New Europe College Yearbook
Europe next to Europe Program
2015-2016
2016-2017

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CITIZENSHIP AND OTHERNESS: THEORIZING CONSTITUTIONAL IDENTITIES OF THE BALKAN STATES

Abstract

The paper examines the interplay between notions of citizenship and otherness in the context of Balkan states and how it reflects on their constitutional identity. The paper starts with the normative examination of citizenship, its elements and salience in the contemporary context. Then, it goes through a historical sketch of othering in the Balkans – and how the notion of citizenship has been changed in the course of time. There is a clear connection between othering and constitutional identity to be identified in the Balkans. The constitutional concepts of our national and political selves, individual rights and national sovereignty, liberal and national values are often in deep collision. Various empirical constitutional histories in the Balkans can be defined through four ideal type models of constitutional identities (national, multinational, republican and constitutional patriotism). The last model is a normative perspective for the constitutionalisation of Balkan states that evades sorts of othering present in other forms of constitutional identities.

Keywords: citizenship, otherness, constitutional identity, constitutional patriotism, minorities, Balkans

I. Introduction

Citizenship studies have gained great salience in the last decades. Normative political theory of the last decade of the 20th century was predominantly focused on the concept of recognition. Taken together with the normative dilemmas of legitimation it is understandable why citizenship achieved so much importance in the academic debate.

Concurrently with the general turn to citizenship as an important normative category, there are the first studies determining the European east/west divide on the citizenship itself. Namely these studies were aimed at showing that the citizenship in the eastern European countries after the

fall of the wall has turned back to ethnic conception of citizenship, based on the cultural understanding of nation. Balkan countries fit well in this East version of that divide. That is the reason why we need a diachronical examination of their citizenship.

Despite possible and probably well-argued remark on using the notion Balkan in the title I still find this label scientifically useful. Firstly, it invokes the whole body of literature on Balkan studies and the Balkans as a specific geographical set of competing historical national projects. Secondly, conceptually, it provides *genus proximum* for the more specific sub regions and groups of targeted states than the contemporary denomination of Western Balkans.

The research is aimed at determining the nature of the constitutional orders of various Balkan countries. Instead of looking at particular cases, I have chosen the method through which I can find parallel (common) models of the exclusion of the members of various minorities from the concept of citizenship. The differences among various models will help me to establish four models of constitutional identity - each approaching the constitutional subject differently and, consequently, the "us vs. others" divide as well. Three models are empirical and one is normative. I will advocate the argument that the last model is normatively more acceptable and a better approximation of the two standards: legitimation and stability of the political order.

The link between constitutional identity and citizenship is evident. Citizenship, just like constitution, determines the members of political community, their rights and obligation and give a symbolical and normative dimension enacted in the political and legal institutions these members can identify to. The norms proclaimed in constitutions and constitutional laws are further elaborated in specific citizenship laws. Furthermore, these laws are brought to reality through distinct practices. This research will go beyond the positive law but with constant reference to it. Many of the laws in this region have been imported from the Western democracies and as such found little reflection in the everyday life.

Thus, though citizenship laws can sometimes be progressive and inclusive, the practices that influence and define constitutional identity might give a completely different picture of what it has meant to be Bulgarian, Serb or Romanian. Conceptualization of citizenship, in all of these levels I have indicated here, is consequently determining legitimization of political orders of these national states and its stability.

In other words, constitutional identities are analyzed as salient normative orientations of these societies.

II. Research Problems, Questions and Employed Methodology

Research problem

There are various models of identifying constitutional subject - which brings legitimacy and stability to the political order? Is citizenship of these states truly universal in its promise of equality and freedom? In order to look at this issue we might need to go beyond the legal notion of citizenship and look at all elements that this concept should entail: rights, citizen participation and allegiance (identity).

Constitutional identities in the Balkans have ever since the creation of modern national states followed a certain pattern of constitutionalisation which has often discretionally given primacy to certain ethnic, national or religious groups. If not in constitutions the rights of certain groups were limited through various laws and practices that were limiting the scope of their citizenship. National state was often perceived as a tool for achieving national goals. It was considered the rightful political space of majority nation.

Given the plurality of Balkan societies shall we consider normative reconceptualization of citizenship and generally constitutional identity? Multicultural liberalism has its own vision of resolving this problem. In order to answer to this normative puzzle I will reflect on multiculturalism and competing theories of citizenship. All these models of citizenship have empirical advantages and flaws. However, it is still possible to determine which of these models are normatively optimal for the given context.

Research questions

Can we identify constitutional other in the history and what are the ways the modern constitutions *other* others? Constitutional orders of national states communicate and interact. International obligations and human rights have influenced the constitutional changes of many national constitutions. In the context of the Balkans, the constitutions were often just a copy of their European models. To a certain extent, the same happens to some of the European laws adopted in national parliaments. However,

laws and legal practice might still be indicative and tell us who the other in these communities is.

Though similar in many aspects, Balkan constitutions have shown significant differences over time. These changes result from different local ideologies, political histories and external influences. Thus, we might speak of different types that combine different models of constitutional identity. Different experience and contemporary history might tell us something in favor or against certain types of constitutional identity.

Main hypotheses

Constitutional other in the Balkan states is the one whose identity does not correspond to the homogenous ideal of the nation. In other words, the patterns of the national transpose to the political. The majority nation uses the political means of parliamentary democracy to define and limit citizenship rights to others. Constitutional others are changing in accordance with big historical events/changes, though the main pattern remains the same. Constitutional othering in the Balkan states is aimed at social closure and ethnification of politics through collectivism, populism and homogeneity. Nationalism is its overarching ideology. Finally, normative inquiry should look at some models of plural and multinational constitutional identity which are more legitimate and inclusive. Constitutionalism, ideally, should reflect the reality and leave the space for different cultures and all individuals to enjoy their autonomy as free citizens and pursue their own conception of the good life.

III. Towards a Normative Theory of Citizenship and Constitution

Citizenship theory reemerged in the focus of political theory at the end of last century out of the need to reconcile the big philosophical questions of justice and epistemological and axiological determinism of community membership. In this paper I use the term citizenship as an overarching term that includes rights, participation and identity element.

In the modern national states normatively construed social contract finds its social power through its positivation in the form of constitution. The liberty of those who possess less political power due to the fact that they belong to various kinds of minorities might depend on the idea and

reality of constitutional order. As Dimitrijevic puts it, 'constitution is a charter of liberty'.[1] Besides, constitutions refer only to those who are citizens of a certain polity. In other words, the idea citizenship is of a pivotal salience for a constitutional order, these two being mirrors of the same imagined social contract.

Rosenfeld explains, and that is exactly where I depart from multicultural conception of politics and political, that any identity conceived as a sealed singularity could never lead to any common constitutional project.[2] The interplay between plurality, which results out of clash between universality whose interpretations are plural, and singularity that wants to be preserved, remains in perpetual tension. The idea of my project, where I follow Rosenfeld, is to look for the least contested plurality by invoking universality which will allow for the least harms of various singularities that constitute certain political space.

> Radical hermetically sealed singularity makes any cogent constitutional project impossible; thorough and permanent identity between self and other, on the other hand, would make constitutional projects superfluous as universal constitutional essentials would be self-imposing and beyond dispute. The constitutional subject and constitutional identity become intriguing, problematic, and challenging when some links of identity clash with claims to give singularity its due. It is precisely at that point that the dialectic between the universal and the singular is unleashed and that it becomes oriented to the plural. Moreover, because conceptions of the universal are plural, and those of the needs for purposes of preserving singularity are multiple, what qualifies as the plural is likely to remain perpetually in question.[3]

In other words, constitution is an act of positivation of so conceived social contract[4]. Most of the contemporary societies are, as Rosenfeld names them, pluralistic-in-fact. In Rosenfeld's view for heterogeneous societies with various competing conceptions of the good, constitutional democracy and adherence to the rule of law may well be indispensable to achieving political cohesion with minimum oppression"[5] The hierarchy inherent for the constitutional order allows citizens to "challenge state-backed infra-constitutional laws". In the heart of this process, we find *consent,* which is not necessarily actual. As Rosenfeld states that it is "arguably sufficient for purposes of assessing the legitimacy of a rule of law regime to determine whether acceptance of the latter would be reasonably consistent with the diverse agendas of all concerned."

