for the Bosniak national minority because it is based on a cross-border, i.e. dual autonomy.

The above-listed examples illustrate the relevance of this topic, which is either underestimated or too quickly discarded by domestic academic and general public. Unfortunately, our political discourse lack the vocabulary needed to discuss this issue in an appropriate way. Recent developments in this region have just reinforced the negative image of territorial autonomy. However, I argue that theoretical, legal and political doubts should not be a reason for the absence of a reasonable discussion on possibilities for territorial organization of minority self-governments in Serbia. Since critics, rather than supporters of territorial autonomy predominate in the public discourse, basic arguments against territorial autonomy will be firstly briefly presented. There are three main positions from which minorities' right to territorial autonomy is disputed. The first position is the one of procedural liberalism. One group of the liberally oriented theorists, who see liberalism in its classical and libertarian form, rejects ethnically characterized regionalization for fear that it would corrode the feeling of the common civil society identity and, therefore, contribute to the „re-feudalization” of the common political space.¹⁷ The supporters of this line of argumentation do not accept the requests for the redefinition of basic liberal values and institutions, claiming that every form of „coquetry” with those favoring identity politics is a step towards the return to the age of pre-modern corporatism and tribalism. It is also argued that the principle of equal citizenship requires all citizens, irrespective of their particular identities, to have exactly the same body of basic rights and obligations. The second group of critics challenge the minority right to territorial autonomy from the perspective of monocultural and communitarian view of a political community. These are mostly supporters of radical, right-wing ideological options which sacralize the ideal of an organic and romantically perceived community of ethnic Serbs, based on the connection of the Serbian nation with its land. Furthermore, these critics claim that multicultural policies inevitably promote an ever-increasing number of demands by an ever-increasing number of groups (so-called „slippery slope” argument). Therefore, all minority pretensions to the territory, even in the form of a request for autonomy, are seen as an act of open hostility towards the ethnic majority. The third position of criticism belongs to the corpus of multicultural theorists. They are „cautious” multiculturalists who do not discard the concept of territorial autonomy because it is in itself normatively undesirable, but because they primarily express skepticism regarding the readiness of the Serbian

17 Ilija Vujačić, *Multikulturalizam i političke institucije*, in: Vukašin Pavlović (ed.), *Političke institucije i demokratija*, Fakultet političkih nauka, Beograd, p. 103.

society for such type of minority rights. These critics defend their views by pointing at the complex historical heritage of majority-minority relations in this region and the fact that the Serbian society is still not democratically consolidated. According to Miodrag Jovanovic, the problem lies in „the existence of continuous disputes in this part of the world, the heritage of real-socialist autonomy, which is an empty shell with no liberal-democratic content, and also the bad experience of former federation’s disintegration” which all together leads to a „strong and justified resistance of those states to ethno-territorial arrangements which would in the fragile conditions of democratic transition and consolidation rather weaken than strengthen social unity in those environments.”¹⁸ It is indicative that the traumatic experience of former Yugoslavia’s disintegration is being wrongly connected with national minorities’ „secessionist ambitions”. This kind of analogy suffers from numerous flaws springing out of poor logic. It’s important to stress that a national minority rights to territorial self-government is in no way identical with the right to national self-determination, neither does it necessarily move in this direction. If we want to find excuses in problematic historical experience, then we should admit, as Kymlicka plausibly notes, that that the past offers far more examples of violent disintegration due to non-existent or quasi-existent territorial autonomy.¹⁹ Therefore, for a start, the best we can do is agree with Bhikhu Parekh who rightfully claims that „unless we find ways of accommodating these demands, and that involves redefining the traditional view of the relation of the state to its territory, we run the risk of provoking a cycle of secessionist violence and undermining the very unity and stability for whose sake the demand is resisted”.²⁰

Conclusion

There are good reasons to conclude that the state of minority rights in Serbia is significantly better compared to the period before the year 2000. However, we have witnessed that multiculturalism has not been working well in all areas of public policy. There are still some obstacles for the full consolidation of minority issue. I shall highlight three main obstacles: (1) the tendency of politicization of national minorities’ cultural autonomy, (2) the insufficiently inclusive electoral formula which ensures political representation of national minorities in the central legislative body and (3) the lack of productive discussion on the possibilities of national minorities’ territorial autonomy.

When speaking about identity rights, I argue that the procedure for electing national council members mistakenly transfers the competition for the support of national minority electorate into the field of cultural autonomy. Such scenario is facilitated by legal decisions which allow political parties to take part in direct elections for national councils (Croatian legislation explicitly forbids this possibility), and also by the general

¹⁸ See, Miodrag A. Jovanović, *Territorial Autonomy in Eastern Europe: Legacies of the Past*, Journal on Ethnopolitics and Minority Issues in Europe, Queen’s University and Central University, Issue 4, 2002, pp 1-10.

¹⁹ Will Kymlicka, *Multiculturalism and Minority Rights: West and East*, op. cit., p. 16.

²⁰ Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, op.cit., p. 189.

problem springing out of the unconsolidated system of Serbian political parties. In that way, national minorities' political parties suffer from all those defects, such as the abuse of power positions, which at a larger scale characterize majority political parties. The solution to this problem does not necessarily lie in depoliticization, but rather in pluralization of actors who represent national minorities' identity needs. Another significant obstacle may be found in the tendency of essentializing identity rights. For example, National Council of Hungarian National Minority has advised Hungarian-language newspapers to work in accordance with traditional Hungarian values. This decision is simply inconsistent with liberal constitutional values of individual autonomy and free speech. Therefore, for further development of cultural autonomy, it is important to avoid the tendency to freeze members of national minority into an essentialized unity.

Regarding representation rights, there are two ways to overcome the described setbacks of the electoral formula which includes an arithmetic threshold for national minority parties. The first solution we see in the election laws of neighboring countries. Croatia guarantees eight parliamentary seats for their national minorities, according to the following formula: three seats are reserved for Serbs, two for indigenous minorities, one for new minorities, one for small minorities and one for dispersed minorities. Parliamentary representatives elected from the lists of new, small and dispersed minorities bring their political views into accordance and also have the duty to represent interests of those minority communities which are not represented in the parliament. Romanian constitution and a special law regulate that national minorities which do not win more than 5% of the total vote (only the Hungarian minority can have more than this) nevertheless have one seat each reserved in the Chamber of Deputies. If we discard the option of automatic representation of national minorities in Serbian parliament, another solution would be to award the seat to the party which wins the biggest number of votes, when parties of a national minority together exceed the natural threshold. Such a strategy would help avoiding the situation such as currently facing Roma minority, but it is still not a remedy for the essential flaw of the electoral formula, deriving from the existence of the arithmetic threshold that has to be exceeded in order to obtain seats. This threshold can never be exceeded by most national minorities, even if we put together all the votes of their political parties.

Referring to the issue of ethno-territorial autonomy, it should be noted that the historical analogy argument against multicultural territorial arrangements is given too much significance. There is no evidence to support the claim that ethno-territorial autonomy is promoting ethnic secession. Nevertheless, I do not deny the existence of psychological tension created by each attempt to territorialize minority rights in this region. The consequence of this is the lack of mutual trust which represents the basic ingredient of every form of ethno-cultural regionalization. I also agree with the part of argumentation related to the importance of democratic and legal consolidation, as the precondition for fully exercising the right to ethno-cultural territorial autonomy. For this reason, I claim that administrative-territorial regionalization would, for a start, contribute to a greater degree of multicultural justice in Serbia. If nothing else, regional and local institutions improve the position of national minorities in simpler and more

effective ways. The results which are achieved in Vojvodina in this field are surely encouraging. Therefore, it should be pointed out that regionalization is also defined by the Constitution of the Republic of Serbia, which along with the regions of Vojvodina and Kosovo, allows the establishment of new autonomies, as a result of grassroots initiatives (Article 182). At the moment, however, this still remains merely a possibility. Each step forward in this direction would be a good motivator for further consolidation of majority-minority relations in Serbia.