> To the extent it is democratic, constitutional democracy implements the will of political majorities and coerces political minorities to contribute to the realization of majority objectives with which minorities may strongly disagree. On the other hand, to the extent that constitutional democracy affords protection to certain fundamental rights and certain vindications of such rights frustrate the ability of majorities to fulfill certain objectives which they consider paramount, the enforcement of constitutional rights would seem to lead to a significant amount of coercion.[6]

The answer to this conundrum is that this constitutionally embedded consent must necessarily encompass the protection of identity, through protection of autonomy of individuals and derived protection of the autonomy of the groups. Therefore, constitution in pluralistic societies cannot be based on "self-explanatory collective bonds but on rational agreement on common life"[7].

Reflecting on *Social contract*, Rosenfeld stresses Rousseau's binary nature of individuals in a political community. They are in the same time bourgeoisies who pursues private interests which often clash with those of others, and citizens, making each citizen a part of the sovereign which dictates of the general will. If the participation in public affairs would mean the negation and suppression of someone's identity then its legitimation would be even lower. While it is possible to imagine that one can restrain his particular interest (economic, social) it is completely different with someone's identity. There, restraining is impossible since one can act only in his capacity of a being with particular identity. It is conceivable that a good citizen ignores his own interests for the benefit of whole community but going against her identity would be too much to expect. This is why socially construed *others* matter since they also want to to perceive citizenship as inclusion and constitution as a guarantee of liberty.

Therefore, the constitutional arrangement, as a positivation of social contract and principles of justice built in the legal and political logic of a polity, must not risk a permanent injustice to *others*. This is exactly the starting point for multicultural dismantling of universal citizenship and the idea of constitution as an intersubjective normative platform for pluricultural societies. However, they take constitutional universalism as a cause and not as a result of a power and culture biased interpretation of politics which is unfortunately inherent to their own projects.

The citizenship should remain flexible and adaptable to the various differences that exist among us. Constitutional identity should ideally be informed by a type of citizenship tailored to the needs of constantly emerging and changing social identities.

Certainly there is a strong normative background behind this apparently scientific vision of citizenship. It origins in the idea that political community should serve the human emancipation, free development of the essential human needs: to act freely, to develop its identity, to contribute the common life of a cultural and other communities, to be willingly part of the political life and to preserve the domain of private life from the inference of the state.

The identity of the modern democracies is, in the vast majority of cases, strongly biased. One of the first hand reasons lies in the historical formation of the national state. The imposition of the majoritarian discourses by the political elites was to way to provide necessary unity and ensure political obligation to the newly formed level of political organisation. Nationalism was only one of the discourses and the formation of Otherness that shaped citizenship as a particular form of social closure. Clearly, this concept needs deep normative revisiting.

Even though it seems reasonable to adopt group rights as a way of correcting the inherent injustices of the modern democracies, it still does not mean the concept of citizenship should be parceled, leading to the independent citizenship regimes. The very idea of citizenship implies a comprehensive, universal and sphere of equal political and legal communication. Nevertheless, it does not preclude that this ideal of citizenship cannot be achieved through various forms of legal arrangements, including group rights.

The concept of national state, with its ideological background, cannot adequately respond to the diversity of contemporary societies. It is normal to expect that a political system cannot legitimize itself if it is grounded on a biased value system. Moreover, the flourishing of diversity and respect for *others* as minorities depends on the various levels of intersubjective recognition and contemporary state with its rules of citizenship lies is the locus of normativity of the whole process.

IV. Defining *Otherness and* Constituitional Other?

Identity is a salient notion in the kaleidoscope of political theory. As identity as a notion has becoming important for the self-understanding of the modern man the importance of this category of social psychology has becoming more and more crucial in the development of political theories. Social identities reflect the way individuals and groups internalize established social categories within their societies, such as their cultural (or ethnic) identities, religious, gender identities, class identities etc. These social categories shape our ideas about who we think we are, how we want to be seen by others, and the groups to which we belong. This is because the representation of different groups within any given society reflects the inter-group disproportion of political power.

The genesis of importance of identity for theorizing political issues starts with social conceptualization of group identities as a result of a historical/ everyday interaction between various groups, their self-understanding and mutual determination. This process and its results become important for political theory once the relation between the groups reflects different level of political power towards the constituting and changing the polity that these groups share. More specifically, this paper is trying to determine how various constitutional identities of the Balkan states in their historical dimension reflect this power game. In other words, how the various Balkan nations managed to use state building and constitutionalisation as determining other – the one who will by the letter of a founding document get a smaller share of political power or will be politically and sometimes even physically annihilated.

Simone de Beauvoir in 1949 *The second sex* argued that otherness and binarity are fundamental categories of human thought that depicts man as an *absolute* and *subject* and woman as *other*. Zygmunt Bauman in *Modernity and ambivalence* explains how the central frame of both modern intellect and modern practice is opposition, dichotomy:

> In dichotomies crucial for the practice and the vision of social order the differentiating power hides as a rule behind one of the members of the opposition. The second member is but *the other* of the first, the opposite (degraded, suppressed, exiled) side of the first and its creation. Thus abnormality is the other of the norm, deviation the other of law-abiding, illness the other of health, barbarity the other of civilization, animal the other of the human, woman the other of man, stranger the other of the native, enemy the other of friend, `them' the other of `us', insanity the other

of reason, foreigner the other of the state subject, lay public the other of the expert. Both sides depend on each other, but the dependence is not symmetrical. The second side depends on the first for its contrived and enforced isolation. The first depends on the second for its self-assertion.

These dichotomies constitute identities of social actors. They are not only identifying but also qualifying features that cover all spheres of the social. "Woman is the other of man, animal is the other of human, stranger is the other of native, abnormality the other of norm, deviation the other of law-abiding, illness the other of health, insanity the other of reason, lay public the other of the expert, foreigner the other of state subject, enemy the other of friend."[8]

Andrew Okolie puts also stresses that social identities are relational; groups typically define themselves in relation to others. Identity is not assigned or defined without some other particular social function. Othering is an omnipresent social process with a precise functionality. We cast a group as other and establish our own identity through opposition to that group and its features. Citizenship, by definition, is almost always a way of othering. Through the process of defining the features and rules of membership, we create "others", excluding them from the rights and benefits of group membership.

The process of intergroup othering takes place in historical interactions of the groups. The social experience, the existence of competing elites, rival national projects etc. constitute sources othering. In the process of othering, various mythical, ideological and quasi-scientific narratives are used to make the process convincing and accepted.

Mythical discourses are particularly suitable for othering. They divide the world into binary oppositions and that makes them so fitting for othering: ideally, the other should be strictly defined and set off against "us". Mythical binary oppositions reduce the complex world necessarily to two opposites, excluding options "in the middle". The same mechanism transposes to identity creation where *us* has to be clearly divided, ie. opposite from *other*. Mythical time is different to historical, placed in eternity and cyclical.[9] That is why national and political myths make othering seem so fixed and eternal.

Ideological narratives are also aimed at differing us and them. Ideologies exclude each other and often perceive proponents of other ideologies as rivalry, antagonistic or hostile. Moreover, ideologies themselves can

propagate exclusion or animosity, especially the ones coming from the right spectrum.