Multiculturalism and Collective Memory¹

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Pseudo-mystical stupidity, enriched with countless and arbitrary *historical memories*, was so emotionally appealing that it seemed to overcome the borders of nationalism in depth and width.

(Hanna Arendt, *The Origins of Totalitarianism*)

Nation, says Fvonk and pauses at that word, it's a hundred-headed troll!

(Erlend Loe, *Fvonk*)

Introduction

Regardless of the theoretical direction one could select when defining multiculturalism or policies aimed at identity, they include the plurality of groups that are recognized as different within the same political system. Such groups can be defined on the basis of different criteria, by features quality of the group and the number of its members. The main focus question of this study will be on the relationship between the state response to the fact of pluralism and the influence of pluralism on the shaping of collective memory. The initial thesis is that Serbia fails to best meet the challenges of multiculturalism. The reason for that is the separation of multicultural policies and minority issues in relation to the politics of memory. If the basis of multiculturalism lies in the request to recognize the identity of minority groups, then the formation of "collective" in the collective memory largely determines how individual perceptions of the past will be included in a basic consensus about the loyalty of members of a given political system. The issue of collective memory always arises when one political community is about to lose the basis of its legitimacy and when it has to provide an adequate response to the recent traumatic past. There are two possible issues here, the first being the process of building a nation-state, national identity and the position of minorities in this process. As the prevailing formula to build a state in Europe is based on unifying a nation, in its very foundation it is possible to recognize a tension between the way of providing legitimacy and the inclu-

1 The paper was written on the basis of a presentation entitled 'Political Structure of Multiculturalism and Majority - Minority Relations: Case of Serbia' at the international conference The Challenges of Multiculturalism: the South-Eastern European Perspectives in the European Discourse, held at the Faculty of Political Sciences of the University of Belgrade from March 22 to 24, 2012

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sion of minorities in the project: "Nation-states seek to nationalize collective memory and prohibit the group memory of minorities, immigrants and the powerless".³ The process of constituting the new political order begins on the ruins of the former regime. The start of this process usually does not mean beginning from scratch. In regard to the countries of South East Europe, the experience of ethnic conflicts that has underlain these processes inflicts a further burden on the possibility of building a community that will accept the values of multiculturalism.

The second question that I will try to answer in this paper is which strategies will contribute in the process of resolving a conflict to the establishment of a long-term stability of the political system. It is clear that if the legitimacy of a new state is provided by promoting hostility towards a group which has remained a minority on its territory, such systems cannot provide a long-term stability. I believe that deliberative democracy after a conflict can be the answer to these problems. However, it is necessary to present an alternative to this solution and clearly define the form of deliberative democracy. In this section, I will rely on Dryzek's argument that some form of deliberative democracy can process some of the most difficult issues in deeply divided societies.⁴ The second section will address the issue of whether this theory is applicable in the case of deeply divided post-conflict societies, whether deliberative democracy can be a way of expressing a new identity through the political forms of building a collective memory and how important that is for the „new minorities“? Answers to these questions should enable the clear detection of the conditions of multicultural policies in post-conflict „divided“ states and determine what kind of challenges such a context, theoretically and practically, puts before the politics of identity.

National State and Political Identity (Identities)

The memory has a constructive role when it comes to identities, and national identity is crucial when it comes to establishing developing a European state. To deal with this problem it is important to make the distinction between the terms "ethnic" and "national." Ethnic groups ("ethnic", ethnic identities, etc.) are a phenomenon that historically came into existence before "national" (nation, national identity, etc.): "... it was agreed that in the 19th and the 20th century, during the construction of modern society based on the European model of modernity, a phenomenon of the modern nation and the nation-state and nationalism and new collective national identities became central historical events (as collectivities and macro-phenomena) which have arisen in the modern integration processes in the area of: literary language, the language of literacy and education, new linguistic community, linguistic identity, school system and education, high culture, and industrial capital, monetary institutions, national market, new political system, modern national institutions (political, cultural, economic, educational, etc.) social relations, etc." (Korunić 2003, 2).⁵ Also, in the crystallization of nations within states (nation-

3 James Booth, *Communities of Memory – On Witness, Identity, and Justice*, Cornell University Press, Ithaca and London, 2006, p. 175

4 John Dryzek *Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia in Political Theory*, SAGE Publications, 2005, pp. 218-242

5 Petar Korunić *Nacija i nacionalni identitet* in *Zgodovinski časopis* 57, Ljubljana, 2003, p.2

states) other ethnic groups begin to form, and they have more than just political features – their identity begins to take the form of political identities. Here we come to another important issue. A modern nation forms at the peak of the constitution process, reproduction and transformation of an ethnic community. This process is always followed by the process of self-identification of people with those communities, their sense of “membership”, a sense of belonging and a sense of separation which emerges from their relation to the „others”. This means that a nation in the modern sense of the word implies a form that transcends pre-political identity. It becomes „a form the effect of which is embedded in the constitutive feature of the political identity of citizens within the thoroughly transformed political order”.⁶ Transcending, in this case, implies erasing everything that came before, it implies also the inclusion and redefinition of certain elements that are now becoming recognized as political. This transcending process plays a crucial role when it comes to the collective memory of a nation. A political community faces its previous experience, remembers or deliberately forgets. In regard to the past, it defines its most important hypothesis for the future. The transition from the pre-political to political is especially evident in the analysis of the constitution of the states built after the disintegration of Yugoslavia. Since this process went in the opposite direction in relation to the processes in other European states, it has left behind a substantial deficit in the understanding of one’s own identity, as well as in the understanding of the basis of loyalty to the state in which some nations or politicized ethnic groups found themselves (or as Hannah Arendt defined them „nations of minorities”).⁷ Nationalism as a building form of a modern state has a specific form of loyalty to a given group (in this case the nation-state). This legitimacy is based on the distinction between „us” and „them”, and since it is also the strategy of appropriation of political goods, the way of defining certain „remaining” ethnic groups within the emerging nations (nation-states) determines the future position of the members of these groups: „In an ethnically divided society, the creation of a nation state simply means that the members of one group of people gain privileged access to the goods which can be distributed by the public authority (offices, educational institutions, legal services), restricting the share of others in these scarce resources”.⁸ The way in which certain groups are defined in the process of development of nation-states will often affect the risk of creating a potential ethnic conflict. The importance of the position of minorities in the process of constituting a new political order is especially evident when it comes to etatization of a nation, as Meinecke understands the form of state formation on the territory of Eastern Europe.⁹ Etatization of a nation is a process in which some form of national political identity exists prior to the constitution of the state itself: „The nation is a pre-statist, pre-political, existential and almost eternal entity, whereas the state is a quasi accidental and ephemeral phenomenon, which supports the survival of the nation in history, but is not really the embodiment of the essence of the nation”.¹⁰ Such an identity, at least when it comes to the countries of Eastern Eu-

6 Milan Podunavac, *Rekonstitucija moderne države i nacije*, Glasnik odjeljenja društvenih nauka CANU, Podgorica, 2008, p.133

7 Hana Arent *Izvori totalitarizma*, Feministička izdavačka kuća 94., Beograd, 1998, p.276

8 Janos Kis *Beyond the Nation State* in *Social Research* Vol. 63, No.1, 1995, p. 200

9 Meinecke according to Milan Podunavac *Rekonstitucija moderne države i nacije* p.143

10 Ulrich Preuss *Constitutional Powermaking in the new Polity: Some Deliberations on the Relations*

rope was built on „tribal nationalism”. For this reason Podunavac rightfully concludes that the Balkan nations can be defined as „belated nations”¹¹: „In these societies, there is the anticipation of national consciousness spread by propaganda, which mapped the positions that led to the formation of nation-states”¹². At a time when one group of people is constitutionally politicized as ethnic group, that is, set against the dominant „others” (in the Balkan context the „constituent, state-building” peoples) it is obvious that, separated from the structures of governance and power, it will aspire to conquer that governance and power. In that respect, it is important to stress two things. First is the order of the process of formation of national identity and national state. As it has been explained already, in the case of the states that emerged from the disintegration of Yugoslavia, it is the so-called „nation etatization”. Second, we should determine which form of nationalism we are talking about. Focusing on the types of processes used to overcome ethnic conflicts after the collapse of a political order (in this case of Yugoslavia) emphasizes the form of nationalism typical of the given states. Nationalism that characterizes these societies shall determine ways to overcome a conflict (forced assimilation, ethnic cleansing, freezing the conflict).¹³ Collective memory is the foundation of national identity directing the conflict in its core as well as the future attitude of these states towards „new” minorities. I will explain the importance of policies aimed at shaping collective memory by using as reference the Prometheus’s dilemma, i.e. the methods to overcome it, by Dryzek’s conclusions about the importance of deliberation after ethnic conflicts and positioning of the public sphere, and by emphasizing the importance of formulating the policies of memory in the public sphere. The (in)existence of an independent public sphere, the deliberation processes during the history memory formation, the importance of (re)formulation of history, the inclusion of minorities in those processes will profoundly determine the national identity of future states and their future policies towards them; „the absence of a pre-constitutional foundations of a common collective identity has multiple adverse effects in the field of politics. The effects of a destroyed legality and devastating effects of the „old regime” are much higher than they would have been had the society used the conquered constitutional opportunity for redefinition and formation of a common collective identity”¹⁴.

The argument could be supported further by Hannah Arendt’s notion that in the modern state, from the very beginning, there is a „secret conflict” between the nation and the state. Although Hannah Arendt universalizes this contradiction, I will focus on her analysis of „tribal nationalism” because it adds to the conflict between the nation and the state, and may be regarded as a general national pattern in this region.¹⁵ Arendt locates

Between Constituent Power and The Constituion in Constitutionalism in Identity Difference, and Legitimacy: Theoretical perspectives, ed. Michel Rosenfeld, Duke University Press, 1994, p. 152

11 See Helmuth Plessner *The Belated Nation*, Naprijed, Zagreb 1997; Ivan Prpić *Suremenost Plessnerove teorije o zakašnjeloj naciji* at *Politička misao* Vol.35 No.1, 1998.

12 Milan Podunavac *Rekonstitucija moderne države i nacije* p. 143

13 See Prometheus’s dilemma in Keith Darden and Harris Mylonas *The Promethean Dilemma: Third-party State-building in Occuied Territories*, *Ethnopolitics: Formerly Global Review of Ethnopolitics*, Routledge, London, 2001, p. 89

14 Milan Podunavac *Poredak konstitucionalizam i demokratija*, Čigoja, Belgrade, 2006, p.157

15 Regarding the separation of the state from the nation see Hannah Arendt: *The Sources of Totalitarianism*, pp. 236-238

the specific characteristics of the „tribal nationalism” in which she includes the Balkan nations. Tribal nationalism is characterized by a lack of articulated ethnic consciousness, whose articulation highly depends on having a country, a state, a language that has outgrown the stage of dialect and a formulation of historical experiences. An additional problem on the territory of the Balkan states was also a constant change of frontiers or the state of „permanent migration”.¹⁶ It is this rootlessness that is the source of an expanded tribal consciousness, or tribal nationalism, „which actually meant that members of these nations do not have an ultimate home, but they feel at home wherever the members of their tribe happen to live”.¹⁷ Although this hypothesis was favorable at the time of the constitution of the Yugoslav state, its devastating effects have become evident after the outbreak of the conflict and in the attempts to overcome it. A characteristic of societies that have been reformed within the process of disintegration of Yugoslavia is that none of the protagonists of the conflict in any of the countries felt (or wanted to feel) like a minority. This has led to the fact that there are still unresolved questions about who the minorities are, and how to define them (e.g. The Constitution of Montenegro) and how much we should include them into the collective memory of a common past. This way, through the *politics of memory*, all the minorities are often redefined as „foreigners” and ultimately, as „enemies.” If that is the case, what remains is the issue of the impact of the legacy of tribal nationalism on future ways of collective remembrance.

Tribal nationalism is fundamentally different from the nationalism of a fully developed nation-state. It additionally lacks functional conditionality and connection between the nationality and the state.¹⁸ This question is legitimate if we look at the states and societies formed after the disintegration of Yugoslavia. Undoubtedly, no matter how ubiquitous the pressure of the communist system was (and no matter how hard it tried to build a „Yugoslav logic” of remembering history) it was never able to completely suppress the gap that existed between feelings of attachment to a particular ethnic group and the state itself. The tradition of mistrust of these nations towards the state, historically, can be found in the Ottoman period when the state was equated with Islamic and Ottoman influence, and the institution of the state was generally viewed as an adverse construct.¹⁹ Although, in the context of Yugoslavia, identities of nationhood and ethnicity were able to co-exist, Yugoslavhood was not a form of belonging founded on the principles of citizenship we see in modern European societies²⁰. Yugoslavhood implied a special form of membership, and its gap was easily filled with „nationalist paternalism”. „In the type of political regime, in which the charismatic leader was the main factor of stability and whose charisma was a ground for the formation of normative consents of the members of a political community, which basically compensates for the absence of primary and basic consensus, the dismantling of the cen-

16 „The main consequence of establishing pax ottomana in the Balkans was the removal of frontier between the states and the feuds, which facilitated and improved the migration of the population and mixing of the different groups on this enormous territory“ Marija Todorova *Imaginarni Balkan*, Biblioteka XX vek, Belgrade, 2006.

17 Hana Arent, *Izvori totalitarizma*, p.238

18 Hana Arent, *Izvori totalitarizma*, p. 235

19 Marija Todorova *Imaginarni Balkan*, Biblioteka XX vek, Belgrade, 2006, p. 325

20 Here I leave the question of comparison of Yugoslavia and theoretical analysis of the nation-state open (is there a nation of Yugoslavs).

tral government authority was lawfully finalized in the process of opening the legitimacy battles".²¹ We can conclude that the tribal nationalism emerged as the nationalism of those people who historically did not participate in the national emancipation and who did not achieve the sovereignty of their nation-state at the moment when the most of the European nations did.²²

According to Hannah Arendt, nations emerge when people gain awareness of themselves as cultural and historical entities, and of their territories as a permanent home. She points out that it is important for nations to define the history as a product of joint efforts of past and future generations. The ways of remembering history will largely determine the bases of cohesion in the „emerging” nations as well as the space they will leave for the minorities to participate in the process of achieving a basic consensus. As it was demonstrated, the states created by the disintegration of Yugoslavia carry the legacy of nation-building processes shaped by tribal nationalism. As it is characterized by „arrogance focused on oneself, who dares to measure the people, its present and its past, by sublime inner qualities, and to inevitably ignore its concrete existence, tradition, institutions, and culture”²³, these states, in their very core, have a negative attitude towards minorities, rooted in the collective memory and the basis of legitimacy of the political order.