There are particular theories in the history of political thought primarily focused with the relation to the utmost other. In 1927, Schmitt published *The Concept of the Political*, arguing the view that all true politics is based on the distinction between friend and enemy. This distinction is based in public not private sphere. Thus, it is collectively shared animosity towards the other which in private sphere must not necessarily exist. The distinction between friend and enemy thus refers to the "utmost degree of intensity … of an association or dissociation."[10] The political distinction between friend and enemy is not reducible to these other distinctions or, for that matter, to any particular distinction — is it linguistic, ethnic, cultural, religious, etc. — that may become a marker of collective identity and difference.[11] A political community exists, then, wherever a group of people are willing to engage in political life by distinguishing themselves from outsiders through the drawing of a friend-enemy distinction.[12]

Thus, othering takes place in all spheres of political and all political forms can in one way or another contain discourses of othering. In what way can we relate this concept of othering to the common project of constitutionalizing a polity? How do these collective identities coincide and collide? In order to determine this we might also need to examine some of the theories of the political which are explicitly based on the mentioned logic.

This paper examines othering which rises to the level of laws of constitutional importance – the grounding legal and political principles of the community and analyzes the phenomenology of that othering in political community. From the point of view of political theory this is the most interesting type of othering. For othering in this case has become a legitimate expression of community's sovereignty. Mainly these laws regard citizenship as the crucial point of community membership.

Though constitutional identity will be elaborated later in this paper, some general statements about notion of identity in the western philosophical discourse can be made. In order to understand the relation between national identity often wrongly translated to constitutional identity in the case of Balkan states one should think first of philosophical relations between identity and difference. Namely, as postmodern theorists have shown, our Western philosophical understanding of identity has always equated identity with homogeneity. Young's contribution is also in

identifying the myriad of minorities that exist within a society other than national, ethnic or religious.

The interplay of identity and difference is crucial for understanding inter-group, especially inter-cultural and inter-ethnic relations. Namely, the logic of identity imposes false sameness within and false diametric opposition towards other entities. The logic of identity has certain rules by which it constitutes this concepts and everything it is related to:

> The logic of identity expresses one construction of the meaning and operations of reason: an urge to think things together, to reduce them to unity. To give a rational account is to find the universal, the one principle, the law, covering the phenomena to be accounted for. Reason seeks essence, a single formula that classifies concrete particulars as inside or outside a category, something common to all things that belong in the category.[13]

This understanding of identity has inspired elites in their conceptualisation of national projects. The space for different voices has not been left. Common language often different to vernacular ones, invented history that ignored historical mass crimes and the high culture that was imposed to simple people was a model of cultural homogenization of the nations. The level to which certain nations had a tendency towards homogenizing was different. Serbians for example tended towards higher religious homogeneity than Albanians who insisted on national homogeneity – somewhat more inclusive notion in their particular case.

The real problem, however, is the tendency of Balkan states to incorporate this concept of identity into constitutional culture. Why? Because constitutionalism has a clear normative framework that goes against described tendencies of national cultures.

Constitutionalism must remain antimajoritarian in order to protect the liberties of individuals in cases when tyranny of majority.[14] In other words this idea is built in the foundations of liberal constitutionalism as a safeguard from illiberal tendencies of democracy and collectivism.

Thus, constitution should ideally recognize and protect the other, as others are always in minority position. In this way, from the way in which others have been recognized by the constitution and citizenship laws as essentially constitutional laws, we can read the constitutional identity of a polity. The concept of identity present in the long western philosophy is

problematic both at the level of inter-ethnic relations and the experience of constitutionalisation.

Tully in 1995 *Strange multiplicity* reckons that contemporary resistance and demands for recognition of the members whose cultures have been marginalized, excluded or exterminated is a consequence of national and liberal constitutions and their universalizing tendency.[15] In Tully's view the dominant language of modern constitutionalism shared by liberals, nationalist and communitarians was shaped by the discourses and practices of pre-modern (ancient) and modern constitutions. The "strange multiplicity" of voices in the age of diversity that Tully depicts is aimed at intercultural and intracultural, primarily constitutional, recognition which takes place at various levels, national and international, and includes subjects that range from linguistic and ethnic minorities to women, indigenous people and national states.

Tully analyses constitutionalism through the paradigm of language as social acts of communication. There are two languages of constitutionalism that intersect in present times. The authoritative political traditions of interpretation of modern constitutional societies: liberalism, nationalism and communitarianism tend to impose a dominant culture "while masquerading as culturally neutral, comprehensive, or unavoidably ethnocentric". This language was designed to exclude or assimilate cultural diversity and justify uniformity.

The other language, in which claims to cultural recognition are taken up and adjudicated, is the language of contemporary constitutionalism. According to Tully, this is an extremely complex language that goes against and acts in accordance with modern constitutions, it is not monolithic masculine, European and imperial it is an assemblage that results from historical dynamics, interaction and struggle. In his words, "constitutionalism is thus a game in which participants alter the conventions as they go along".[16]

Antimajoritarian character of constitutionalism is not always clearly proclaimed in empirical constitutions. Instead it should be constantly rediscovered in the common quest for constitutionalizing a polity. Constitutionalism should not be perceived as homogenous, unitary, incontestable but rather open, diversified and contestable. Open to include new subjects and forms of protection, diversified to allow different forms of political order and different legal mechanisms of rights protection, and finally some parts of it should always be open to contestation. It should correspond to the diversity and changing nature of political life

in contemporary polities. The contestation of the constitutional order, as a dominant form of questioning the overall system by those it refers to, should be possible but still enabling the core principles that guarantee the functioning of the society and basic civil rights untouched.

V. The Strategies of Othering and Historical Phases of Balkan Othering

Historical others can vary during history. Historical other last over time though these can be combined with ideological (based on various ideological splits) or axiological othering (based on value differences, understanding of the conception of good etc.). The relation between Albanians and Serbs, Hungarians and Serbs, Romanians and Croats, all Balkan nations and Turkish minorities etc. are examples of historically induced othering based on nationality. There can be also ethical others organized around various binary oppositions: fascists – antifascists, democrats – communists, modernists – traditionalists etc. Finally ethical, esthetical of identity can merge in cases when othering is aimed at various social group: women, LGBT minorities etc.

In this section I will describe some of the strategies of exclusion through the concept of citizenship in the history of Balkan states. Then I will propose a scheme of historical phases of othering in the Balkans determining some of the common features in these phases.

Before determining the category of constitutional identity it is important to determine the nature of the mechanisms of othering. These mechanism, and both historical and contemporary references will confirm this, usually go through the discourse and practice of citizenship. Citizenship is a form of inclusion and exclusion and as such is a perfect context for othering. Using notable historical studies, in this part I will indicate some historical examples of othering, realized through the formulation and application of citizenship laws.

Since religion has been the main matrix of self-understanding of Balkan nations and the keeper of "statehood" during the Turkish yolk, the main other in the time of nation formation was consequently religious one. Some of the first Balkan constitutions, though nominally liberal, universalistic and inspired by Belgium constitution of 1931, in practice were implementing "hierarchical and multi-layered citizenship".[17] This triggered the reaction

of the big powers at Berlin congress which conditioned independence of the new Balkan states by their internal recognition of minority rights.

Special mechanisms of exclusion have been applied to Roma population. Though we can identify citizenship rights violation in all Balkan states in this very moment, historical examples are way more radical. Namely, Roma were for a long time traded as slaves,[18] deprived of any rights, a sort of *zoe* in Agamben's terms.