Collective Memory

The collective memory determines the grounds for the identity of the formed political orders and it does so by defining group members, excluding minorities and belittling their importance for the community. Analyzing the collective rights of minorities, Janos Kis points out the importance of recognition of their identity. This requires that the state treats the tradition of this group as its own.²⁴ For example, if we found that national museums are „places of collective memory” than the country which have national museum must have a section in it exhibiting the culture and history of the minority. As we are going to see from the example of Volksdeutsche there are even some minorities which cultural influence was completely erased by specific politics of memory.

New issue that arises from this is the question of identity of those who participate in the process of forming collective memory and the way they do it. I would like to emphasize the significance of deliberation in this process as opposed to the claims that deliberation is not possible in post-conflict societies. We will see that the way minorities are defined and remembered in a historical context establishes the grounds for the way in which they are later treated:”...its (state's) historical remembrance will absorb something from the tradition of all the ethnic groups belonging to it, so that everyone can see that the state is also theirs”.²⁵ In the countries formed after the disintegration of Yugoslavia the mere perception of the identity of the minorities has been mainly

21 Milan Podunavac, *Princip građanstva i poredak politike*, Čigoja, Belgrade, 2001, p.209

22 Hana Arent, *Izvori totalitarizma*, p. 233

23 Ibid, p.233

24 Janos Kis, *Beyond the Nation State*, p. 228

25 Ibid, p. 237

clouded by the lack of clarity in perceiving someone as majority or minority in different areas.²⁶ The situation after the conflict can be defined as the „memory war” which is constructed by the memory of real wars.²⁷ Serbia was defeated, but not everyone agree with that. Lines that divided Serbian political society are the same „front lines” of the „memory war”.²⁸ The lack of collective interpretation originates in of the manner in which the nation and state were built. Ignjatieff concludes that the etatization of a nation in the Balkans was shaped by the influence of the expansive and uncontrolled nationalism, which left unresolved issues about territorial borders and „who belongs to whom”.²⁹ As shown previously, the way minorities have been perceived ever since significantly determined the process of nation forming. At this point, I would underscore the collective memory as one of the key factors of this process.

The past which is remembered by the politics of memory is a past which is integrated in what is most often named collective memory.³⁰ Speaking of this form of memory, it is important to point out that those are groups which have their time dimension and which are created by common interpretation and common memory. The problem with this way of defining collective memory predominantly lies in the manner the group is (self)defined. It is common for the Balkan states to exclude from their collective memory not only a positive image of their neighbors, but the existence of entire minorities. Thus, the number of the Danube Swabians (Volksdeutsche, the Vojvodina Germans) was according to the census in 1921 about 300,000, a big part of whom lived on the territory of present-day Serbia. Interestingly, according to the census in 2002, there are no people in Serbia who declare to be Swabians, Germans or Volksdeutsche:³¹ „Polemicists mainly had access to their own research and only to partial results of

26 Brubaker has an interesting standpoint on whether an ethnic group should be a measure of analysis when it comes to ethnic conflicts. In his opinion, an ethnic group is just a construct used by common sense without a prior scientific analysis. He raises the issue of whether an ethnic conflict is really a conflict between ethnic groups and who the participants of the ethnic conflict are. See Rogers Brubaker *Ethnicity without groups*, University of California, 2002.

27 Đorđe Pavićević *Memory, Trust and Fear in Post-Conflict Societies*, 2012, still unpublished

28 „For the nationalists, it was military defeat in the unfair battle against the new American imperial project. It was ideological (for some identity-based) conflict and Serbia have to endure in her political fight against imperialism. For the moderate, it was defeat of unreasonable political project, and Serbia needs more pragmatic political approach. Liberals believes that it was defeat of immoral and shameful nationalistic project and that Serbia needs a new political approach based on radical reconstruction of political identity. Political parties are divided along these lines.” Ibid

29 Michael Ignatieff *The Warrior's Honor: Ethnic War and the Modern Conscience*, Henry Holt and Company, New York, 1998

30 Nenad Dimitrijević *Kad padne režim zašto je prošlost važna*, Reč no. 73, Belgrade, 2005, p.21

31 „It is estimated that about 200,000 of them saw the end of the war in Yugoslavia, although the escaped Volksdeutsche from SR Germany claimed in 1961 that the number was almost 250,000. (...) So, with the number of almost 30,000 Volksdeutsche who were killed with weapons in their hands in Hitler's forces and the same number of Yugoslav Germans forcefully taken to Siberia as forced labor, as well as 20,000 of them who were considered innocent victims at the end of the war, all others were sent to concentration camps at the end of 1944. This camps for Volksdeutsche, who had there extremely hard working and living conditions, existed until March 1948. In 22 such camps in Vojvodina (Pančevo, Kovin, Mramorak, Brestovac, Jabuka, Padinska Skela, Kničanin, etc.) there were about 110,000 Volksdeutsche.” See Branko Pavlica *Sudbina folksdojčera u Jugoslaviji posle Drugog svetskog rata – The Fate of Volksdeutsche in Yugoslavia after World War II* (<http://elkundosefarad.wikidot.com/sudbina-folksdojčera-u-jugoslaviji-posle-drugog-svetskog-rat>)

the research of Yugoslav origin. Namely, it is a fact that there are no scientific results of Yugoslav research as to the fate of Volksdeutsche, archival material mostly does not exist and some archives are still closed for scientific research. „The state” has shown no interest in casting light on this matter through forming an institute for history studies. Even now, almost 60 years after the end of World War II, there are no scientifically supported topics in school books which would objectively present students the first post-war years and explain the fate of Volksdeutsche, which were Yugoslav citizens, in those years. One can still read between the lines in school books that the only good German is a dead German“.³² This assumption did not worry the Serbian public then and it does not so now like the Croatian public was not worried by the fact that in the 1991 census more than 90% of the population declared themselves Croats.³³

In a situation when the new political order is being constituted, a consensus is necessary to establish values, goals and means by which a community can reach those goals and which will enable the stability and sustainability of the political order. Nevertheless, the absence of a firm consensus on certain issues is not a justification for some groups to be completely excluded from its formation so that certain goals are efficiently reached, however justified they might be from whatever normative standpoint. This is especially important in a situation when a whole group of people is identified as „the enemy“ and when the future issue of legitimacy of the political order is formed with regards to this group. At a moment when the past, which should be perceived by and deeply rooted into the collective memory, is still a recent one, minorities often tend to be excluded from the process of political (re)formulation of the community’s identity. Even though the inclusion of minorities into the process of forming collective memory requires more challenges, resources and efforts in the short term, in the long run this leads to a greater stability of the future political order. I will demonstrate this by quoting the Prometheus’s dilemma.

The term *Prometheus’s dilemma* is used to explain the influence of adopting certain policies in societies affected by ethnic conflicts. The basis of this argumentation is that in deeply divided societies, efforts to build a common identity and loyalty must precede the process of constituting a state, especially when coercive state institutions are concerned.³⁴ In order to efficiently overcome the problem of non-existent or weak basic consensus, during the process of forming a political order, coercive state institutions (police and army) are often first formed. The prevailing theoretical approach assumes that the fastest way of managing transitional processes is also the best. This mainly includes efficient armament and organizing the army and the police, which can enable state control of all armed groups in that area: „As a result of military victory, UN peace-keeping operations or other forms of international receivership, contemporary occupiers

32 Stjepan Seder, *Stigma kolektivne krivice* (<http://ebookbrowse.com/stigma-kolektivne-krivice-doc-d166066493>)

33 The number of those declaring themselves as Serbs continued to drop and according to the 2011 census they account for about 4.5%, the number having dropped compared to the results of the 1991 census when there were 12.2% of them.

34 Keith Darden Keith and Harris Mylonas, *The Promethean Dilemma: Third-party State-building in Occupied Territories*, *Ethnopolitics: Formerly Global Review of Ethnopolitics*, Routledge, London, 2001, pp. 85-93

find themselves responsible for large territories over which they exercise sovereign responsibilities but which they cannot control. Lacking the resources, will, interest or perceived legitimacy to govern the territory, the occupier wishes to cultivate indigenous coercive capacity in political order for the territory to be effectively governed and eventually self-governing³⁵. However, the essence of the Prometheus's dilemma is the issue of giving governing power to local population (if, for example, we talk about retreating peace keeping mission like the one in Kosovo) at the same time minimizing the risk of using that power for further violation of the rights of minorities. Darden and Mylonas conclude that an efficient forming of a state requires efforts to first establish the loyalty of the citizens towards the political order, social cohesion and legitimacy of the government before transferring authority over coercive institutions. Their second point is that these processes take several generations, that is, that they can not be simply implemented and that the third party in the conflict mostly does not succeed in solving the dilemma in a suitable way.³⁶ One of the possible solutions is to use the system of education and invest an effort in forming suitable education programs rather than to arm the population and then to withdraw peace keeping troupes: „Although these strategies take time, the hastier alternatives have proved historically to be dangerously ineffective“.³⁷

One of the principal objections to Darden and Mylonas is that they did not offer a suitable way of overcoming the dilemma: „Darden and Mylonas end on a somewhat pessimistic albeit realistic note, arguing that when identities cannot be caged and loyalties cannot be bought, our only alternatives are either to accept that political boundaries have to change or just resign ourselves to long-term instability.³⁸ Although the aim of this paper is not to solve the Prometheus's dilemma, it is used to show that adequate conflict strategies have to include something more than just forming the police and the army. As the heritage of tribal nationalism additionally burdens the processes of constituting the new political order in this region, I will focus my central attention on the issues of collec-

35 Ibid, p. 86

36 One of the examples mentioned for overcoming the dilemma is the strategy of „divide and conquer“ see *ibid*, p. 88

37 Ibid, p. 92

38 „The complexities of identity-formation in the Balkans in the nineteenth century, for instance, illustrate the difficulties with explanations stressing the role of institutions such as the school system or churches in such nation-building efforts. A common view of Bosnia and Herzegovina during the Ottoman and Habsburg eras, for instance, argues that the Christian inhabitants of these regions had no sense of national identity, and that it was only due to nationalist proselytizing efforts during the 1800s that Catholics and Orthodox became Croats and Serbs. When it comes to the Balkans, however, it is difficult to see how schools, churches, or the apostles of nationalism might have changed identities. In Bosnia and Herzegovina in the 1870s, for instance, less than 1% of the population was literate, and even this small reading public would probably have had a hard time acquiring nationalist literature because there was not a single bookstore in Bosnia during this relatively late period (Stokes, 1990, p. 92). In 1910, 88% of Bosnia and Herzegovina's (BiH) population was still illiterate. Organizations dedicated to fostering national consciousness had relatively weak memberships. In 1909, for instance, the Serb cultural organization Prosvjeta ('Enlightenment') had 5,101 members, the Croat Napredak ('Progress') had 3,156 in 1912, and the Muslim organization Gajret some 2,089 in 1910, for a total BiH population of some 1,900,000 at the time (Okey, 2007, p. 162). Extrapolating from these figures, each member of these organizations would have had to influence and/or change the identity of some 184 individuals“ Gordon Bardos *Buying Peace? The Difficulties of Building States and Nations in Deeply Divided Post-conflict Societies in Ethnopolitics: Formerly Global Review of Ethnopolitics*, Routledge, London 2011, p.95

tive memory which has dominantly influenced the shaping of the national identity. My assumption is that in societies where it is not clear who constitutes the „collective“ aspect of the collective memory, deliberative democracy can offer a solution for the tension between forming a nation-state and including minorities into a political order. If the state's constitution is „(...) a social contract in which a mature political community asserts the deepest field of consent about the basics of its political existence (...) this answer basically articulates how a community solves the key matter of forming a country and a nation“³⁹ then the attitude towards the identity of the minorities can tell a lot about the future cohesion and stability of the political order. Speaking of Serbia: „The absence of multiculturalism as a normative response and the absence of developed political structures of multiculturalism as the answer to the cultural complexity is one of the core weaknesses of the 2006 Constitution“⁴⁰, which further disables the reproduction of the citizens' belonging to the political order. Also, the example of the constitutional arrangement of the Dayton agreement visibly emphasizes contradictions created by applying the one-sided political solution (consocial model) where conflict management strategy was based on limiting the interaction between ethnic groups.

The matter of the position of minority groups defined by the constitution can be found in a deeper political field, that one being the issue whether the societies created by the disintegration of Yugoslavia are capable of facing their own experience of the „ethnic“. While describing the nation-building in Europe in the 19th century, Ernest Renan concludes that the „togetherness“ of a community, i.e. its cohesion, does not amount to the justification by primordial origin but it is achieved through the everyday plebiscite. According to this a nation is not „a family inflated to an enormous extent“⁴¹ but a willingly created democratic nation. Social capital on which the very idea of the nation is based is the way to remember the past. The nation is not only a community based on will, it is also based on *experience*. What Renan calls the soul of the nation, nowadays is recognized as the notion of collective memory.⁴²

One of the prominent problems that today's memory theories is faced with is the differentiation between the notion of „history“ and memory.⁴³ This opposition is maybe best explained by Pierre Nora, when he concludes that the memory is an ever-present phenomenon characteristic of the present, whereas the history is a one-sided representation of the past. In this way, memory outgrows the group and the cohesion on which it has been founded, while unlike this: „history, on the other hand, belongs to everyone and no one, thus being universal“.⁴⁴ It can be said today that there is a certain parallelism between these two attitude forms towards the past, history and memory:

39 Milan Podunavac, *Šta to Srbija politički danas jeste ili zašto dolazi do restauracije režima*, still unpublished

40 Ibid

41 Alaida Asman, *Duga senka prošlosti*, Biblioteka XX vek, Beograd, 2011, p.41

42 Ibid, p. 42

43 Historian Reinhart Koselleck demonstrates that the term „history“ acquired its modern form in the second half of the 18th century in the process of forming national states. The main characteristic of the term „history“ is the abstract „collective singular“ which replaced a number of other histories. (Koselleck according to Asman 2011, 48).

44 Pierre Nora according to Alaida Asman, *Duga senka prošlosti*, Biblioteka XX vek, Beograd, 2011, p. 48

„When discussing the past, especially the traumatic past, we need all the functions, both memorial and moralist function, which connects the past and the memory, as well as the critical function which separates one from the other“.⁴⁵

Alaida Asman completes her thesis with the claim that from the memory perspective three things complete „history“, those being the expansion of the dimension of the emotional and individual experience, further emphasis of the memorial function of the history as memory and the emphasis of the ethical orientation: „In the period after a disaster a historian is not only the story-teller ... but also an advocate and a judge“.⁴⁶ However, this process is not the exclusive right of the historian. During the process of constituting a new political order, a far greater role is played by those who have enough power to impose and define the agenda of the ruling memory discourse.⁴⁷ Based on this we can talk about memory regimes. One of the most common phrases used when talking about past is that the past is written by the winners. But who remembers the past? In the context of plural societies created after the disintegration of Yugoslavia, whose national identities are nourished by the heritage of tribal nationalism and (constitutional) unacceptance of the factual minority status, the winner – loser relationship becomes even more complicated. The winners often form memory constructions which incorporate into their memory the unspoken defeats of the neighbors and so they prolong historical confrontations far beyond the borders of their time.⁴⁸ On the territory of former Yugoslavia, ethnic groups once perceived as powerful conquerors, as winners, have become minority groups without a real power to oppose the dominant ethnic group in the context of forming new orders. The dominant ethnic group, thus, assumes a position in the process of forming the collective memory of both the winner and the defeated. Such is the case of the Serbian perception in case of the Bosnian minority. They are often perceived as remnants of the Ottoman Empire which, as Serbs vividly remember, have ruined the attempt of forming the Serbian state, and even today they are perceived as a threat to the political system/order. There is a certain parallelism when the Croatian collective memory of the Serbian national minority is concerned. All this creates a certain form of schizophrenia when the attitude of the newly formed political orders to their ethnic minorities is concerned: „That is why one can „lose“ by winning and „win“ by losing“.⁴⁹ How can then the past be remembered in post-conflict societies in a way that it enables the relation to *all* others who actually constitute a common political identity?