Otherness encouraged by Christianity and well established on the whole European continent and not only Balkans was reserved for members of Jewish community. In Romania, as Iordachi has shown in his study, Jews remained in the status of legal inferiority until the First World War[19]. Though often well integrated and contributing to the wellbeing of young bourgeois societies, Jews have been for a long time perceived as outsiders, others. Political and social exclusion had its peak in the horror of Holocaust and collaborating Quisling governments in the Balkans have contributed to it.[20]

Otherness does not have to be delineated only along the divisions between groups, but within groups too. Women are the perfect other from within, whose citizenship rights can be limited as a strategy to keep the patriarchal norms and order intact. The relation between the modern state and the French revolution which, inspired by Enlightment, recognized the rights of the men and officially limited the women the private sphere.[21] In her numerous writings, Nira Yuval Davis explains the relation between nationalism and gender inequality and the special role that was given to women within the concept of the national state.[22] Women voting and civil rights were either nonexistent or limited to their relation towards men (husbands, fathers etc.)[23] In some cases, modernizing constitutional projects were a step back comparing to before existing norms of traditional common norms and established juridical practices.[24]

In very interesting cases of newly conquered territories, there has been something that we might denominate as *territorial othering*. The other in this case has almost colonial status. It is not a matter of ethnicity or religious belonging but rather on the overall civilizational discrepancy perceived by center of national states. Namely, for certain territories, like Dobrugea[25] or Kosovo, there was a limitation of citizenship rights for whole population as a sign of an inadequacy of these subjects to gain the fully fledged citizenship status.

Finally, nowadays, in the wake of various and plural identities of post transitional reality we can talk about new others: immigrants, refugees,[26]

LGBT.[27] Their citizenship rights, though substantially and formally different, are often limited despite various accepted international norms or the constitutionally guaranteed rights. Having new minorities in mind is important because it indicates the dynamics of the notion of citizenship. It is a vivid and always changing concept and citizens and noncitizens constantly raise new claims in order to vindicate their rights.

These historical examples illustrate the history of citizenship as a strategy of exclusion but also as a field of constant contestation by various groups. Going back in time should help us understand the process of formation of constitutional identity through the practices and rules of citizenship. The conception of citizenship significantly shapes our idea of membership and allegiance, the content of citizenship rights and obligations and overall vision of political that a community shares.

Historical phases of othering

The constitutional change in the Balkans like elsewhere was often a result of power struggles of various political groups. These struggles often reflected the fluctuations in the global political order and big historical changes that took place at the European continent. I will propose several historical periods of defining constitutional identity that are fairly common for all Balkan societies with.

The spring of nations Nation building 19th century

In this paper I argue that the root of conceptualizing constitutional identity based on ethnicity and nation can be found in the first national discourses in the wake of nations in 19th century. Cultural Herderian nationalism will later turn into political nationalism which will put the national state in the main focus of nationalistic projects. Initially an ideology of liberation and cultural emancipation nationalism, due to the recognition of Balkan states by international community of the time, it has become a project oppressive towards various religious and ethnic minorities.

The earliest national revolutions, 1804-1830 in cases of Serbia and Greece, as well as the Revolution of 1848 and its legacy in Hungary (1848-1867) and Romania (1848-1866) similarly to great American and French revolutions were the initial point in constitutionalizing national states. In Hungarian case like a matrzoshka doll one could identify the

existence of others within the others. Once that Hungarians came to terms with Austrians in Austro – Hungarian Compromise of 1867. other *others* within Hungary were still demanding right to self-determination.

The Balkan wars were used by most of the Balkan societies to deal with the back then the biggest Other (and its recidives in the Penninsula). On the great war crimes towards Muslim minorities contemporary textbooks remain silent. Balkan wars are seen as liberating and as an important step in nation building so this picture might maculated by their suffering.

Gellner was pointing out the equation between the nation and the state which nationalism has always had as one of its fundamental premises.[28] Nation and state are dialectically intertwined and the difference between them in the political space is often not clear. In the mosaic of nations and ethnicities this vision had to lead to conflicts. Besides, the idea that constitutionalism should protect rights and liberties of individual, was not a part of a dominating discourse of this time. Collectivity as a bearer of sovereignty in this period was perceived as nation, group of a clearly defined ethnic and linguistic feature. This idea was backed by parallelly developed ideological movements whose role was to encourage the process of self-emancipation and nation building.

Collectivism[29] and egalitarianism, equality not as equality in front of the law but equality of property,[30] were the value coordinates of the intellectual elites of the time. Here lies at least one of the reasons why constitutional identity in its birth was formulated exactly in this way with little space for individual, particular and different. Diana Mishkova explains the relationship between liberalism and nationalism showing how liberal nationalism as an idea that was unifying romantic ideals with universalistic notions of individual rights was gradually turning into statist, protectionist and collectivist ideology that gave priority to collective rights and national question.[31] The ideals of French revolution liberty, equality and fraternity were disproportionally interpreted by local elites. Declaratory social egalitarianism and collectivism were always in front of liberal ideological streams.

Interwar period rise of fascism

As influential elements in Balkan societies grew impatient with moderate ideologies, the Balkan states experienced a political drift to the Right. Authoritarian regimes came to power because liberal and parliamentary approaches failed to solve the problems of national

minorities and economic backwardness. Of course, authoritarian regimes did no better in the long run, but this was not immediately apparent.

The clear connection between constitutionalism and othering can be also seen in this particular period of history. Constitutionalism as a set of norms aimed at protecting individuals and groups from the arbitrary omnipotence of majority was negated in the name of a new philosophy and worldview that had a bigoted vision of monolith community. To construct a nation *fascio* this ideology was separating wheat from the chaff by targeting excluding, misrecognizing and exterminating various *others*.

Fascism is anti-parliamentary, anti-democratic and even anti-political, it depicts a world of absolute values in which debate and democracy lose their validity as political tools. Fascism is racist and often anti-Semitic which resulted in horrific mass crimes against Jews and Roma, as well as Serbs by Ustashe's concentration camps. Revisionist and anti-Semitic movements: Arrow Cross in Hungary, the Legion of the Archangel Michael, also called the Iron Guards, Ustashe in Croatia, Ljoticevci in Serbia (Srpski dobrovoljacki korpus) became the new elites proposing a different constitutional identity to their nations. In this period the ultimate goal is to exterminate the other, any form of coexistence was excluded.

Socialist constitutions

During the time when most of the Balkan countries had a socialist turn, it seems that some embedded features of constitutional identity remained the same. Nationalism and populism, dressed in new ideological attire, still played the role. The imaginary of a nation as a community of fate could not be easily altered by a vision of socialist internationalism.

Katherine Verdery in 1995 *National ideology under socialism* shows how the example of Romania suggests ethnic tensions of the time are not a sort of a resurrection of pre-Communist Nationalism but result of promoting of national ideologies under the rule of Communist Party.[32] Similarly in Bulgaria socialistic elites interpreted the official ideology in the language of nationalism. All Turks in Bulgaria suffered substantially because of communist policy, and it is likely that more than 200,000 left the country permanently.[33] The treatment of Jews and Macedonian question also show the continuation of national paradigm rather than its requestioning.

The case of socialistic Yugoslavia was somewhat different. It led to promotion of a sort of republican concept of citizenship which still

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allowed for limited recognition of particular cultures since the previous forms of Yugoslav unity were perceived as hegemonistic. The kingdom of Yugoslavia was marked by insistence of postnational concept of Yugoslavism promoted by the king Aleksandar I as a way to silence the voices of nationalism. Compared to post-Yugoslav but also history of the first Yugoslavia experience of war and bloodshed this form of plurinational polity was certainly a normative breakthrough. Communist idea of Yugoslavism was genuinely postnational and was enforced by the ideology of "brotherhood and unity". However, particular identities were seen as detrimental for the socialist order. Especially religion and (in plurinational context like that of SFR Yugoslavia) strong nationalist feelings were seen as retrograde and damaging for the political order. Thus brotherhood and unity" was an ideal that served as an excuse for suppressing diversity and different claims for identity recognition. The way socialist elites dealt with Aleksandar Rankovic, Croatian spring (Hrvatsko proljece) have shown that any kind of collective right claims will be rapidly crushed.

In the same time, colonization politics in Kosovo that has begun during the kingdom of Yugoslavia as a part of Serbian nationalistic project continued in socialist Yugoslavia.[34] In other words, though nationalism of recognized nations and ethnicities was not accepted, the old nationalistic policies in the region that has always been perceived as poor and uncivilized were reapplied. Besides, similarly like in Bulgaria, in this period from 1952-1965 390 000 Turks and Albanians was released from Yugoslav citizenship.[35] It seems that the picture of a historical other remained, even with the apparent change of constitutional order.

Thus, though the ideological matrix has been changed, the main paradigm of privileged collective against various, and often "old" others (determined by ethnicity or nation), has remained intact. Constitutionalism as a space of guarantees and rights for minorities in individuals could have not been achieved in orders that favored ideology over institutions and law. In other words, constitutional identity is more than a mere political other and the politics of *othering* is a good indicator of its real change.

Post-cold war constitutionalisation and the EU Integrations

Revival of atavist othering and establishing nationalistic matrix was a key element of Balkan's transition. What some coined as constitutional nationalism[36] – became the main question of the new political elites: how to provide the supremacy of one nation in a liberal democratic

constitutional framework? This was particularly present in the case of disintegration of SFR Yugoslavia where the revival of fascist policies was seen in the nationalistic civil war. Expulsion and extermination of national minorities, violation of their citizenship rights, constitutional changes that proclaimed the primacy of one nation were part of Yugoslav political reality during 90s.

The EU integrations have brought in the insistence on the politics of minority and human rights and consequently change the nuances of constitutional identities of member and candidate states. The case law of European Court of Human Rights has also important impact on the citizenship of the Balkan states in this period. The Europeanisation mechanism resulting from the politics of integration of the Balkan states with the supranational political entities can be seen in the changes of citizenship regimes.[37]

The constant in Balkan othering?

After elaborating these four phases of Balkan othering one might wonder if there is a pattern followed by all forms of othering in these different phases, a sort of a historical light motive of othering? How is politics and constitutional self-perceived? It is clear that in all phases the ideas of state, nation and sovereignty was coming outside from political. It was not a matter of consensus but rather ex ante determined notions that should lead the community on its prescribed historical path. Individualism, pluralism were not seen as values but rather as enemies of national sovereignty. This vision was reflected to Western imported institution of democracies: nonexistent parliamentary and often only declaratory constitutions.

The main national matrix developed in the first period was continuously followed by national elites ever since it was created. Communism has shown aberration from the matrix but its collectivist populist paradigm has been kept. During the interwar period, the rise of fascism and occupation this matrix was brought to its extreme paroxysm.

The paradigm has always had tendency towards monism, cultural homogeneity and exclusion or destruction of otherness. In other words, we can say that there is a whole range of different constitutional histories of Balkan nations. However, there is one prevailing feature that seems to be in the heart of constitutional autonomy – based on collectivism and particularity of dominant nation. To what extent this fact is salient we can

determine only once we define the notion of constitutional identity and its basic normative presuppositions.

Another important conclusion can be drawn. Namely, unlike European Balkan constitutionalism had little reference to the discourse of human rights and individual liberties and was more interested in the idea of national self-determination. Collectivity has been always seen as a barrier of sovereignty and this will exactly impede the possibility of minorities to legitimize the existing orders. Constitution was not understood as individual's (citizen's) charter of liberty but rather as an expression of the right to self-determination of a nation. Collective understanding of liberal ideals had precedence over liberalism based on freedoms and liberties of an individual.

In the next part I will try to define the constitutional identity to see its normative axes and try to analyze it within a particular Balkan context. The historical periods indicated so far have informed the constitutionalisation process in the Balkan states and influenced the concept of citizenship.

VI. Defining Constitutional Identity

Identities can be individual (personal) and collective. Though these notions of identity are structurally different drawing parallels between them can sometimes be useful. Naturally, in this project I refer to certain types of collective identities. The fundamental differentiation will be made between national and constitutional identity.[38] Although these identities can be often intertwined and mutually informing, it is important to analytically divide these two concepts. National identity is a broader notion and refers to the communal sense of being a cohesive whole, which shares tradition, culture and language. National identity can be a form of political identity when this sense of wholeness refers to a community that shares a unique political space (national state). Nevertheless, national identity can and often was an extra political category, contrary to the idea of political (as essentially dialogical and critical) and invoking categories and projects that could go beyond political.

Constitutional identity is a narrower concept. Interestingly enough, both nationalism and constitutionalism of modern national states emerge within the same historical context, both in a way legitimizing the state as "is the source of legitimate physical force". Rosenfeld writes:

> Modern constitutional identity is distinguished from national identity—one can easily conceive of the French or German nation without reference to a constitution—but both originate in the late eighteenth century and both are identities constructed and projected by what Benedict Anderson has labeled 'imagined communities'.

The idea of these two phenomena was to address two important issues of citizenship in modern national states: rights and solidarity. Thus, for the new political project in the form of national state it was not enough only to empower its subjects but also to offer a pattern of solidarity invoking common language, culture, tradition etc. The idea of constitutionally guaranteed rights was to recognize universal equality (measured by the standards of the time) despite differences while nationalizing discourses were aimed at unifying political subjects, showing their intrinsic sameness.

This short theoretical excurse was needed in order to show the dialectical nature of the relation between national and constitutional. I will now proceed with analyzing the notion of constitutional identity. In order to define it might be useful to explicate the notion of constitution first and then define the identity which is based on it. National identities emerge in a particular discourse of the ideology of nationalism.

Constitutions should be understood as "the law produced through a political decision that regulates the establishment and exercise of political rule".[39] As Grimm explains, we talk about normative and not empirical constitutions that existed before the eighteen century. Therefore, in theorizing constitutions we should primarily focus on its normative dimension and consequently also determine to what extent that normative dimension is followed in political decision making.

Nationality laws, which determine the rules for acquisition and termination of citizenship and all other matters relating to citizenship, are usually within constitution or constitutional laws. They define the membership in political community, rights and obligation, the overall conception of political and political community.

Jacobsohn has indicated that the issue of identity of a constitutional order has deep historical roots. He quotes book 3 of The Politics, where Aristotle asked, "On what principle ought we to say that a State has retained its identity, or, conversely, that it has lost its identity and become a different State?" and his answer that "The identity of a polis is not constituted by its walls." According to Gary Jacobsohn:

> a constitution acquires an identity through experience. … [T]his identity exists neither as a discrete object of invention nor as a heavily encrusted essence embedded in a society's culture, requiring only to be discovered. Rather identity emerges *dialogically* and represents a mix of political aspirations and commitments that are expressive of a nation's past, as well as the determination of those within the society who seek … to transcend that past.

Constitutional identity is a rather new concept in political and legal theory[40]. Rosenfeld identifies three important features of constitutional identity: the fact of existing of certain constitution, the contents of that constitution, the context in which that constitution operates. Constitutions, *ratio materiae*, refer to both the institutional outlook of a polity and protection of fundamental rights. However, constitutional identity goes beyond this. As Rosenfeld explains:

> Placed in their contemporary setting, conceptions of constitutional identity range from focus on the actual features and provisions of a constitution— for example, does it establish a presidential or parliamentary system, a unitary or federal state—to the relation between the constitution and the culture in which it operates, and to the relation between the identity of the constitution and other relevant identities, such as national, religious, or ideological identity.[41]

Constitutionalism requires constitutions to provide a definition and limitation of the powers of government, commitment to adherence to the rule of law and protection of fundamental rights exactly these features make constitutional identity different to other forms of collective identities. Nevertheless, exactly for its similar declaratory character constitutional cultures and identities should be differentiated by the application of constitution in the life of its subjects.