The Strategies of Attitude Towards the Past

There are different strategies of attitudes towards the past. One of them is the strategy of forgetting the past. This strategy uses the oblivion in a metaphorical sense of the word. Of course, a problematic past is impossible to forget literally, so the question is whether

⁴⁵ Ibid, p. 57

⁴⁶ Ibid, p. 58

⁴⁷ Đorđe Pavićević *Zajednice pamćenja i režimi pamćenja: ka odgovornom pamćenju*, in *Kultura sećanja: 1945. Povjesni lomovi i savladavanje prošlosti* eds. Sulejman Bosto i Tihomir Cipek, Disput, Zagreb, 2009, pp. 103-104.

⁴⁸ Alaida Asman, *Duga senka prošlosti* p.76

⁴⁹ Ibid, p. 77

it should be made a subject of public debate and political action.⁵⁰ The main argument of advocates of this strategy is that democratic government of the new order should look forward, not backwards. Dealing with one of the toughest issues in the field of politics can additionally burden the community's opportunity to establish democratic political institutions and provide stability of the future political order. Collective memory and the very issues of identity would simply not be a priority in this process. The above mentioned Prometheus's dilemma raises this exact question, what is the priority in the conflict resolving strategies. If the priority is not finding common grounds for loyalty (which is certainly a part of collective memory) it can lead to an even greater breach of human rights and reinforcement of a deeply negative attitude towards minorities. Also, this strategy is based on an idealistic concept of the relationship between the past, the present and the future: „The understanding of censorship, discontinuity or even point zero in the historic process is very problematic... The one who speaks of censorship can speak only of a relationship between reality he experienced and the matrices he uses to interpret those experiences. If, due to important events, such as revolutions and wars, the institutional frame of a society falls apart, pictures, symbols and the mentality the old order used to tie people to itself usually manage to survive”.⁵¹ That means that the present must find adequate ways to face the unwanted past: „We live in a historical context and the very past we are trying to overcome determines also the features of the present, possible meanings we attribute to our life, possible political choices, ideas we have about the future and ways to accomplish them. This is not mere determinism: we live with the heritage of insuperable past, it is an important feature of our personal, common and collective identity, and it determines the options our political community has at its disposal”.⁵² The question remains: how do we address the past?

Dimitrijević distinguishes two paths towards the truth. One is „representative” and the other one „deliberative”.⁵³ Representative approach establishes the two-way communication between the official people in power and the citizens. In this process, the function of citizens is almost passive. The government expects from them information they will present to the public rephrased and selected, in one more comprehensive concept of truth about the past. Deliberative approach differs in its procedures and process carriers and in its results. When it comes to deliberative democracy there are no pre-determined priority issues: „The value of free discussion about possible changes among the members of a culture should always prevail over the values of conservation of the cultural identity. Without such a discussion, one can never know which cultural traditions are walls mere screens behind which the strong oppress the weak, and which of them, however weak, should be preserved... The preservation of cultural identity can not be used as an excuse for keeping the democracy away from the masses”.⁵⁴ Ideally, the deliberative model would lead to the moral consensus through facing the publicly defensible arguments of different sides. Even though deliberative democracy has certain shortcom-

50 Nenad Dimitrijević, *Kad padne režim zašto je prošlost važna*, p. 13

51 Helmut Dubil according to Nenad Dimitrijević, *Kad padne režim zašto je prošlost važna*, p. 18

52 Ibid, p. 26

53 Ibid, pp. 30-32

54 Richard Rorty according to Asim Mujkić *Mi, građani etnopolisa*, Šahinpašić, Sarajevo, 2007, p.34

ings, especially in terms of overcoming conflict in deeply divided societies, according to Dryzek, it can offer adequate solutions if specific features of this model are more precisely defined. However, it should be noted that it is also wrong to equate deliberative democracy with agonistic democracy. The main difference lies in the attitude of the agonistic model towards identities: „Mouffe wants this interchange to be energized by core identities, otherwise passion is missing. Yet, paradoxically, identities for Mouffe have to be fluid to the extent of enabling thorough conversation in one group's attitude of another“.⁵⁵ Agonists believe that deliberative democracy can not deal with different problems of the past, instead it requires agonistic pluralism that will enable „a vibrant clash of democratic political position.(...)The prime task of democratic politics is not to eliminate the passions,(...)but to mobilize these passions towards the promotion of democratic designs“.⁵⁶ The issue with the agonistic model is the assumption on identities which can remain unrecognized in the process of interpreting the past through political rivalry: „In that case, too much is left to the balance of power in a given political community“.⁵⁷

The solution offered by Dryzek is based on the principles of deliberative democracy whose normative frame would be supplemented with some additional demands. The first one is separating the deliberative institutions from a sovereign authority; the existence of some „issue-specific networks“; centripetal electoral system, power sharing state that does not penetrate too deep into the public sphere, conditionality of sovereignty, and transnationalization of political influence.⁵⁸ Although every one of these demands is equally important, I will further discuss the demand for deliberative forums in the public sphere, which focus on special needs rather than on universal values. The issue here is whether the collective memory is a need, or does it come down to deliberation about universal values on which a consensus cannot be reached.

As I have demonstrated earlier, collective memory and the relationship to the past is one of the priorities when it comes to deeply divided post-conflict societies. However, as arduous the process might be, only a *common* collective memory will be able to provide preservation and long-term stability of a political system. This understanding of the relationship to the past can be explained with the principle of economy of moral disagreement.⁵⁹ According to this principle, the citizens who belong to different ethnic groups (dominant, as well as minority ethnic groups) should find the common denominator for their arguments: „In accordance with that principle, the citizens search for important points of convergence between their beliefs and the beliefs of those citizens whose point of view as a whole, they can basically reject. (...) the citizens (in that way, comment by T.D.) manifest mutual respect“.⁶⁰ It is almost intuitively clear that people who share a

55 John Dryzek, *Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia*, p.221

56 Chantal Mouffe, *Deliberative Democracy or Agonistic Pluralism?*, Institute for Advanced Studies, Vienna, 2000, p. 26

57 Đorđe Pavićević, *Zajednice pamćenja i režimi pamćenja: ka odgovornom pamćenju* p.102

58 John Dryzek, *Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia*, p.222

59 Amy Gutmann, Dennis Thompson, *The Moral Foundations of Truth Commission in Truth v. Justice. The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson, Princeton University Press, Princeton, 2000, p.33

60 P. 33

common destiny, regardless of the sides they are on, have certain opinions they would be able to agree upon. This statement is symbolically well illustrated by the statue *Mother with her Dead Son* in Berlin. The monument is dedicated to all the victims of war and the grief of a mother who has lost a child connects into one joint image of an experience that transcends (or should transcend) ethnic differences. In this case, although metaphorically, we could say that the suffering can be used as a „common denominator“.