Rosenfeld sees the constitutional identity as a result of negation, rearrangement and reincorporation of their salient features and as an act of break with preconstitutional past. In other words, it is a result of political creation and imaginary that shapes the political life of the community.

For Jacobsohn, the essential function of constitutional identity is to deal with constitutional disharmony. Constitutional disharmony creates a need for adaptation and coping with conflict and dissonance, and constitutional identity must be shaped dialogically with a view to overcoming the causes of such disharmony.[42] Moreover, such constitutional identity must at once

differentiate itself from all other relevant pre- and extra-constitutional identities while preserving or reincorporating enough of the latter to secure a minimum of acceptance among all those who are meant to come under its sweep.[43] Here I would argue somewhat different position. Given the inherent character of constitutionalism, constitutional identity should rather critically asses other forms of identity while naturally looking to secure legitimation. If other forms of identity are contrary to the essence of constitutionalism their incorporation in constitutional identity would be normatively wrong and counterproductive.

VII. Models of Constitutional Identity – Between Description and Normativity

Rosenfeld identifies four national models of constitutional identity: French, German, American and Spanish.[44]

The principal difference between the French and the German model, he explains, is traceable to their contrasting conception of the nation. He quotes Ulrich Preuss and his famous differentiation of two conceptions of nation: "whereas in the French concept the nation is the entirety of the *demos*, in the German and East European concept the nation is a group defined in terms of ethnicity – the nation is *ethnos*". In the German model championed by Karl Schmitt, the universal conception of democracy typical of the French model is replaced by an ethnocentric democracy – by the ideal of self-governance. The American model is closer to the French than to the German. However, unlike in France, where the nation was already in existence -- through not yet fully adapted to the needs of the new constitutional order -- in the United States, the constitution set the frame-work for the state and antedated the nation. Finally, the Spanish model differs from the preceding three in two principal respects: it sets a framework for a multi-ethnic polity; and it incorporates transnational norms into the prescriptive order of a multi-ethnic nation-state.

I reckon that Rosenfeld's analytic apparatus can be useful for our discussion of the Balkan constitutional traditions. It captures the main elements needed for our normative inquiry: the character and role of nation, the relation between nation and constitution and finally the interplay of identity and difference within the national state building – to what extent were the voices of other heard. Nevertheless, I will go further on with this analytic division and come to somewhat different categorization. I will

elaborate four ideal types, three of which are more empirically and the last more normatively informed. These will be differentiated according to four criteria: concept of nation, conceptualization of sovereignty, determination of other and the object of patriotic loyalty. I find these criteria crucial for the conceptualization of political community, membership and belonging as important denominators of constitutional identity. Furthermore, the notion of otherness is added as an additional criterion due to the importance I have previously elaborated.

Concept of the nation (ethnic/political) What is the quality of the majority group? Is it ethnical – origin based - a specific cultural national group with history, language, or is it political – citizenship based? This tells us about the conditions for the membership in the world where national states are the main type of political order. Broadly the concept of the nation can be either ethnic (based on language, culture, religion or other criteria) or political (based on the citizenship, political territory).

Conceptualization of sovereignty – who does it belong to? Who is the bearer of the highest political power in the polity Ethnos or demos. This enables us to see how the power relations are divided within society. Does individual or minority group have a right to autonomously decide on issues that concern them?

Determination of other. Once constitutional identity is formulated through constitution and constitutional laws who can be seen or auto perceived as excluded. Again it will be necessary to employ the broader concept of citizenship (normative social citizenship, not purely legal) to determine this.

The object of patriotic loyalty. Finally, the way in which these ideal types are construed they animate a particular attachment to polity – patriotic sentiment. In other words, this criterion tells us where the symbolic value of the community is, but also its normative nexus. This indirectly indicates the main legitimacy discourse of the political community – where the arguments for legitimizing political decisions come from.

First three of the four ideal type models were present in constitutional histories of Balkan states but usually in various mixed types. Nevertheless, they can be construed as ideal types/categories that include various values of the previously enlisted criteria. These ideal types of constitutional identity are: *nationalism*, *multiculturalism/multinationalism*, *republicanism* and *constitutional patriotism*.

These four types are all present in the normative potential of the Balkan constitutions though some have been historically more present than the

others. We might also think of these models in a sequence of patriotic loyalty towards more universalistic notions: from national homogenic concept of constitutional identity over unifying republicans through various forms of multiculturalism and finally constitutional patriotism.

There is no doubt that the *national model* is most present in all Balkan states and that has been the case with the most part of its history. The constitutions and citizenship laws give in one way or the other primacy to the members of one ethnic/national community.[45] I have shown in previous parts the salience of this phenomenon on the constitutional experience and identity of Balkan polities. Also, I have indicated that this form of constitutional identity is more prone to creating constitutional others and as such often illegitimate and instable in the terms of political order.

Republicanism is also normatively impregnated concept. Here we might think more of French republicanism than some other more theoretically informed versions of it. Republicanism gives primacy to political over national or ethnic. We might see it in the ideas of Yugoslavia, though it was indeed a multinational polity, its republican character was undoubtedly salient. Problem with republicanism is that it can often be a disguise for some other forms of domination: national, ideological. In the context of contemporary understood liberty and freedom this concept might be too thick in multinational context.

Multiculturalism has following the liberal/communitarian debate reentered the space of political philosophy in the 90s. In the same time, it was gaining more and more salience in the world of real politics of plural societies. Today, many speak of its retreat. Though this concept seems normatively adequate for multinational reality of Balkan states it has also its shortcomings. In Yugoslavia a sort of multinationalism was covered in the communist party induced ideology of brotherhood and unity, while in Dayton's Bosnia and Herzegovina it was a pattern proposed by the international guarantees including Serbia and Croatia. Similarly some multinational elements were introduced by Ohrid agreement in Macedonia, again as a result of a post conflict compromise. This original constitutional issue of legitimacy and autonomy is not the only one.

Another normative issue with multiculturalism is that it can be exclusive towards ethnic and minority groups not belonging to recognized ones or the ones who did not gain some sort of political autonomy (e.g. Albanians, Hungarians in Yugoslavia as non-Slavic nations without territorial autonomy before 1974, or member of any nation other then

three constitutive peoples in Deyton's Bosnia and Herzegovina, see eg. Sejdic and Finci v. Bosnia case[46]).

Besides, the rights to self-determination as one of the possible multicultural policies[47] can also have disintegrative role in this particular geographical context. Political history of Balkan states has shown that autonomies given to certain regions due to their specific ethnic or cultural were a reason to further instability and raise the interest for independence.

Given all these empirical and normative coordinates, ideal constitutional identity should combine the principles of respect for individual rights but leaves the space for integrative functions of the citizenship. The citizenship should be understood both as a free space of personal autonomy and expression of our public political selves.

Constitutional patriotism represents post-national and post-conventional political identification and allegiance to the set of normative components of a constitution, broadly understand as a political and legal order within a certain polity. As such, constitutional patriotism leaves the public sphere open for the dynamic development of various identities putting the otherness, based on color, race, nation, religion, sex, sexuality, ideology etc., in the context of a common citizenship. It is focused on fostering political participation, public discussion and the exchange of worldviews under the determined set of legitimate principles.

I believe that the normative potential of constitutional patriotism lies in the fact that it overcomes the historical and social otherings. The only other to this kind of order is the one who negates the constitutionally guaranteed rights and liberties and as such is not based on any ascriptive features. Besides this model is a proper balance of centrifugal (autonomy focuses, libertarian) and centripetal (communitarian) tensions of citizenship.

Models of constitutional identity	Concept of the nation	The bearer of Sovereignty	Others	Object of patriotic loyalty
Nationalism	ethnic	nation as collective	**Those who do not belong to (ethnic) nation.**	nation

Multinationalism/ multiculturalism	ethnic	nations as collectives	**Everyone who is not recognized by multicultural scheme in federal states.**	community
Republicanism	political	citizens	**Those who oppose republican order, outsiders of the political nation.**	polity
Constitutional patriotism	political	citizens	**Those who oppose liberal constitutional order.**	constitution

Table 1. Models of constitutional identity for the Balkans

VIII. Conclusion

The concept of constitutional identity is still looking for its precise, clear-cut theoretical formulation. That is the reason why applying this concept to historical development of Balkan constitutionalism is an academic challenge. The idea of the research was to identify the interplay between constitutional identity and ethnically, nationally and in other ways construed otherness. The relation between the identity of a political constitutional unit and the various other collective identities of communities in shaping the overall identity of the political community is a salient academic question.

In order to shape my findings I have elaborated four possible ideal models of constitutional identity and indicated criteria for their definition. These models should be assessed as ideal types, in reality of various constitutional identities they intertwine through some of their features. The research was consisted of both theoretical and empirical elements. I have tried to show that the theoretical models I am proposing have their clear historical resonance in Balkan states. Again, even though they often

appear in reality as a specific combination of ideal types, formulating them in this way enables us to judge their normative potential. Once I have analyzed these criteria through contemporary and historical constitutions and constitutional laws as well as citizenship laws to determine their empirical intersections, I have developed a normative paradigm through which all constitutional identities should be assessed.

Despite many differences all Balkan states have shown a great tendency towards ethnical concept of nation and subsequently nationalist concept of constitutional identity. However, nuance differences can be detected. The cultural plurality of Balkan countries with the plurality of lifestyles necessarily implies some kind of a more inclusive notion of constitutional identity. Constitutional identity is not just a reflection of historically accumulated experience that constitutions should petrify but also the whole space of intentionality that a political community puts in front of itself. Thus, normative ideals of these communities, informed by the historic experience and failures, should set the principles that respond to criteria of legitimacy. Legitimacy, conceived in this way is nothing but a differently formulated idea of stability of political order. Following this normative paradigm I have come up with a model of constitutional patriotism that contains the best solutions for the issues of citizenship in the plural and diversified context of Balkan polities.

The idea of the research was determining patterns of othering, especially at the level of constitutional rules of membership, laws regarding membership, judicial practice regarding cases of civil rights abuse of members of minority groups etc. This is not a case study but rather a proposal of understanding dominant features of Balkan constitutional identity through the prism of subaltern, misrecognized *others*. The way in which we determine others and limit their access to citizenship rights marks significantly our constitutional identity: the way we define us as citizens, rights and obligations, our patriotic loyalty and identification but also our idea of justice and belonging.

The research was aimed at giving analytical and normative tool for analyzing constitutional traditions in the Balkan states. Though various historical researches based on case studies can be very useful and used this research remains clearly in the field of political science in its descriptive and political theory and legal philosophy in its normative elements. In Foucauldian terms speaking, this is rather a genealogical study how certain othering patterns generate and repeat through history, in particular constitutional history. There is a dominant matrix behind the othering,

spiritus movens of political and constitutional, and generally understanding of politics and polity membership.

Various explicitly defined constitutional others have faced other forms of othering that fit into the broader notion of constitutional identity. Constitutional identity cannot be read only from the written constitution but from the interplay of written norms and their echo in the reality of political community.

Ideology is the main generator of constitutional identity. Its sources are national identity, culture, religion, class relations and of course specific cultural epochs. The normative gravidity of concepts like ideology and constitution make these notions so related. There is also an important difference: while ideologies are necessarily perceived as biased and belonging to a particular group constitution has universalistic aim: to be accepted and legitimized by all. This is, goes without saying, an idealized vision of constitutionalism. However, despite this critique, we might still claim that constitution as an object of patriotic loyalty and a source for citizenship identification is a normatively superior type of constitutional identity for the Balkan societies.

Besides the descriptive element of this research aimed at various ideal types of constitutional identities that existed in the history of Balkan polities in various forms, there is a normative input of this research. It is aimed at showing that the forth ideal type constitutional identity in the form of constitutional patriotism has the biggest normative potential for the future of citizenship in the Balkan countries. Constitutional patriotism is a form of patriotic loyalty but also a form of citizenship identification that might help Balkan political communities construe the necessary political legitimacy. However, the sources of constitutional identity as it has been shown in this paper was mainly found in the ideologies of nationalism, collectivism of mainly homogenizing concepts and ideas that left little space for minority cultures and human rights individualistic perspective that should necessarily inspire modern constitutions. Still, the fluidity of notions like constitutional identity and its socially construed nature leaves some space for the future elites and public discourse deliberations to aspire for different visions of political community. In that regard, this paper was a contribution to this imaginary constitutional debate that included some of the arguments *pro* et *contra* various possible constitutional futures.

NOTES

1 Nenad Dimitrijevic, "Kako čitati ustav" [How to Read the Constitution], u: Saša Ilić (ed.), Kako čitati, Beograd: Narodna Biblioteka, 2005.
2 Rosenfeld M., The Constitutional Subject, Its Other, and the Perplexing Quest for an Identity of Its Own: A Reply to My Critics , Cardozo Legal Studies Research Paper No. 358., 2012.
3 Ibidem.
4 Dimitrijevic, N., "Ustav kao akt pozitiviranja društvenog ugovora." (Constitution as an act of positivatioon of social contract) Habitus (1999): 117-138. While Dimitrijevic uses the word *act* I opt for word process in order to indicate fluidity of constitutionalisation.
5 Rosenfeld M., "The Rule of Law and the Legitimacy of Constitutional Democracy", Cardozo Law School, Public Law Research Paper, 2001, No. 36, 1310.
6 Rosenfeld M., "The Rule of Law and the Legitimacy of Constitutional Democracy", 1312.
7 Dimitrijević N., *Ustavna demokracija shvaćena kontekstualno*, Fabrika knjiga, Beograd 2007, 397 (my translation).
8 Bauman, Z. (1991) *Modernity and Ambivalence*. Cambridge: Polity Press. 1991, 8.
9 Eliade, Mircea: *The Myth of the Eternal Return: Cosmos and History*. Princeton: Princeton UP, 1971
10 Scmitt, C, *The Concept of the Political*. Expanded Edition (1932), trans. by G. Schwab, Chicago: University of Chicago Press, 2007 26, 38.
11 Ibid. 25-27.
12 Ibid. 38, 43.
13 Young, I. M, *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press, 1990. p.98.
14 This concept, parallely invented by Mill and Tocquille, was aimed at the shortcomings of democracy and public opinion.
15 Tully, J., *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge: Cambridge University Press, 1995.
16 Ibid, 40.
17 Iordachi C., "The Unyielding Boundaries of Citizenship: The Emancipation of 'Non-Citizens' in Romania, 1866-1918," European Review of History, 8 (August 2001) 2, 157-186.
18 Beck, S. "The origins of Gypsy slavery in Romania", *Dialectical Anthropology* 14, no. 1, 1989, 53-61. http://www.jstor.org/stable/29790296.
19 Iordachi, ibid. 171.
20 Cattaruzza, M. and Iordachi, C., eds., "Anti-Semitism and the Holocaust in East-Central Europe: New Perspectives," Special Issue**,** *East Central Europe* (Leiden, Brill), Volume 39 (2012) No. 1.

21 Pateman, Carole, *The Sexual Contract* , Stanford University Press, 1988.

22 Yuval-Davis, N, "Gender and Nation." *Ethnic and Racial Studies* 16, no. 4, 1993, 621-32.

23 Iordachi, ibid. 177-179.

24 Ibidem, 178.

25 v. Iordachi, C., *Citizenship, Nation and State-Building: The Integration of Northern Dobrogea into Romania, 1878-1913* (Pittsburgh: University of Pittsburgh Press, 2002), Carl Back Papers in Russian and East European Studies No. 1607.