The main reason for not being able to make a „common denominator“ in Serbia, represents the total suppression of the civil society and free public sphere, after the war period, by Milošević's regime. That fact has been producing the lack of legitimacy of political community over the time, and it has made even more difficulties to deal with the past after the 5 October. Upon the end of Milošević regime, there were three ways of dealing with the traumatic past.⁶¹ The strategies that have been chosen after the 5 October make a reasonable discussion about the past implausible even today. The first strategy is the opportunistic pacifying of the past. This principle continues to support the values of tribal nationalism that was commonly used during Milošević's regime. The main premise of this principle is making the balance between „our guilt“ and „theirs“, and it is the most expressed in the systematic protection of people who have been accused of war crimes. The second principle can be defined as a strategy of oblivion. Supporters of this strategy thought that it was enough to make democratic institutions to ensure a stable political order. The third strategy has never become a clear official option for political leadership. The idea behind it was based on moral reflection on the past. That would be the only that strategy could produce a „common denominator“. While the previous government's strategy for dealing with the past was somewhat similar to both: more second and less third, the position of today's government is intimidating close to the first strategy. The *principle of continuity*⁶² has made possible for the political supporters of Milošević's regime to become a dominant political actor again. It can be seen not only in the way of how we deal with the past today, but also how we were dealing with the institutions and their values after the old political order has ended.

Conclusion

In the context of Serbia, this attitude to the past is important for several reasons. Serbia is a plural society. But also, „Serbian political arena is a battlefield of opposing memory judgment. Different layers of the past are a heavy burden for political society in Serbia. Disagreements about interpretation and meaning of the past are charged with disruptive political potential and open a window to divisive memory battles“.⁶³ That makes a position of minorities in the collective memory even worse. Judging by empirical research of the position of the minorities, it is defined by the norms prescribed by the international standards of the protection of minorities. Serbia adopted these standards by joining the Framework Convention for the Protection of National

61 Nenad Dimitrijević *Srbija kao nedovršena država*, Reč no.69/ 15, Belgrade, 2003, pp. 8 - 14

62 See Nenad Dimitrijević *Srbija kao nedovršena država* pp. 5-21

63 Đorđe Pavićević *Memory, Trust and Fear in Post-Conflict Societies* p. 2

Minorities and ratifying the European Charter for Regional or Minority Languages. However, the contents of these documents are just the legal framework which the states should complete according to their own circumstances and implement in everyday life by developing democratic values and the rule of law: „The initial enthusiasm concerning the institutionalization of the rights of the minorities during which the Law on Protection of Rights and Freedoms was prepared and adopted have soon passed, and the hope that the unsolved issues raised by this Law would be solved through a comprehensive constitutional and legal system proved to be without foundation“.⁶⁴ Such institutional position of minorities further lessens the chances of changing the attitude towards them by wholly redefining the politics of collective memory.

The official position of the authorities regarding the past and the attitude to minorities is fluid. The government is especially unreasonably indecisive when right-wing political organizations are concerned. The problem with these organizations is that they do not exist. The problem lies in the fact that they are deliberately kept on the margins from which they are sometimes dragged into the centre of the political field when it is necessary. Daily political issues are often resolved by an inappropriately close relationship of the government with the values and attitudes of the tribal nationalism. That not only raises fear among the members of ethnic minorities (destroying the basis of their loyalty to the state- or chances for building it), but contributes also to a flooding of „the lowest common denominator“ by the members of the dominant ethnic group by nationalistic redefinitions of certain historical moment. These strategies of governing post-conflict societies can be explained by the fact that the aim of every government is to retain the power. One mandate often proves to be not a means of facing the experience of the community but a „new beginning“ which puts a full stop (and not an exclamation or a question mark) to the traumatic past.

64 Goran Bašić, *Politike multikulturalnosti: Zaštita ili kontrola etničkih identiteta?*, *Filozofija i društvo* 3/2007, p.91

Political Representation of Minorities and Preservation of Multiethnic Identity of Vojvodina

PROF. DR DUŠKO RADOSAVLJEVIĆ

Introduction

Before 1990, when multi-party system was introduced in Serbia and Yugoslavia, national minority communities constituted a specific entity known as *nationalities*, which, at that point in former Yugoslavia, was constitutionally, legally and politically equated with the concept of the peoples. This was particularly the case in the Socialistic Autonomous Province of Vojvodina (SAP Vojvodina), as there were a substantial number of minorities.

The period from 1990 to 2000 which has ended by the winning of pro-European forces in Croatia and Serbia, was extremely challenging for the minority communities to endure, preserve their identities, gain power and actively participate in political and public life. The eagerness to find as soon as possible solutions to the problem, according to the author, has outweighed the justified concerns that the implementation of the respective law could cause various problems, especially if some provisions were carelessly used.

The aim of this paper is to show some important activities related to the status of national communities, political representation of minorities and preservation of multiethnic identity of Vojvodina.

General framework

Before 1990, when the multi-party system was introduced in Serbia and Yugoslavia, national minority communities constituted a specific entity known as *nationalities*, which, at that point in former Yugoslavia, was constitutionally, legally and politically equated with the status of the peoples. This was particularly the case in the SAP Vojvodina, as there were a substantial number of minorities. In both political practice and everyday life, the complicated but highly efficient system of „*the national key*” was respected, ensuring that all nationalities were adequately represented in the institutions of political organizations¹ and

1 League of Communists of Yugoslavia, the leading state and social force, as well as Trade Union, Socialist Alliance of Working People of Yugoslavia, League of Veterans and Socialist Youth League.

the socio-political communities². Correspondingly, the president of the Presidency of SAP Vojvodina³ was **Nandor Major**, a Hungarian by ethnicity, as were also many non-Serbs⁴ presidents of the Executive Council of the Province (Government of Vojvodina), or presidents of the Assembly of the Autonomous Province of Vojvodina, etc. This unprecedented harmony lasted until mid 80s of the last century⁵, when the Slovene and Serbian political coryphaei started voicing different attitudes regarding the division of the government. The former performed this through administration and bureaucracy – less taxation and less federative and „other” involvement in their endeavors, while the latter claimed their right to the „national-constitutional unity of the whole territory”! Also, they demanded that others refrain from interfering with their affairs. At the end of that decade, when Croats surfaced with their own ambition to pursue „a thousand-year-old dream of independence”, it was evident that certain concepts of Yugoslavia, as „brotherhood and unity” or equality between peoples and nationalities, would not last for much longer. The wars that were waged had as a consequence six plus one newly-founded states⁶, unspeakable human and material victims⁷, destruction just for its sake of itself, ethnically transformed population, and consequently, through implementation of the prevailing nationalistic policies, former nations were reduced to the status of „national minorities”.

The period from 1990 to 2000 which has ended by the winning of pro-European forces in Croatia and Serbia, was extremely challenging for minority communities to endure, preserve their identities, gain power and actively participate in political and public life. Certain part of the national elite did not get by very well; certain part did not even made an effort, given the aggressive character of Serbian regime, which had highly adverse effects both on Vojvodina as a whole and within the national minority communities. Thus, there were cases when representatives of certain communities were reluctant to actively support the efforts for democratic changes in government, some of them focused solely on their communities’ interests, and others, disregarding the larger context, were concerned only with preserving restricted national benefits (i.e. culture and information) or have become exponents of the matrix-state policies. A number of them gave up their rights for public and political engagement, thus leaving the issue of solving problems to the politicians of matrix-countries, whereas some had extremely unequivocal attitudes about indispensable change of the regime and the development of democratic policies and institutions for the preservation of human rights. Still, the prevailing inclination of these „Years of Lead” was that all these issues were much easier tackled in AP Vojvodina, considering the great number of its citizens

2 In municipality, autonomous province, republic, and federation.

3 Presidency was a collective authority. Under the Constitution of Soc.Fed.Rep. of Yugoslavia from 1974, the autonomous provinces had the same status as republics, so that they had all state authorities, too.