26 There is an interesting case of refugees from Albania of Montenegrin origin (Vrachani), who after 20 years of residence have not achieved their citizenship status. http://www.vijesti.me/vijesti/crnogorci-koji-su-izbjegli-iz-albanije-20-godina-cekaju-drzavljanstvo-31397.

27 https://freedomhouse.org/blog/east-west-divide-lgbt-rights-europe.

28 See Gellner, E., *Nations and Nationalism*, Ithaca: Cornell University Press, 1983.

29 Collectivity of Balkan nations was stressed by various ideologies. The word "poporanism" is derived from "popor", meaning "people" in the Romanian language and was founded by Constantin Stere this movement was mainly aimed at expanding the power of the peasants. In a very nationalist manner, poporanism was also advocating the use of Romanian language and maintaining the Romanian spirit. This is similar to what, rather as an overall ideological matrix than a concrete and formulated ideology, was names as *narodnjastvo* by Serbian historian Latinka Perovic, patriarchal model of living that reflects to all spheres of political (Holm Sundhaussen named it populism).

30 Elaborating on the reception of French revolutionary ideals of brothers, equality and liberty, Dubravka Stojanovic explains how the idea of equality was perceived in modern Serbia: "Another problem was that equality here had always been embraced as a main value, but it was understood in a way that's opposed to its original sense. Here it was understood as social equality, not as legal equality – not as a right of all people to have equal social opportunities, but as a requirement for all people to remain socially the same – don't anyone dare get rich." Stojanovic, Dubravka, "Know your priorities", published on http://pescanik.net/know-your-priorities/.

31 Mishkova, D. (ed), *Entangled Histories of the Balkans - Volume Two: Transfers of Political Ideologies and Institutions*, Brill Publishers, 2014. 193-195.

32 Verdery K., *National Ideology Under Socialism: Identity and Cultural Politics in Ceaușescu's Romania*. Berkeley and Los Angeles: University of California Press, 1991.

33 See e.g. M. P. "The Expulsion of the Turkish Minority from Bulgaria." *The World Today* 7, no. 1 (1951): 30-36. http://www.jstor.org/stable/40392358.

34   Jovanovic V., "The colonization of Kosovo", http://pescanik.net/the-colonization-of-kosovo/.

35   Jovanovic, V., "Iz FNRJ u Tursku", http://pescanik.net/iz-fnrj-u-tursku/.

36   Hayden, R. M. "Constitutional Nationalism in the Formerly Yugoslav Republics." *Slavic Review* 51, no. 4, 1992, 654-73.

37   See e.g. Shaw J, Stiks I, *Citizenship after Yugoslavia*, Routledge, 2013, 10.

38   Constitutional identity like national identity can be conceived as belonging to a collective self.

39   Grimm, D., "The constitution in the process of denationalization", Constellations, Volume 12, Issue 4, December 2005, 447–463.

40   Jacobsohn, G, *Constitutional Identity*, Harvard University Press, 2010.

41   Rosenfeld, M, "Constitutional Identity." Oxford Handbooks Online. 19 Jul. 2016. http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199578610.001.0001/oxfordhb-9780199578610-e-37.

42   Jacobsohn, *ibid,* 23.

43   Rosenfeld, M, *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (2010) 10, 11.

44   Rosenfeld, M, *Constitution-Making, Identity Building, and Peaceful Transition to Democracy: Theoretical Reflections Inspired by the Spanish Example*, 19 Cardozo L. Rev. 1891 (1998).

45   E.g. Serbian constitution from 2006 stipulates that "Republic of Serbia is a state of Serbian people and all citizens who live in it" marking clearly the line between members of majoritarian ethnic group and others. Similar provisions regarding ethnicity or language can be found in almost all Balkan constitutions today.

46   Its complexity, the problems of application, application of protocol 12 was elaborated here: Milanovic, Marko, Sejdic and Finci v. Bosnia and Herzegovina (September 6, 2010). American Journal of International Law, Vol. 104, 2010.

47   v. eg. Kymlicka, Will. *Multicultural citizenship: a liberal theory of minority rights.* Oxford: Clarendon Press, 1995.

BIBLIOGRAPHY

Bauman, Zygmunt, *Modernity and Ambivalence*, Cambridge: Polity Press, 1991

Beck, Sam. "The origins of Gypsy slavery in Romania." Dialectical Anthropology 14, no. 1, 1989 http://www.jstor.org/stable/29790296

Cattaruzza, Marina and Iordachi, Constantin, eds., "Anti-Semitism and the Holocaust in East-Central Europe: New Perspectives," Special Issue, East Central Europe (Leiden, Brill), Volume 39, No. 1, 2012

Dimitrijevic Nenad, "Ustav kao akt pozitiviranja društvenog ugovora." (Constitution as an act of positivatioon of social contract) Habitus, 1999

Dimitrijević Nenad, *Ustavna demokracija shvaćena kontekstualno*, Fabrika knjiga, Beograd 2007

Dimitrijevic, Nenad, "Kako čitati ustav" [How to Read the Constitution], u: Saša Ilić (ed.), Kako čitati, Beograd: Narodna Biblioteka, 2005

Gellner, Ernest, *Nations and Nationalism*, Ithaca: Cornell University Press, 1983

Grimm, Dieter, "The constitution in the process of denationalization", Constellations, Volume 12, Issue 4, 2005

Hayden, Robert M. "Constitutional Nationalism in the Formerly Yugoslav Republics" Slavic Review 51, no. 4, 654-73, 1992

Iordachi, Constantin, "The Unyielding Boundaries of Citizenship: The Emancipation of 'Non-Citizens' in Romania, 1866-1918," European Review of History, 8, 2002

Iordachi, Constantin, Citizenship, Nation and State-Building: The Integration of Northern Dobrogea into Romania, 1878-1913 (Pittsburgh, University of Pittsburgh Press, 2002), Carl Back Papers in Russian and East European Studies No. 1607.

Jacobsohn, Gary, *Constitutional Identity*, Harvard University Press, 2010.

Kymlicka, Will. *Multicultural citizenship: a liberal theory of minority rights*. Oxford: Clarendon Press, 1995

Mishkova, Diana (ed), *Entangled Histories of the Balkans - Volume Two: Transfers of Political Ideologies and Institutions*, Brill Publishers, 2014

Rosenfeld, Michel, "The Rule of Law and the Legitimacy of Constitutional Democracy", Cardozo Law School, Public Law Research Paper, 2001, No. 36, 1310

Rosenfeld, Michel, Constitution-Making, Identity Building, and Peaceful Transition to Democracy: Theoretical Reflections Inspired by the Spanish Example, 19 Cardozo L. Rev. 1891

Rosenfeld, Michel, The Constitutional Subject, Its Other, and the Perplexing Quest for an Identity of Its Own: A Reply to My Critics , Cardozo Legal Studies Research Paper No. 358., 2012

Rosenfeld, Michel, The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community, Routledge, 2010

Rosenfeld, Michel. "Constitutional Identity." Oxford Handbooks Online. 19 Jul. 2016. http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199578610.001.0001/oxfordhb-9780199578610-e-37.

Schmitt, Carl, *The Concept of the Political*, Expanded Edition, trans. by G. Schwab, University of Chicago Press, Chicago, (1932), 2007

Shaw Jo, Stiks Igor , *Citizenship after Yugoslavia*, Routledge, 2013

Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press, 1995

Verdery Katherine, *National Ideology Under Socialism: Identity and Cultural Politics in Ceaușescu's Romania*, Berkeley and Los Angeles: University of California Press, 1991

Young, Iris Marion, *Justice and the Politics of Difference*, Princeton, N.J.: Princeton University Press, 1990

Yuval-Davis, Nira. "Gender and Nation." Ethnic and Racial Studies 16, no. 4, 1993