4 For instance, Geza Tikvicki, Stipan Marušić, Franja Nađ, Jon Srbovan, etc.

5 For more information refer to: D. Radosavljević. 2001. ELITE I TRANSFORMACIJA, Novi Sad

6 Serbia does not recognize the independence of Kosovo.

7 War activities were especially noticeable in Vojvodina, which was a sort of „a war chamber” of Milošević’s regime, having more than 100.000 soldiers mobilized for war in Croatia and BiH and having been robbed of its many years long agricultural production for those purposes. In addition to this, men belonging to different ethnicities such as Hungarian, Ruthenian, Slovak and Croatian were being forced to wage wars against their nationals in different republics of Yugoslavia.

belonging to national minorities, rather than in the Republic of Serbia, not to mention SR Yugoslavia which had still existed then.

In the aftermath of the opposition's victory in 2000, new laws have been issued, which took into consideration the rights of national communities. However, they were not met with expected approval, neither from the national communities, nor from the liberal-democratic and civil public. Although these laws legally and formally complied with the views of European emissaries⁸, it was evident that the assigned national councils, as the umbrella national institutions, would be under (too) great an influence of the dominant political party within a particular national community. This entailed that the impact of civil society organizations has been insignificant or non-existing, that some provisions of that law have easily become counterproductive, that they have trigger unwanted (nationalistic) reactions within the very minority communities and, even more dangerously, nationalistic reactions of the dominant national community, that the „minor” and „major” national communities have not been equally treated, that it has been tailored according to the interests of a particular national community, etc. However, it seemed that the eagerness to find as soon as possible solutions to the problem has outweighed the justified concerns that the implementation of the respective law could cause various problems, especially if some provisions were carelessly used.

Interethnic incidents

When it comes to incidents, it has been debated for a long time in Vojvodina whether these laws should be „internationalized”? In other words, the question is whether the representatives of the international community, monitor missions, organizations and the like should help the authorities to solve these problems. It has been proven that the internalization of incidents in Vojvodina substantially reduced their number.⁹ From 2005 onwards, the number of incidents has decreased noticeably. On the other hand, there have been a great number of lower intensity incidents that were not reported to the police.¹⁰ The number of territories where such incidents have occurred has evidently increased and up to the year 2005, they have mostly happened in Bačka, but from that year on, it has also spread onto other parts of the Province. Crucial improvement is the fact that the media have become more open towards this issue, so they stopped treating these topics in a sensationalistic manner. However, there is a huge discrepancy in the perceptions of gravity of ethnic incidents in Vojvodina among the international organizations, minority communities and authorities of provincial government, on the one hand, and authorities of Republic of Serbia and the Ministry for human and minority rights, on the other. Nevertheless, the fact that the involvement of state authorities has improved, which has helped largely to reduce the number

8 In Serbia after the October 5th, 2000, the unequivocal compliance with the views of European delegations, emissaries and institutions has always been strongly stressed, with a special emphasis on the attitude that our laws are „the highest world standards in this area”!

9 See: D. Radosavljević. 2006. DIJAGNOZA MEĐUETNIČKIH ODNOSA U VOJVODINI, u: ETNICITET I MEDIJI, Spens media centar, Novi Sad

10 See: THE REPORT OF THE PROVINCIAL OMBUDSMAN FOR 2010, Novi Sad

of incidents, indicates that the ethnical incidents in Vojvodina could be put under control by the cooperation at all authority levels.

Why is this so important? The experience of political life and electoral activities has taught us that these incidents occur before, during and right after the elections! At such times, the corpus of the right-wing nationalistic parties pertaining to the dominant national community is brimming with legitimately nationalistic messages about how Serbs are endangered in Serbia (to a certain extent), and even more in Vojvodina (significantly more)¹¹, and that they have no protection whatsoever from the scheming minorities with whom in the forefront, the country would end up who knows where! Likewise, exactly the same policy is conducted by minority communities which want to protect their community from the Serbs and their terror! Luckily, these actions do not last for long (and do not occur so often, as the elections in Serbia are held only once every four years). However, sometimes they can transform to conflicting situations, chaos, and confusion¹², causing substantial political and human damage.

An alternative to the conclusion – What should be done?

In the very title of the topic presented lies a seed of contradiction which is difficult to be resolved. With other words, given the current state of affairs, it is impossible to develop an action plan that would preserve the multiethnic identity of Vojvodina at the current political scene, no matter what solutions are offered or provided for a political representation of national communities, as following problems could be anticipated:

- The lack of will from the political executive side, both on a republican and provincial level, to solve the issue of political representation of national communities in a productive and long-term manner;
- Controversial legitimacy of the national councils to carry out productive policy according to the people who belong to the community, rather than only in the interests of a political class within the community; the issue of national councils' election;
- The imposition of political arbitrating in the national councils; the greater likelihood of electoral manipulation; the compilation of the electoral registers by non-mandatory bodies; the artful fixing of electoral results by certain political groups, the attempt of „fortification” of the existing political groups regardless of the electoral results, etc.;
- The lack of an outline for the development of Vojvodina as a multiethnic region, and hence, the impossibility of the preservation of multiethnic identity of Vojvodina,

11 The population census of AP Vojvodina in 2002 states that the 65% of the population were Serbs, „which is, to a great extent, the consequence of emigrational movement prompted by the political situation in 1991, which also had an impact on the transformation of the subjective views of individuals regarding their national identification, but also on the different population growth rates of certain nationalities depending on their age structure.” Provincial secretariat for demographics, family and social care for children. 2003. ANALYSIS OF DEMOGRAPHIC SITUATION IN AUTONOMOUS PROVINCE OF VOJVODINA ACCORDING TO THE POPULATION CENSUS IN 2002.

12 This is how the recent gaffe of one civic party high-representative is interpreted, as she says „I speak my native, Ruthenian language”, whereas, according to her, her opponent speaks a „foreign language”. Also, the leading Hungarian party in Vojvodina, SVM, appealed to Viktor Orban, who is widely disapproved across the Europe, to help her in her campaign.

by both the office-bearers in AP Vojvodina and the relevant political options in the central office in Belgrade; ineptness for creating a sustainable policy and/or unwillingness to perceive and see Vojvodina a bit differently than just as 7% of Serbian budget;

- The lack of a wider political, cultural, economic, pluralistic platform for Serbia as a EUROPEAN, MULTICULTURAL, governmental and political community, which would be offered by RELEVANT political groups and the Serbian office-bearers (the parliament, the government, the president) who would encompass PARTICIPATION OF NATIONAL COMMUNITIES IN FORMING THE NATIONAL IDENTITY OF SERBIA, ESPECIALLY THE MULTICULTURAL IDENTITY OF VOJVODINA;

- Outdated ideas of the political elite in Serbia and Vojvodina, which are predominantly based on securing the resources for a long-lasting rule and securing the interests of a party membership, deceitfully hidden under the so called „state-building topics”, disable the implementation of adequate policies in this area;

- The lack of power of the political scene in Serbia and Vojvodina to recognize the legitimacy of the founding principle, that the autonomy of an individual is a precondition for the development of a modern political community, is the underlying problem. It represents an obstacle for in the national communities to take part in the political processes, but also to develop a multicultural identity of Vojvodina, as well as a modern political community of the Republic of Serbia.

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